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Parental Leave



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LAWS 513

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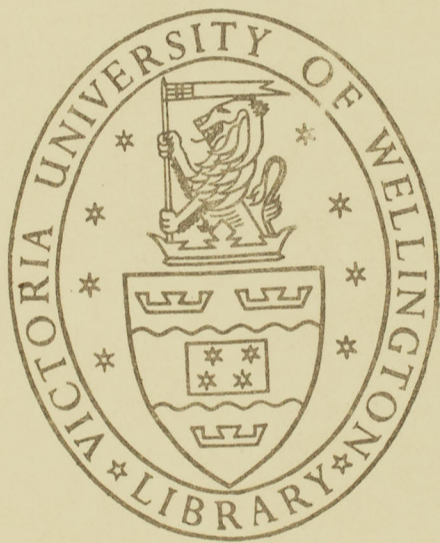


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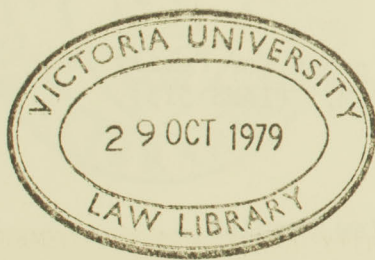
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I. INTRODUCTION

For several years various women's groups have been lobbying for parental leave in the private sector,¹ that is, the right for parents to take leave from work (paid or unpaid) when their children are born, and to return to work later without suffering any disadvantage.

In 1978 a Bill to provide for parental leave was to have been introduced in Parliament.² It did not eventuate. A Maternity Leave and Employment Protection Bill has been promised for the 1979 session of Parliament.³

This paper examines a draft of that Bill. Most of the paper will, therefore, be concerned only with maternity leave. But paternity leave does exist in New Zealand to a small degree, and it is likely to appear more frequently in the future. In view of this the paper will include some discussion on paternity leave.

The paper begins by looking at the International Labour Organisation (ILO) proposals. These proposals are for maternity leave only, paternity leave is not included. Then the situation in selected overseas countries is described. Next, the present situation in New Zealand in both the public and private sectors is studied. Lastly, the draft Bill is analysed to see what it will mean for women workers, and how it measures up to ILO standards. In conclusion, recommendations will be made for a Parental Leave Bill.

II. POLICY

What is the policy behind parental leave? What is it hoped it will achieve?

The reasons for the demand for maternity and paternity leave are different.

The call for maternity leave is a result of demographic, economic, and social factors. Women now are marrying earlier and having children earlier than they did in previous decades.⁴ Nowadays, the average woman will marry and have two children, the youngest of which will be at school by the time she is thirty-three. That means she is likely to have a potential working life after marriage of thirty or more years. Many women need paid employment to survive economically, whether they are single (including divorced and solo mothers) or married. Many families are finding that one pay packet a week is not sufficient. A change in social attitudes has also occurred. Women are demanding the right to work, and more particularly many women are demanding the right to a career. They are no longer satisfied with duties within the home, instead they have vocational aspirations. All these factors combine to mean women want to be able to compete equally with men for a place in the workforce. There have been various measures to assist this. Examples range from formal legal action (e.g. the Equal Pay Act 1972, the Human Rights Commission Act 1977) to administrative action (e.g. setting up advisory bodies, for example the National Advisory Council on the Employment of Women and the Vocational Training Council's Women's Advisory Committee) to informal action (e.g. assertiveness training groups specifically for women).

But women are still at considerable disadvantage in the workforce. They are used as a reserve labour force, when the economy enters a recession, they are amongst the first to lose their jobs. They are concentrated in the lower paid, lower status occupations. For the occupational distribution of women to match that of men, seventy-three percent of women would have to change jobs.⁵ On the issue of pay, women are much worse off than men:⁶

"Despite the full implementation of equal pay steps in April 1977, women's wage rates have been dropping in comparison to men's. There are many reasons for this, among them the differentiation in labour markets, continued employer opposition to equal pay and the strength of 'male' unions in winning wage claims."

Amongst the many barriers to equal participation in the workforce by women has been the fact that, if they wished to have children, women had to stop working. Consequently they lost not only their seniority but also their job. For women to be equal this had to be remedied. In addition, women who had to work for economic reasons, even if they had children, were needing protection. (The latter motive is the one that appears to be behind the ILO provisions. They appear to be less concerned with middle-class educated women wishing to combine a career and having children, which is where a great deal of the impetus for reform came from in New Zealand, than with women who have to work almost all of their lives to survive, in particular those in developing countries.)

Maternity leave, in allowing women time off work (paid or unpaid) and allowing them to return to work, is a form of reverse discrimination. It gives women advantages that men do not have. It can easily be justified, however, because women suffer a disadvantage, (in terms of employment) in that they give birth to children. Although a number of reverse discrimination measures are designed to be eliminated eventually when women achieve equality in all spheres, for example quota systems, maternity leave is not one of these. As long as women continue to bear children they will continue to need maternity leave. *

A further justification for this form of discrimination is that when women give birth to and raise children they are performing an activity in which the community as a whole has an interest. The National Development Subcommittee on the Role of Women said; "The Committee recognises that the contribution made by women to the welfare of the nation during this period of their lives [i.e. when they have pre-school children] is of the utmost importance."⁷ It is unfair that women should be penalised for performing such a valuable task.

But maternity on its own will not mean equality for women in the workforce. For women to be able to return to work after maternity leave, there must be somewhere for their children to be cared for. Although child care leave and the provision of child care facilities is not within the scope of this paper, maternity leave itself is of little practical value without these. It is estimated that there are over 45,000 pre-school children of working women, of which approximately 12,000 are in registered day care centres. "The rest are cared for by relatives or in backyard situations - some of which are disasterous."⁸

The Public Service provides for child care leave, a man or woman can take up to four years leave to care for a pre-school child. But the employee has to resign to do so. On application to re-enter the Public Service, if the ex-employee has the necessary skills to competently fill the vacancy, and the position is substantially the same in character and at the same or lower salary and grading as the position previously held, then the ex-employee is entitled to the job ahead of any other applicants.⁹

Not only are child care leave and facilities needed, but also more flexibility in working conditions. For example, wider availability of part-time work, job sharing and flexible hours.

When all these measures are implemented, women will be in a position to participate much more fully in the workforce.

Paternity leave arises from different considerations. Men do not need paternity leave for economic reasons. Although the need for paternity leave is sometimes couched in terms of the value to a father in being able to be with his child,¹⁰ the major motivation in calling for paternity leave is to try and make the caring for children a shared responsibility, between men and women. In most households, even where both parents are in paid employment, the woman usually does almost the entire housework and caring for children as well.¹¹ Not surprisingly, the call for paternity leave has come from women.

What impact does maternity and paternity leave have on employers? In the case of maternity leave there are several advantages. First, the workforce of the employers will be more stable with a lower turnover. This is because women will return after taking leave, thereby increasing the total length of time they spend with a particular employer. In addition, if women can return to a career structure, this would reduce turnover even more. Second, employers will not lose the skills and training they have invested in their workers. Third, the better the working conditions the better the morale of the employees, and usually the better the work output.

The impact of paternity leave will, if it takes the form of one week's leave without pay as is commonly suggested, be minimal. As in the case of employees taking sick leave or annual holidays, the employer is able to re-arrange work schedules to cover the absence.

The provision of maternity leave may be disadvantageous to the employer during times of high employment. It will be difficult to find temporary workers to fill the vacancy created by the woman taking leave.

On the whole however, parental leave will bring long term benefits to both employers and workers.

III. THE INTERNATIONAL LABOUR ORGANISATION

The International Labour Organisation was created under the Treaty of Versailles in 1919. In 1946 it became the first specialised agency associated with the United Nations.¹² Its objects are contained in the Declaration Concerning the Aims and Purposes of the ILO:¹³

"The Conference reaffirms that fundamental principles on which the Organisation is based and, in particular, that -

- (a) labour is not a commodity;
- (b) freedom of expression and of association are essential to sustained progress;
- (c) poverty anywhere constitutes a danger to prosperity everywhere;
- (d) the war against want requires to be carried on with unrelenting vigour within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of Governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare.

II. Believing that experience has fully demonstrated the truth of the statement in the Constitution of the International Labour Organ-

isation that lasting peace can be established only if it is based on social justice, the Conference affirms that -

- (a) all human beings, irrespective of race, creed or sex, have the right to pursue both their material wellbeing and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity;
- (b) the attainment of the conditions in which this shall be possible must constitute the central aim of national and international policy;
- (c) all national and international policies and measures, in particular those of an economic and financial character, should be judged in this light and accepted only in so far as they may be held to promote and not to hinder the achievement of this fundamental objective;
- (d) it is a responsibility of the International Labour Organisation to examine and consider all international economic and financial policies and measures in the light of this fundamental objective;
- (e) in discharging the tasks entrusted to it the International Labour Organisation, having considered all relevant economic and financial factors, may include in its decisions and

recommendations any provisions which
it considers appropriate."

The functions the ILO performs to achieve these objects include the following: collection and distribution of information, provision of technical assistance to governments, provision of a forum for the exchange of ideas, and the conclusion of Conventions and formulation of Recommendations and other international standards of policy, legislation and administrative practice.¹⁴ It is the last function listed that is of particular relevance to the topic of maternity leave.

The annual meetings of the ILO consist of worker, employer, and government representatives from the 136 member countries. These meetings produce Conventions and Recommendations. The former, if ratified by a country, impose binding legal obligations, the implementation of which is supervised by the ILO. Recommendations on the other hand, merely provide guidance on a particular issue, for example how to go about implementing in practice the policies contained in a Convention.¹⁵

New Zealand was a founder member of the ILO, but did not participate in its activities much to begin with. The first New Zealand delegation went in 1930, and delegations have gone annually since then.¹⁶ The policy of the New Zealand Government is to ratify a Convention when all its provisions are complied with.¹⁷ By 1977 it had ratified forty-eight Conventions. Examples are Convention No. 32 Protection Against Accidents (Dockers) (the first

Convention New Zealand ratified) and Convention No. 134 Prevention of Accidents (Seafarers) (the most recently ratified Convention, ratified in 1977).¹⁸

Convention No. 3, Convention No. 103, Recommendation No. 93 and Recommendation No. 123.¹⁹

None of the ILO provisions include paternity leave.

Convention No. 103, Maternity Protection, is a revision of Convention No. 3 and was adopted by the ILO in 1952. Before outlining its contents a summary will be made of the events that led up to its adoption.

The International Labour Office proposed a text which was revised by the Committee on Maternity Protection and then submitted to the plenary session for final resolution.²⁰ The two main points that emerged in the discussion were whether certain occupations could be excluded from the Convention and whether maternity benefits should be paid by the employer or the State. On the first issue the Office text gave Governments the option to exclude several non-industrial occupations. The Committee did not favour this; they were persuaded by approving temporary exceptions for a few limited occupations. The answer was that permanent exceptions were allowed, but after five years in operation the Governing Body would have to submit to the Conference a report about the exceptions, including proposals for further action if appropriate. On the second issue (who pays the benefit) the split proved to occur between the developed and underdeveloped countries. For example, the Government of India from Pakistan thought employers should be liable for paying benefits

IV. INTERNATIONAL LABOUR ORGANISATION CONVENTIONS AND
RECOMMENDATIONS ON MATERNITY LEAVE

On the topic of maternity leave there are four provisions, Convention No. 3, Convention No. 103, Recommendation No. 95 and Recommendation No. 123.¹⁹

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because in some underdeveloped countries there are no social security schemes and insufficient Government funds for benefits to be the responsibility of the State.²¹ But there was opposition to this from the developed countries on the ground that to make employers pay the benefit would operate against the employment of women.²² An amendment permitting benefits to be paid by employers was lost by ninety-one votes to twenty-seven.²³

An outline of Convention 103 now follows. It must be noted that the Conventions are couched in very broad terms, lacking the specificity one would find in legislation.

Article 3 provides for a minimum of twelve weeks maternity leave, of which six weeks after confinement is compulsory.

Article 4 entitles a woman to cash and medical benefits while she is absent on leave. "The rates of cash benefit shall be fixed by national laws or regulations so as to ensure benefits sufficient for the full and healthy maintenance of herself and her child in accordance with a suitable standard of living."²⁴ The benefits are to be provided by either compulsory social insurance or public funds, not by employers individually. Where the benefits are provided for under social insurance based on previous earnings, they are to be at a rate not less than two-thirds of the woman's previous earnings.

A woman is entitled on returning to work to interrupt her work to nurse her child, the interruptions to be regarded as working time and paid accordingly.²⁵ Although the length of the inter-

ruptions is to be prescribed by national laws or regulations, it is intended that the interruptions would be for approximately half an hour three times a day, or some similar provision, until the child is weaned.

It is unlawful for a woman to be dismissed while absent on maternity leave.²⁶

The Recommendation supporting this Convention, No. 95, spells out in more detail the method for implementing the Convention. Briefly, it provides the following.

Where practicable, maternity leave should extend to fourteen weeks. Further extensions should be possible if necessary for the health of the mother or the child.²⁷ With regard to maternity cash benefits, they should where practicable equal the woman's previous earnings.²⁸ (It is not stated whether these benefits should be taxed or not. Presumably this would depend on the practice prevailing in each particular country. In New Zealand some benefits are taxed, for example unemployment benefit and accident compensation, and some are not, for example family benefit and domestic purposes benefit.)

The Recommendation then details what types of medical benefits should be available, and states that women should be encouraged to use them.²⁹ Nursing breaks should be of at least one and a half hours duration per day. There should be facilities for nursing or day care. By facilities it is meant a place, equipment, and personnel. "Provision should be made for the establishment of

facilities for nursing or day care, preferably outside the undertakings where the women are working; wherever possible provision should be made for the financing or at least subsidising of such facilities at the expense of the community or by compulsory social insurance. The equipment and hygienic requirements of the facilities for nursing and day care and the number and qualifications of the staff of the latter should comply with adequate standards laid down by appropriate regulations, and they should be approved and supervised by the competent authority."³⁰ These facilities are for the use of the woman when she returns to work.

The woman should be protected from dismissal from the date she notifies her employer of her pregnancy until one month after her maternity leave expires. On her return, the woman has a right to reinstatement in her former position or an equivalent one paying the same amount. Her seniority rights should also be preserved.³¹ The final part of the Recommendation deals with prohibitions on certain types of work for pregnant and nursing women.³²

At the 1965 General Conference of the ILO the Employment (Women with Family Responsibilities) Recommendation No. 123 was adopted.³³

Preparation work on the Recommendation was done by the ILO, which submitted material for discussion to the Committee on Women Workers. (The committee comprised of sixty Government members, twenty-five Employers' members and forty Workers' members. The majority were men, but the chairman and reporter were both women, and three of the four members of the drafting committee were women.)³⁴

During the discussion there appeared to be consensus on a large number of issues, but some members would have preferred a Convention to a Recommendation.³⁵ Some members (in particular the Government members from the Scandinavian countries) were opposed to having a measure specifically for women, believing this would prejudice women's chances for equality of opportunity on the employment market.³⁶

The Committee modified the Recommendation and it was then presented to the Conference as a whole. After general comments from several speakers, the Recommendation as a whole was adopted without discussion.³⁷

The general principle of the Recommendation is that the appropriate authorities in each country should pursue a policy "... with a view to enabling women with family responsibilities who work outside their homes to exercise their right to do so without being subject to discrimination..." and that services should be developed "... to enable women to fulfil their various responsibilities at home and at work harmoniously."³⁸ The Recommendation covers the areas of education of the public, child care services and the initial entry and subsequent re-entry into employment.

Of specific relevance to maternity leave is the following provision.³⁹

"In the case of women who, on account of their family responsibilities arising out of maternity, do not find themselves in a position to return to their employment

immediately following exhaustion of the normal period of maternity leave established by law or practice, appropriate measures should be taken to the extent possible to allow them a reasonable further period of leave of absence, without relinquishing their employment, all rights resulting from their employment being fully safeguarded. In the case of termination of employment following maternity, the women concerned should be considered for re-employment in accordance with the provisions applicable under the Termination of Employment Recommendation, 1963, to workers whose employment has been terminated owing to a reduction of the work force."

The Termination of Employment Recommendation provides (in part) that the worker should be given priority of re-engagement and that the rate of wages of re-engaged workers should not be adversely affected as a result of the interruption of their employment.⁴⁰

In 1965 the ILO conducted a world survey on national law and practice regarding maternity provisions. The Committee on the Application of Conventions and Recommendations discussed this report and concluded that,⁴¹

"... despite the limited number of ratifications of these instruments, considerable progress had been made in this field in recent decades. While progress was largely the result of economic and

social development in the various countries, the maternity protection Conventions and Recommendations had exercised undoubted influence on national legislation, which had drawn on the international standards. The Committee was impressed by the progress made in regard to the length of maternity leave; in 89 countries the duration was equal to or greater than the 12 weeks laid down in the international standards. In most of the countries concerned women were entitled to cash benefits during maternity leave (varying from 66 to 100 percent of the wage in some 30 countries) and to free medical care provided under an insurance scheme or out of public funds. In addition, in most countries women were guaranteed job security during maternity leave and protected against discrimination because of pregnancy or the need to nurse an infant.

While noting certain difficulties in applying ILO standards on maternity protection, especially in developing countries which were not able to extend protection to all categories of women workers covered by the Conventions, the Committee considered that these difficulties were not such as to call for revision of the Conventions, particularly as in most cases non-ratification was not due to

basic differences between national legislation and the Conventions. In this connection, it is noted in particular the conclusion of the Committee of experts that national legislation for maternity provisions in many cases contained standards equal to or even higher than the international standards."

The next chapter turns to look at parental provisions in other countries in more detail.

V. OVERSEAS PRACTICES

Many countries have parental leave provisions. The ILO office for Women Workers has collected information on maternity provisions in selected countries and published it in Women At Work.⁴² A summary of their findings follows, supplemented by information on several countries that are of particular interest to New Zealand.

The ILO tables record four aspects of maternity leave provisions, the length of leave permitted, the amount and source of maternity cash benefits, whether there is prohibition of dismissal, and the length and type (paid or unpaid) of nursing breaks.

A study of selected Latin-American countries (eighteen countries) reveals the following.⁴³ Only eleven countries allow sufficient leave to comply with the ILO standard (twelve weeks). All the countries pay cash benefits, almost all out of social insurance. The amount a woman can receive varies, for example in Bolivia it is the national minimum wage plus seventy percent of the amount by which her wage exceeds the minimum wage. Paraguay on the other hand pays the woman fifty percent of the average wage for nine weeks.

All the countries prohibit dismissal and in addition eight countries have provision for entitlement to re-instatement on return from leave. All countries except one allow nursing breaks, nine allow paid breaks, seven unpaid breaks.

Seven socialist countries were studied.⁴⁴ All adhered to the ILO standards on length of leave. All provided for cash maternity

benefits under social insurance, ranging from 50 to 100 percent of the woman's previous weekly wage. All countries prohibit dismissal during maternity leave and in all countries the woman is entitled to be reinstated after taking leave.

The ILO also looked at thirty-one African countries.⁴⁵ Thirteen allowed for more than twelve weeks leave, twelve allowed twelve weeks, and six allowed less than twelve weeks. All except two countries provide for paid leave. In thirteen of these, the benefit is paid out of social insurance. In eleven countries it is paid by the employer, in three the benefit is paid half by the employer and half by insurance; one it is paid by insurance or the employer if the woman is not covered, and for three countries it is not stated who pays the benefit.

Five countries have no prohibition on dismissal. In Somalia dismissal is prohibited until the child is one year old.

In France paid maternity leave is for sixteen weeks (or ten weeks in the case of adopted children).⁴⁶ The prohibition on dismissal lasts for fourteen weeks after confinement. A woman can, however, take up to one year's leave to bring up the child, during which time the employer is obliged to give her priority for re-employment and maintain all entitlements she had at the time of leaving. If a woman renounces this right to take leave then the father may take it up.

In Finland under an act that provides for sickness insurance a maternity allowance is paid for 186 working days.⁴⁷ In the

case of adopted children the entitlement is for 162 days, the natural mother of the adopted child is entitled to 72 days. A father who stays home to care for the child is also entitled to the allowance during the first twelve days after birth.

Sweden's Public Insurance Act gives a total of 210 days paid leave on approximately 90 percent of full pay to either parent or it can be divided between the two.⁴⁸ This benefit is followed by a flat rate daily allowance for sixty days. Parents with children under eight years old have the right to a six hour working day, while those with children under eighteen months old can take full time leave of absence. These entitlements apply to foster parents and parents in de facto relationships.

In the United Kingdom the Employment Protection Act 1975 states in its preamble that amongst its other aims it is an Act to "... provide for the establishment and operation of a Maternity Pay Fund..."⁴⁹ The Act makes dismissal on the grounds of pregnancy unfair unless it falls within two narrow exceptions.⁵⁰ A woman is entitled to return to the job she had before taking leave on terms and conditions not less favourable than those she would be entitled to had she not been absent.⁵¹ If her previous job is not available because of redundancy then she is entitled to be offered alternative employment that must be suitable and appropriate and on terms and conditions that are not substantially less favourable.⁵²

A woman is also entitled to maternity pay for six weeks.⁵³

The amount of the weekly maternity pay is nine-tenths of the woman's weekly pay reduced by the amount of maternity allowance payable under the Social Security Act 1975.⁵⁴ Maternity pay is provided from the Maternity Pay Fund which is, ^{by} the Employment Protection Act, included in the social security Act as one of the funds paid for by a levy on the payroll of all employers. It amounts to .05 percent of the payroll.⁵⁵

In the United States maternity benefits are usually paid from health insurance. "More than 90 percent of the workers who participate in employment - related health plans are covered for medical care expenses resulting from pregnancies."⁵⁶ A decision of the Supreme Court has held that women cannot be forced to terminate their employment when they become pregnant.⁵⁷

In Australia in the public sector women are allowed one year's leave, of which twelve weeks is paid.⁵⁸ Maternity leave does not affect continuity of service for entitlements dependent on continuity.⁵⁹ Men are allowed one week's leave on pay to care for a woman or her child.⁶⁰

It can be seen that there is wide variety in the type of parental leave provisions found in overseas countries. Although some countries, and Sweden in particular, have provisions that enable child rearing to be a shared responsibility, in most countries parental leave means maternity leave.

VI. NEW ZEALAND

1. Introduction

Where does New Zealand stand in regard to the ILO Convention and Recommendations, and how does it compare with other countries?

Because New Zealand law does not comply with all the provisions of Convention No. 103 it has not ratified it. New Zealand is not, therefore, bound to follow it. The New Zealand Government has, however, prepared a report on its position in regard to Recommendation No. 123.⁶¹ There are many legislative, administrative, and practical provisions that go towards meeting some of the requirements of the Recommendation. However, this is not the case for the parts of the Recommendation dealing with maternity. The report outlines, for example, in relation to childcare, legislation (the Children and Young Persons Act 1974 and the Childcare Regulations 1960) and administrative and practical provisions (training of childcare centres' staff).

At the time of the report, December 1976, the Public Service allowed maternity leave for up to six months with full job protection.⁶² Eleven percent of awards had maternity leave provisions, none obliging the employer to re-employ the woman.⁶³ These awards were concentrated in industries where many women are employed, for example the manufacture of food, beverages and tobacco. There were no awards with maternity provisions in the following industries: agriculture, hunting, forestry, fishing, mining, quarrying, electricity, gas, water and construction. The report stated, "Proposals for legislation on maternity leave are currently being closely examined by Government."⁶⁴

The situation now, (late 1979), is similar. In the public sector there is a maternity leave provision with job protection, and a paternity leave provision.⁶⁵ In the private sector more awards than in 1976 include maternity leave, few with job protection. An extremely small number have paternity leave. A Maternity Leave and Employment Protection Bill is due to be introduced into Parliament this year.

The rest of this paper will describe the present situation in the public sector, the private sector, and then a draft of the Bill. As the Bill applies to all women whose conditions of employment are not as advantageous as the Bill in regard to maternity leave, it will be possible to see, by comparing the Bill to what already exists in awards, how much change the Bill will make. An analysis will also be made of how far the Bill will bring New Zealand into line with the ILO standards.

2. Public Sector

A package of revised conditions of employment in the public sector was implemented at the beginning of 1978.⁶⁶ The revisions were aimed at eliminating discrimination against women in the Public Service. Topics covered included the advertising of jobs, Housing Corporation Loans and transfer expenses.⁶⁷

Maternity leave and limited paternity leave were both included.⁶⁸ The maternity leave provisions are designed to ensure that a woman who has to leave her job to have a child can return to her previous position. This means that, in most cases, the department concerned must hold open the position the woman occupied before she took maternity leave, or fill it but only on a temporary basis. Where this

is not possible and a permanent appointment is necessary, then the woman who has taken leave, must, on her return, be placed in a similar position to the one she previously held. In detail, the rules are as follows. Maternity leave is granted as leave without pay, and the rules for the latter apply to the former, for example the qualification period for long service leave is not broken.

Maternity leave of up to twelve months will be granted to women who have had at least one year's service at the time of starting leave. For women who have worked less than one year in the Public Service, there is entitlement to up to six months leave. Increments continue to be awarded to the woman on maternity leave. But a woman away for more than three months has her incremental date, for the purposes of eligibility for promotion, deferred.

As stated above, a woman is entitled, where possible, to return from maternity leave to her previous position or a similar one. A similar position is one that is at the equivalent salary and grading, at the same location or at another location within commuting distance, and involves responsibilities broadly comparable to those in the previous position.⁶⁹

Where neither the woman's previous position nor a similar position is available, the State Services Commission can offer the woman one of the following options. Her maternity leave can be extended for twelve months until a position comes available. Or the woman could be appointed to a similar position in another department. The woman could be offered a similar position in another location (with normal transfer expenses), if this offer is refused the woman continues

on the twelve month extension of leave. Alternatively, the woman could be appointed to a different position, but if this is not acceptable to her she can continue on extended maternity leave for up to twelve months. Or, if the extended maternity leave expires and still no position is available, the Commission can terminate employment with three months' notice, in which case the woman is entitled to an ex gratia payment equivalent to thirty working days' leave on pay.

There are requirements for notification by the woman to her department. At least one month before her maternity leave expires she must notify that she intends either to return to work or to resign.

Where a woman returns to work before her leave expires she is entitled to certain payments. She can get payment equalling thirty working days if she works for a further six months after returning from leave. If she is away for less than six weeks she can receive a proportion of the payment mentioned above that her absence represents in working days.

Paternity leave to which all employees are entitled, whether they are on the permanent staff or not, can be granted at the time of any confinement. "Like other forms of leave without pay, paternity leave will depend on reasonable notice being given and on the exigencies of the service. However, departments should regard this leave, as far as possible, as an employee's entitlement, to be declined only in extreme circumstances." 70a

Paternity leave is granted for fourteen days, and there is no requirement as in other types of leave without pay, for annual leave to be used up before taking paternity leave.

These provisions apply to all employees in the public services, except teachers.⁷⁰ Any teacher who holds a permanent teaching appointment may be granted maternity leave for up to twelve months. The woman's position must be held for her during her absence. She is also entitled to a maternity grant, on taking leave or resigning for maternity reasons, of six weeks full salary.

The negotiations to bring about these conditions for public servants took more than two years.⁷¹ The fact that the Public Service led the way towards equality of the sexes in employment is attributable to a number of factors. First, the Public Service employs a lot of women, and in particular women interested in careers. The unions of public servants, and especially the Public Service Association, (PSA) responded to pressure from women to negotiate to improve their working conditions. The PSA itself also employed women very interested in women's issues and the movement for equality. Second, historically the Public Service has led the way towards equality of the sexes.⁷² Third, it is a very large employer, and is in a position to be able to afford the changes negotiated. And by the time the new conditions were implemented successive Governments had stated their commitment to improving the status of women. It would have been a very unsatisfactory position if having made these statements, the Government as an employer permitted inequality in the public service.⁷³

Secondary teachers were not satisfied with the conditions negotiated and held out for a grant as well. Their union, the Post Primary Teachers Association was able to negotiate for this successfully because, at least in part, there was a recruitment problem in the teaching service at the time.⁷⁴

3. Private Sector

Before describing the extent and type of maternity provisions that are in awards at present (i.e. 1978 and 1979 awards), a look at a study of awards made in 1976 will provide a useful contrast and indicate trends in the provision of maternity leave.⁷⁵

Seven hundred and ten awards were examined at July 1976, (i.e. all those in existence). Eighty-six percent had no maternity leave provisions, twelve point four percent had unpaid maternity leave, and one point five percent allowed a type of paid leave (i.e. the payment of unused sick leave after the woman has been back at work six months). The fourteen percent of awards with maternity leave provisions were concentrated in female - intensive industries, the manufacturing of food, beverages, tobacco, textiles, clothing and leather, and in community, social and personal services.

Ninety-one percent of the documents that allowed maternity leave permitted six months leave. Sixty-two percent had no service requirements before leave could be granted, three required six months with the employer, thirty-four required twelve months, and one required two years service.

In no case was there any obligation on the employer to re-employ a woman, nor did any award provide for paternity leave.

Since 1976 however, many more awards have included maternity provisions.⁷⁶ An examination has been made of all awards made in 1978 and those available until July 1979.⁷⁷ Of the 708 awards made in 1978, 191 contained maternity provisions, (twenty seven percent). Of the ninety-five 1979 awards, thirty-four contained maternity provisions, (thirty-six percent).

Food, Beverages, Accommodation	27	38.2	8	29.6
Textiles, Clothing, Leather	7	3.7	5	71.4
Wool, Wool Products, Paper, Paper Products	7	3.7	1	14.3
Chemicals, Chemical and Petroleum, Coal, Rubber and Plastic Products	14	7.3	-	-
Non-metallic Mineral Products	5	3.1	-	-
Basic Metal Industries	2	1.0	-	-
Fabricated Metal Products, Machinery and Equipment	17	8.9	3	17.6
Other Manufacturing	3	1.5	1	33.3
Multi-Industry	4	2.0	2	50.0
Wholesale and Retail Trade, Restaurants and Hotels	12	6.3	3	25.0
Transport and Storage	1	0.5	-	-
Finance, Insurance, Real Estate, Business Services	10	5.2	1	10.0
Community, Social and Personal Services	23	12.7	5	21.7
	191	100.0	33	100.0

TABLE 1

Type of Industry X Awards with Maternity Provision

	<u>1978</u>		<u>1979</u>	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
Communication	16	8.4	1	3.0
Local Bodies, Harbour Boards, Borough Councils, Catchment Boards, Drainage Boards etc.	34	17.8	2	6.1
Manufacturing:				
Food, Beverages, Tobacco	27	14.1	8	24.2
Textiles, Clothing, Leather	7	3.7	6	18.2
Wood, Wood Products, Paper, Paper Products	7	3.7	1	3.0
Chemicals, Chemical and Petroleum, Coal, Rubber and Plastic Products	14	7.3	-	
Non-metallic Mineral Products	6	3.1	-	
Basic Metal Industries	2	1.0	-	
Fabricated Metal Products, Machinery and Equipment	17	8.9	3	9.1
Other Manufacturing	3	1.6	1	3.0
Multi-Industry	4	2.1	2	6.1
Wholesale and Retail Trade, Restaurants and Hotels	12	6.3	3	9.1
Transport and Storage	4	2.1	-	
Finance, Insurance, Real Estate, Business Services	10	5.2	1	3.0
Community, Social and Personal Services	28	14.7	5	15.2
	<u>191</u>	<u>100.0</u>	<u>33</u>	<u>100.0</u>

TABLE 2 TYPE OF INDUSTRY X TYPE OF PARENTAL LEAVE 1978

Industry	Paternity	Eligibility Requirement	Length				Re-employed where practicable	Considered first in re-employment	Paid	Re-employ in same position	Not imply re-employment	Service unbroken for:		
			3 months	6 months	9 months	12 months						Sick Leave	Service Entitlements	Holidays
Communication		14	1	13			1	1	13	1	2	14		
Local Bodies		20	-	35			3		1	14	25	38	16	
Food, Beverages, Tobacco	4	15		29	3			1	2	11	26	24	11	
Textiles, Clothing, Leather		2		7						1	5	6	3	
Wood, Wood Products, Paper etc.		6		6		4	2				3	7	6	
Chemicals, Chemical and Petroleum etc.		4		13			2	1	1	2	12	13	9	
Non-metallic Mineral Products		2		6						1	6	6	3	
Basic Metal Industries		2		2			1				1	1		
Fabricated Metal Products		8		11	5	7					9	16	9	
Other Manufacturing				2	2						3	3	2	
Multi-industry				4							4	4	4	
Wholesale and Retail		4		12						4	9	12	4	

TABLE 2 cont'd.

	Paternity Eligibility Requirement	Length				Re-employed where practicable	Considered first in re-employment	Paid	Re-employ in same position	Not imply re-employment	Sick leave	Service Entitle- ments
		3 months	6 months	9 months	12 months							
Transport and Storage	4	4							4	4	4	
Finance, Insurance, Real Estate	1	1	7	1	1					6	10	
Community, Social, Personal Services	3	8	25	1	3	2	15	3	12	22	25	

Table 1 shows the distribution of awards containing maternity provisions according to the type of industry. It can be seen that most awards are either in industries employing large numbers of women (e.g. food, beverages and tobacco manufacturing) or industries with strong and influential unions (e.g. factories manufacturing fabricated metal products).

Table 2 shows the type of parental leave provisions in the 1978 awards cross-tabulated with the type of industry. Each number represents the number of times that particular provision appeared in awards in the industry specified. Before analysing this table an elaboration of what each category of parental leave provision means will be given.

Paternity leave means any kind of paternity leave provision.

An eligibility requirement is either six or more usually twelve months employment. For example, the New Zealand Motor Corporation Assembly Plant, Nelson Metal Trades Employees Collective Agreement (Voluntary) reads :⁷⁸

"If a female worker with more than twelve months service with the Employer returns to her employment after a break in service for maternity purposes, which shall not exceed nine months, she shall maintain the service entitlement she received before the break in her service."

The length category is the length of leave the woman is allowed.

The next category is where an award states that a woman will be employed, where practicable, in her old position or a position not less advantageous. This can be distinguished from awards that place an obligation on the employer to place the woman in the same or similar position (on the pattern of the State Services conditions).

Some awards have a weaker version of the above provision, merely that the woman will be given first consideration when it comes to re-employment.

The category "paid" means any sort of pay the woman is entitled to.

Re-employment in the same position includes re-employment in a similar position.

Quite a number of awards specifically state that the existence of a maternity provision does not imply the employer must offer re-employment.

The final three categories are those entitlements that maternity leave is deemed not to have broken a woman's service record for.

Only seven awards have any provision for paternity leave. The most generous of these is the New Zealand University Students' Association Employees' Collective Agreement (Voluntary).⁷⁹ This allows a male employee up to ten days paid leave in any one year. However, the employee must "find it essential to remain at home in an emergency

in the event of his spouse's maternity confinement."⁸⁰ By way of contrast, the paternity leave in the New Zealand Engineering Union Auckland Clerical Employees' Collective Agreement (Voluntary) allows paid leave of one week, but this is for any birth of the worker's wife not just where an emergency occurs.⁸¹ To qualify for this leave an employee must have given three or more years service.

The New Zealand Public Service Association Inc. Employees' Collective Agreement (Voluntary) has the same paternity leave provision as the State Services, two weeks without pay.⁸²

The remaining awards, the Otago and Southland Fish Trade Employees' Award,⁸³ Otago and Southland Manufacturing Chemists, Preserved Foods and Jam Factories' Employees' Award⁸⁴ and the Northern, Wellington, Nelson, Canterbury and Otago and Southland Biscuit and Confectionery Workers' Award⁸⁵ (made twice in 1978) all have the same paternity leave provision. It reads:⁸⁶ "Any male employee who has completed 12 months' service and terminates his employment because it is necessary for him to look after his sick wife, as a result of pregnancy prior or frequent (sic) to childbirth or care for his dependent children while his wife is hospitalised as a result of pregnancy, shall if re-engaged by the employer within six months after the birth of his child retain all service, long service, sick pay entitlements as if the employee had remained in continuous employment. Annual holiday entitlement for the period of absence is excepted. This provision shall not imply that the employer must offer re-employment."

A study of employers' attitudes to maternity leave, and their willingness to allow women to take leave, revealed that of those employers who had a discretion to allow leave, half either had no policy or did not permit women to take maternity leave.⁸⁷

Slightly less than half of the awards (ninety out of 191) had an eligibility requirement.

By far the most common length of time allowed for maternity leave was six months. Those allowing twelve months were: Wellington Industrial District Bacon and Smallgoods Workers' Award (twice),⁸⁸ New Zealand Engineering Union Auckland Clerical Employees' Collective Agreement (Voluntary),⁸⁹ New Zealand Public Service Association Inc. Employees' Collective Agreement (Voluntary),⁹⁰ Nestle Company (New Zealand) Limited Papatoetoe Employees' Composite Agreement,⁹¹ New Zealand University Students' Association Employees' Collective Agreement (Voluntary),⁹² and Wellington Chartered Accountants' Employees' Award.⁹³

On the crucial issue of re-employment after taking leave, more awards specifically state that the maternity provision shall not imply that the employer must offer re-employment, than there are awards that allow for re-employment (even including the minor "first consideration" provision). However, the most common type of re-employment provision (occurring twenty times) is that which puts an obligation on the employer to re-employ the woman in the same or similar position.

Eighteen awards allowed payment of some sort. Thirteen of

these were awards covering Hospital Board employees which allow the payment of unused sick leave to the woman after she has been back at work six months. Two awards allowed payment of unused sick leave without the six months work qualification. One award allowed one week's pay, one (following the State Services pattern) provided for thirty working days pay after six months back at work. The New Zealand University Students' Association gives one working day's paid leave for each month of service up to a maximum of sixty working days maternity leave.

What have these provisions meant for women in practical terms? Although there are no statistics, it appears that not many women have been availing themselves of maternity leave. There are three reasons for this. First, a lot of women are not aware that these provisions exist. Second, there is strong social pressure on women to stay at home with the child. If they do return to work it is often associated with severe feelings of guilt. Thirdly, and most importantly, there are very few child care facilities in which to place the child at the end of the period of leave.⁹⁴

VII. MATERNITY LEAVE AND EMPLOYMENT PROTECTION BILL

The Bill had its beginnings in 1977 when the National Advisory Council on the Employment of Women (NACEW) drafted proposals for minimum standards for parental leave.⁹⁵ Council's recommendations were for three months maternity leave, with the right to re-instatement in the woman's previous position or a substantially similar one. They also recommended that there should be a prohibition on dismissal during leave, and that a social security benefit be paid for three months from the date of confinement. And paternity leave of two weeks duration should also be paid by a social security benefit. These proposals were presented to the Minister of Labour with a recommendation that they form a basis for legislation. (The New Zealand Employers' Federation representative on the Council was of the opinion however, that legislation was not necessary).

In addition to the NACEW proposals there were two other policy statements on parental leave that formed the basis of the Bill.⁹⁶ The first is found in the report of the Select Committee on Women's Rights.⁹⁷ The Committee recognised that women were penalised in their careers because they had to stop working to have children. They therefore recommended that:⁹⁸

"The Government (a) introduce legislation to provide for paid maternity leave for employed women with the objective of either (i) ratifying by legislative act ILO Convention 103 concerning maternity protection, or (ii) giving effect to the principles contained in aforesaid convention; and (b) consider the desirability of allowing

for paid paternity leave in the cases of family need."

Paternity leave is linked to family need because the Committee did not favour "... measures which might diminish or destroy the value of personal relationships and co-operation in New Zealand society."⁹⁹ It thought other arrangements (for example assistance from family or friends) were preferable to paid paternity leave.

The Committee agreed with the Federation of Labour on where the responsibility for paying benefits should lie:¹

"We therefore endorse the opinion of the Federation of Labour that the main cost be borne by the social security system and that the individual employer should make some contribution as recognition of past and possibly future services rendered by his employees..."

The second source of policy for the Bill comes from the report of the Royal Commission on Contraception, Sterilisation and Abortion.² The Commission commended the recommendations of the Select Committee. The Commission said:³

"It is important that, if women are to be encouraged to be mothers, and if society is to recognise that parenthood is a valuable function, the need to ensure that job opportunities are protected and that women do not suffer financially because of child-rearing

should be recognised. -We do not overlook the fact that the implementing of maternity leave is not without difficulties and that the absence of an employee on pregnancy leave in a small business may cause serious interruption."

With these policy statements as a basis, in early 1978 Cabinet and the Cabinet Committee on Family Affairs decided that an Employment Protection Bill would be included in that years legislative programme.⁴ A brief for parliamentary counsel was prepared and discussed at a meeting in July 1978 of representatives of the State Services Commission, the Combined State Services Organisations, the Federation of Labour, the Employers' Federation and NACEW.⁵ However, the Bill did not appear in the 1978 session of Parliament. In early 1979 the parties listed above were given a further opportunity to comment on the Bill. NACEW was able to make some proposals that were incorporated in the Bill.

It appears probable that the Bill will be presented to Parliament before the 1979 session ends. It is very likely it will go to a select committee.⁶ This will enable interested parties to make submissions. In particular, women's groups will no doubt appear before the committee. The Federation of Labour may not do so, it will depend on the political events at the time.⁷

It must be noted that the Bill has always been designed as a minimum provision, to be improved on by agreements reached between employers and workers.

The Bill will apply to all women in employment unless they are entitled to rights and benefits of maternity leave by an award, agreement or contract of service that are more favourable than those in the Bill.⁸

The following description is of a draft of the Bill dated April 1979.⁹

To be entitled to maternity leave a woman must have been under a contract of employment working at least twenty hours a week, for the twelve months before her confinement.¹⁰

If a woman wishes to take maternity leave she must notify her employer no later than three months before the presumed date of her confinement, giving the employer a medical certificate stating that she is pregnant and the presumed date of confinement. Within three weeks of receiving this the employer must give written notice to the woman stating whether her position can be maintained during her absence. If it cannot be maintained then the woman must be advised that she would receive preference for re-employment if she applies for a comparable position that becomes vacant. She must also be advised that she has a right to dispute any claim by the employer, that he is unable to maintain her position.

If an employer terminates a woman's employment without her consent on the grounds of her pregnancy or state of health due to pregnancy, or her application for maternity leave, or her absence on maternity leave, she can take either of two courses of action. The

two possibilities are personal grievance procedure or an application to the Arbitration Court.

A personal grievance is defined as any grievance a woman may have against her employer because of a claim that her employment has been terminated on the grounds specified above, or that the employer has taken action that affects a woman's maternity leave rights or benefits to her disadvantage.

The procedure for settling a personal grievance will be as follows. As soon as possible after a grievance arises, the woman submits the grievance to her immediate supervisor, giving the supervisor the opportunity to remedy the cause of the grievance. The intention of this provision is to settle the grievance rapidly and as near as possible to the place where it arose.

If that fails, or a direct discussion between a woman and her supervisor would be inappropriate, the woman then can notify her union, which then takes up the matter with the employer.

If that fails, the grievance is then set out in a written statement. The statement is referred to a grievance committee, (consisting of equal numbers of representatives nominated by the union and the employer). The employer may be assisted on the committee by an employers' organisation representative.

If the committee cannot settle the grievance it is referred to the Arbitration Court. The Court inquires into the matter and con-

siders the representations made by the parties. It can make a decision by way of a final settlement which will be binding on the parties.

If it is found that the employer has breached any of the provisions of the Bill, then the woman may be reimbursed for any wages she lost, or be reinstated in her former position or one not less advantageous, or be paid compensation.

If there is not a union which a woman could be a member of then an inspector may act for her. (It is assumed this refers to an Inspector of Awards from the Department of Labour).

The woman concerned may act on her own behalf. She may appear personally, or be represented by an agent or a barrister or solicitor.

The other alternative action of applying to the Arbitration Court can arise from the same circumstances that give rise to grievance proceedings. An application to the Court may be made by an Inspector of Awards, a union, a barrister or solicitor. The Court may make an order for one or more of the following: reimbursement of wages lost as a result of the employer's action, or payment of compensation, or reinstatement. In addition, the employer is also liable to a penalty not exceeding \$100. No part of any penalty will be paid to the woman if she commences the action on her own behalf.

The two procedures outlined above are alternatives, but it is

possible for a woman to change, at any time, from the personal grievance procedure to the Arbitration Court application procedure.

The following defences are open to an employer. First, if the employer can prove that the woman was dismissed for reasons other than those specified above as giving rise to the procedures outlined. Secondly, if the employer can prove that the dismissal was the result of the nature of the work, or the industry, or its location or the training period or skills required in the job, or the occurrence of a redundancy situation was such that her employment could not have been protected by holding her position open, and a temporary replacement was not reasonably practicable. And it must be proved that the woman was offered preference in re-employment, (with preservation of seniority and superannuation rights),^{for} up to six months absence.

Maternity leave shall be for 26 weeks. A woman may return to work earlier however if her employer consents and if she has a doctor's certificate stating that she is fit enough to return. (This requires the repeal of section 38(1) of the Factories Act 1964 that prohibits a woman from being employed in a factory for six weeks following her confinement).

The employer is permitted to transfer a pregnant woman from one job to another or, if there is no suitable work, have her take maternity leave, if she cannot do her work safely or adequately.

On resuming work, whether in the same position or not, the woman's employment is deemed not to have been broken for the purposes of any rights and benefits conditional on unbroken service.

Prior to taking maternity leave a woman is entitled to special leave for up to ten days without pay for reasons connected with her pregnancy.

Temporary workers who replace a woman on maternity leave must be informed in writing of their status.

Maternity leave for adopted children is limited to cases where the children are twelve months old or younger.

Judgments of the Arbitration Court can be filed in the Magistrate's Court and will be enforceable in the same way as a judgment of the Magistrate's Court in an action for the recovery of a debt is enforced.

Finally, there are no offence provisions in the Bill.

It is not known whether there will be any administrative provisions associated with the Bill to, for example, check its enforcement or keep records of the numbers of women taking leave. It could be assumed however, that even if there is no formal monitoring by the Labour Department there will be plenty of interested groups who will oversee its use in practice. In particular, the following groups will probably be involved: the Committee on Women, NACEW,

trade unions in industries employing large numbers of women, the PSA, and the women's sub-committee of the Wellington Trades Council.

What effect will this Bill have on the private sector? The major issue is that of re-employment. The draft Bill states:¹¹ "... the employer shall give the woman written notice informing her whether or not he is able to maintain her position, and if unable to maintain her position advising her that preference would be given to her for re-employment should she apply for any comparable full or part-time position that becomes vacant." The woman can then dispute whether the employer can or cannot maintain her position. Although the final wording of this provision in the Act is unknown, this does not appear to be a very strong safeguard for a woman wanting to take maternity leave. There is no obligation on an employer to maintain her position, as there is in the Public Service.

If the woman does wish to dispute the decision that her position can be maintained, it is a defence for the employer to prove "... that a woman was dismissed because the nature of the work or the industry or its location or the training period or skills required in the job or the occurrence of a redundancy situation was such that her employment could not have been protected by holding her position open, and a temporary replacement was not reasonably practicable."¹² This seems to be a very wide provision. An employer could argue he could not maintain a woman's position because of the "nature of the work." What does this mean? It is difficult to see what type of work would prohibit, by its nature,

the re-employment of a worker after a six month break.

The re-employment provision is one that appears in few awards. It has been possible to include it in awards, however, because the high unemployment that exists at present means it is relatively easy to get temporary workers to fill vacancies, and because there is a high staff turnover in some industries, for example food manufacturing. But the Public Service, which has the most comprehensive re-employment provision, does not have a high staff turnover relative to some private industries, it can be argued if the Public Service can re-employ women, it must be possible in the private sector also.

If the economy does return to a situation of high employment re-employment provisions may be less desirable for the employers because of the difficulty of getting temporary workers, but this may be compensated by the fact that they will be sure of getting their workers back.

The advantages to employers of re-employing women workers have been outlined in the introduction. Perhaps what is of most immediate advantage to an individual employer is that the investment by an employer in a worker to train her, even if only to a small degree, will not be lost.

The draft Bill follows the majority of awards in having an eligibility requirement, six months length of leave and the deeming of service benefits conditional on unbroken service. A number of

awards specifically excluded service towards annual holiday entitlement, so in this respect the bill is more generous.

The provisions of the Bill do not apply where a woman is entitled under any other Act, award, agreement or contract of service "... to any rights and benefits that are not less favourable to the woman than the rights and benefits provided for in this Act..."¹³ Some awards, however, are more favourable in some respects but less favourable in others. For example, the Wellington Industrial District Bacon and Smallgoods Workers' Award states,¹⁴ "After 12 months continuous service with the same employer, where a female worker has to terminate her employment for maternity purposes, but within 12 months is re-employed as a worker covered by this agreement by the same employer, for purposes of sick pay and special holidays for long service entitlement the employment shall be deemed to have been continuous: Provided that the employer is notified no later than two months after her confinement of her intention to return to work 12 months after termination."

This is more favourable than the Bill in that it allows twelve months' leave instead of six, but less favourable in that there is nothing about a re-employment policy. Is a woman covered by the Bill, the Award or the more advantageous provisions from both? There is probably little to be gained by a close analysis of the wording of the draft, because it may not appear in the same form in the Bill. If, however, a woman must be covered by either the Bill or the Award but not a combination of the two, then what components of the maternity leave provision carry the most weight in

deciding whether it is more or less advantageous than an award? It is submitted that the critical factor is re-employment, and if an award does not provide for this then the Bill must prevail. As only forty-two awards mention re-employment, that means the Bill will apply to 149 of the 191 awards that contain maternity provisions (as well as the 517 awards without maternity provisions of course).

On the issue of when awards and legislation conflict, the Industrial Relations Act states that:¹⁵

"The award or collective agreement shall not contain any provisions that is inconsistent with this Act or with any other Act that makes special provision for any of the matters before the Court or the parties."

There is no inconsistency, however, if the statute itself intends that it will be superseded by an award, as is the case here.¹⁶ It appears that in practice the question of whether some parts of the Bill and some parts of the award can be used in conjunction will be resolved not by reference to legal rules, but by agreement reached between unions and employers. Whether the union is successful in ensuring women get the most advantageous arrangement will depend not only on its bargaining strength but also on its willingness to pursue issues specific to women. This has not always been demonstrated in the past.

If a woman could be covered by a combination of this Bill and

an award, this could be the most advantageous to her. It will be necessary to see if awards negotiated after the Act comes into force contain provisions designed to operate in conjunction with the Act.

The draft Bill leaves out two areas appearing (albeit rarely) in awards, paternity leave and 'paid' maternity leave. The Bill when originally mooted was called the Parental Leave and Employment Protection Bill. It is not known why paternity leave was eventually not included. If it is to be included in the future, however, it is preferable that paternity leave be a right, rather than conditional on there being an emergency at home. Unless paternity leave is a right, child care will not be regarded as the responsibility of both parents. Fathers being allowed leave only for an emergency reinforces the notion that the children are the mother's sole responsibility. It also has the unfortunate effect of implying that childbirth is a time associated with illness and disruption, rather than a pleasant and exciting experience for the participants.

The issue of payment again raises the problem of deciding whether the Bill or an award is more advantageous. There are some awards that allow a woman unused sick leave pay on her return but do not guarantee her re-employment. By being covered by the Bill she would get re-employment but lose the pay. It is submitted that the Bill should be expanded to include paid leave. This will be discussed in the conclusion to this paper.

TABLE 3

COMPARISON OF PROVISIONS IN THE BILL, THE ILO CONVENTIONS
AND RECOMMENDATIONS, THE MOST COMMONLY FOUND AWARD, AND THE
AWARD MOST ADVANTAGEOUS TO EMPLOYEES.

	<u>THE BILL</u>	<u>ILO</u>	<u>MOST COMMON AWARD</u>	<u>MOST ADVANTAGEOUS AWARD</u>
Paternity	-	-	-	10 days
Eligibility Requirement	12 months	none	12 months	none
Length	6 months	3 months more if possible	6 months	12 months
Re-employ Same position	yes	yes	no	yes
Paid	no	yes equalling previous wage	no	yes to maximum 60 wkg days paid leave
Service unbroken for entitlements	yes	yes	yes	not stated
Nursing breaks	no	yes	no	no

If the draft Bill became law, how would New Zealand measure up to the ILO standards? First, Convention No. 103, which, if ratified, New Zealand would have to comply with totally.

The Bill means all employed women would be entitled to maternity leave, one of the requirements of the convention. But the Bill states that, to be eligible for leave, a woman must have been working for her present employer for at least twelve months. This does not appear in the Convention.

The Convention provides for a period of compulsory leave after confinement, and additional leave for illness arising out of pregnancy or confinement. The Bill does not provide for the former. It goes some way towards providing for the latter,¹⁷ "In the event of a woman being unable through illness, or the illness of her child, or unwilling to return to work at the end of her maternity leave her employment may nevertheless be continued without loss of rights if the employer agrees to it being so treated."

Article 4 deals with cash and medical benefits. New Zealand complies with the medical benefits provisions already. All pregnant women are entitled to free consultations, as well as free hospitalisation and medical care at the time of birth.¹⁸ Women can get a sickness benefit when pregnant.¹⁹

Women will not, however, receive cash benefits while absent on maternity leave, except in the few cases of awards that contain cash benefits and that are more advantageous to the woman than the Bill.

Even so, these cash benefits could not be classed as being "... sufficient for the full and healthy maintenance of herself and her child in accordance with a suitable standard of living."²⁰ Usually the cash benefit is only to the extent of unused sick pay. These benefits, by being paid by the employer, are contrary to the Convention which specifically prohibits this.

Women are entitled to the family benefit once their child is born.²¹ Paid for out of the Social Welfare budget, this complies with the Convention.

The Convention provides for paid nursing breaks. The Bill does not allow this. The nearest the Bill gets is to permit ten days special leave. This leave is not paid, and anyway is available prior to childbirth, not subsequent to it.

Article 6 prohibits dismissal of a woman absent on maternity leave. In contrast, the main focus of the Bill is employment protection, and it goes much further than the ILO provision. The employer must try to maintain the woman's position. If it cannot be maintained she must be given preference in re-employment.

To summarise then, if the Bill is put into practice New Zealand would not be in a position to ratify Convention No. 103. It would not meet many of the Conventions requirements, both major (cash benefits) and minor (paid nursing breaks). But this should not be taken to mean that the Bill is totally inadequate when compared to the Convention, because it does contain more extensive employment protection measures.

Recommendations 95 and 123 are guidelines. How close to them would the Bill bring New Zealand? The comments made above in connection with convention 103 are to a certain extent applicable also to Recommendation No. 95 because it is an amplification of the Convention. In addition, though, the following observations can be made. The types of medical benefits that should be available are listed. New Zealand does not provide all of these free (e.g. dental care). Provision of facilities for nursing or day care is rare. Some employers provide them. The Government does lay down standards to be met, but the Government as an employer does not accept responsibility for providing these types of facilities.

The Recommendation expands on the protection of employment provision to the extent that it is the same as the Bill (prohibition on dismissal, seniority preserved, right to reinstatement in former or equivalent position).

The Recommendation then prohibits certain types of work for pregnant and nursing women (e.g. night work and overtime). In New Zealand these types of provisions that differentiate between male and female workers are in fact being removed from the legislation.²² For example, the provision in the Factories Act preventing women from working in a factory until at least six weeks after confinement will be repealed by the Bill.

Recommendation No. 123 provides that women should be allowed a further period of maternity leave on top of the "...normal period of maternity leave established by law or practice..."²³ The Bill

permits this if the woman or her child is sick, or if she wishes to stay away longer, if the employer agrees. But it should be noted that the Bill allows twenty-six weeks of leave anyway, whereas the ILO Convention requires twelve weeks and the Recommendation fourteen weeks.

To conclude, the Bill will not meet the provisions of the ILO Recommendations on maternity leave in all respects. Some provisions would need only minor changes in the Bill, for example, paid nursing breaks. Some would need major changes to the social security legislation, for example, cash maternity benefits. And some would need a change in the political philosophy of the New Zealand Government, for example, free child-care available to all women workers.

VIII. CONCLUSION

To conclude it is proposed to outline what the writer believes should be included in a Parental Leave Bill for New Zealand. It will incorporate the ILO standards, some of the provisions found in awards at present, and some of the policies of the Select Committee on Women's Rights and NACEW.

Firstly, maternity leave will be considered. The Bill contains an eligibility requirement. There seems to be no real justification for this. Apart from the inconvenience of hiring a woman who would shortly have to be replaced temporarily, there is not much difference to an employer in a woman taking leave early in her working life or later on. The inconvenience would be reduced by reasonable notification requirements anyway.

The length of leave should be at the discretion of the woman, within certain limits. Only the woman concerned will know whether she feels capable to commence work again. Only she will be able to judge the adequacy of the child care arrangements that will have to be made, and be able to weigh up the financial, social and emotional factors that will influence her decision when to return to work. It is submitted that six months leave should be the minimum, and twelve months the maximum. Of course further leave could be permitted as child care leave, but this would have to be subject to different rules, particularly in relation to payment during leave.

Women who work part-time (as many women do) should also be eligible for maternity leave. The Bill includes women working at

least twenty hours per week. As most part-time work is for twenty hours or more per week this seems a reasonable cut off point.

Notification has been mentioned above. Adequate notification of the proposed dates of the commencement of leave and of return is important for the employer to be able to organise the workforce successfully. The following is recommended. The request for maternity leave should precede the estimated date of confinement by three months. The notification of when the woman wishes to commence leave should be given three weeks in advance of that date. An estimation of when she is likely to want to return should be given at the same time. This should be confirmed later by three weeks notice of the actual day of re-commencement.

On the issue of re-employment, it is submitted that, as in the actual Bill, the woman's actual position should be held for her. The Bill proposes a complex procedure in the case of disputes on this issue. It is hard to assess the effectiveness of the procedure without seeing it in operation, but the explicit objective of settling the dispute rapidly and as near as possible to the point of origin is admirable. The question of enforcement is difficult. Although it is hoped that maternity leave legislation will be strictly enforced, it is recognised that fines and offence provisions are no longer regarded as appropriate in the industrial relations field. However, the Labour Department could perhaps be given a larger role in the operation of the legislation, for example, by keeping records of the numbers of women refused leave and inspecting employers who do this frequently to check the validity of their reasons. It is also suggested that inspectors of Awards be permitted

to act on behalf of women even where there is a union to which they could belong. If the union is weak, or not particularly sympathetic towards women, the inspector may be more effective.

There are several provisions that should be made for pregnant women who are working. These should apply equally to those who intend to return after taking maternity leave and those who intend to resign. If the work women are doing is dangerous in the light of their pregnancy they should have the right to be transferred to a safe job on the same pay and conditions. If this is not possible they should be able to start maternity leave earlier, increasing the total length of leave to include the early commencement without having to return early. Pregnant working women should also be entitled to take a certain amount of paid time off work for reasons associated with pregnancy, for example for appointments with doctors or specialists.

Dismissal should be prohibited from the time the employer hears of a woman's pregnancy (whether directly or indirectly) until the woman has been back at least three months.

In the case of adopted children, the adoptive mother should be entitled to maternity leave on the same conditions as biological mothers. The adoptive mother will have as much to do once the child arrives as would its biological mother:²⁴

"While the physical condition of the adoptive mother is not a consideration, the maximum time available to establish the child in a comfortable relationship with its adoptive

family should be allowed, given the tendency to a higher rate of psychological and other problems among adoptive children. There are few adequate support services for adoptive families and the arrival of such a child is no less momentous than the birth of a baby..."

Consideration should be given to allowing maternity leave for women who place their children for adoption, perhaps for a shorter period such as three months. Women whose pregnancies do not result in the birth of a living child should still be entitled to maternity leave on the same terms as women who give birth to living children. A miscarriage is often a very traumatic experience that takes time to recover from.

It is submitted that, in line with the ILO standards, maternity leave should be paid. The consensus of opinion in New Zealand appears to be that the financial responsibility should be on the Government, but levies from employers would also be appropriate. When the cost of paying maternity leave has been calculated three possibilities have been mooted. The woman could be paid at the rate of the net average female wage, the domestic purposes benefit plus the family benefit, or the sickness benefit. The first of these alternative would result in the highest rate of payment. It is submitted that it is the one that should be implemented. Not only would it maintain the woman and child at an adequate living standard, it would also mean the community was recognising the valuable contribution being made by women when they give birth to and rear children.

If individual women take different lengths of leave it would be fair to set a uniform length of time for paying for leave. Three months has been recommended. In view of the fact that the Bill contains no provision for paid leave at all, three months is probably a realistic length to aim for. Perhaps in the future it could be extended.

Nursing breaks have never been mentioned in New Zealand recommendations on maternity leave, except indirectly when it is suggested that New Zealand ratify Convention 103. However, nursing breaks are obviously only relevant where the child is being cared for in facilities near to where the mother works. Although it would be a good idea to include nursing breaks in any legislation on maternity leave, it would be a provision with little practical use until child care facilities are developed much more fully.

Paternity leave has not really been developed as part of a policy on the role of fathers in child rearing at all. Probably all that can be expected in the near future is one or two weeks paid leave at the time of confinement. But in the long run what is needed is legislation that will allow fathers leave on similar conditions as maternity leave (e.g. with the right to re-instatement), so that they will be in a position to take equal responsibility for child rearing. For an indication of what could be implemented in the future, see the discussion on the situation in Sweden. For the present, the Swedish arrangements seem a very long way off.

The Bill has been designed as a minimum provision. In the writer's view there is still a considerable distance to go to reach a situation where women will not be disadvantaged if they combine working and giving birth to children. It is hoped that when the Bill comes into force the policies behind the improvements that have been outlined will not be lost sight of.

APPENDIX

1. SAMPLE PARENTAL LEAVE IN AWARDS

The following are sample maternity and paternity provisions from awards negotiated in 1979.

This is the most commonly found provision:²⁵

"After 12 months' continuous service with the same employer, where a female worker has to terminate the employment for maternity purposes, but within six months is re-employed as a worker covered by this agreement by the same employer, for the purposes of service allowance, sick pay and special holidays for long service entitlements the employment shall be deemed to have been continuous : Provided that this provision shall not imply that the employer must offer re-employment, and provided, further, that this provision shall not apply in respect of annual holiday entitlement."

The following provision is from the New Zealand Clerical Workers' Award, an award which covers 38,000 workers, of whom approximately 75% are women.²⁶

"If a female employee seeks re-employment after a break of not more than six months for maternity purposes, and there is a suitable position available for her, she shall retain the entitle-

ments to sick leave, service towards the fourth week of annual holiday and long service leave accrued before her service was broken."

The next provision is of interest because it is one of the few that include paternity leave, as well as being one of the few that allows a type of paid leave.²⁷

"(a) Subject to the employer being able to employ a suitable replacement for the period required, every permanent female worker shall be entitled to 12 months' maternity leave and her employment shall be guaranteed after such 12 month period: Provided that the employer may, as a matter of discretion, grant the worker up to one months' additional maternity leave prior to the birth of the child.

(b) An application for maternity leave must be made at least one month before the worker intends to commence maternity leave, and every female worker shall notify the employer the period of leave she intends to take for maternity leave.

(c) Every permanent female worker shall be entitled to one working day's paid maternity leave for each completed month of service up to a maximum of 60 working days' paid

maternity leave.

(d) Maternity pay for a day shall be calculated according to the number of hours normally worked on the days of absence.

Cl.33

(a) Where a permanent male employee finds it necessary to remain at home during the course of his spouse's maternity confinement, the employer shall grant him up to ten working days' leave in any one year, on production of a birth certificate or similar evidence of the birth of the child.

(b) Where a permanent male employee finds it necessary to remain at home during a child's first year, up to 12 months' leave may be granted on the same basis as maternity leave."

The final example is of the maternity provision found in almost all Hospital Board Employees' awards.²⁸

"(a) Maternity leave may be granted to a female employee as leave without pay, it shall not be granted as sick leave on pay: Providing an application for leave of absence under this heading is supported by a certificate signed by a registered medical practitioner, approval for

maternity leave for a maximum period of six months may be granted.

(b) On return to duty from maternity leave of not more than six months an employee may, after at least six months further whole time service, apply for retrospective payment for the period absent on maternity leave to the extent of her sick leave entitlement to the point at which she ceased duty.

(c) In order to qualify for paid maternity leave, employees returning to duty on a part-time basis must complete a further period of service which on an aggregated basis is equivalent to six months' service under the employment arrangements prevailing in each individual case, prior to the commencement of maternity leave."

FOOTNOTES

1. See, for example, "Whatever happened to the Maternity leave promises?" Working Women February - March 1979; Committee on Women The Care of Dependants and Employment Conditions paper prepared for IWY Conference, Wellington : 11 - 12 March 1976; Committee on Women letter to the Hon. G. F. Gair, Minister of National Development Parental Leave 20 February 1978; National Advisory Council on the Employment of Women Annual Report Wellington : Department of Labour 1977, 2.
2. National Advisory Council on the Employment of Women Annual Report Wellington : Department of Labour 1978, 2.
3. Sir Keith Holyoake "Governor-General's Speech" New Zealand Parliamentary Debates No. 1 1978, 8. See also "New Deal for Working Mothers Near" Evening Post 11 July 1979.
4. Vocational Training Council Women's Advisory Committee Women and Training - an Action Plan for Employers 1976, 15 - 16. An excellent discussion of the policy issues involved in maternity leave in Australia is contained in WEL Submission to the Conciliation and Arbitration Commission paper prepared for ACTU test case, Claim for Unpaid Maternity Leave September 1978.
5. Christine Gillespie The Condition of Women in New Zealand Today text of an address given to Working Women's Alliance Seminar 10 June 1978, 2.
6. Idem.
7. The National Development Council Subcommittee on the Role of Women The Role of Women in National Development - The First Annual Report n.d., 13.
8. The Distribution Council Role of Women in the Distribution Industry Wellington : The Distribution Council 1976, 22. It is interesting to note that large sections of this report dealing with maternity leave are identical to the Report of the Select Committee on Women's Rights, indicated perhaps how influential the latter has been.
9. State Services Commission Elimination of Discrimination Against Women in the State Services Circular Memorandum 1978/16, 4.

10. See, for example Committee on Women The Care of Dependants and Employment Conditions op. cit.
11. Phillida Bunkle speech delivered at Victoria University of Wellington Open Day 25 May 1979.
12. William L. Tung International Organisation Under the United Nations System New York : Crowell 1969, 138 - 139.
13. International Labour Office The International Labour Code 1951 Geneva : International Labour Office 1952, 21.
14. Ibid., v.
15. Department of Labour New Zealand and the International Labour Organisation unpublished paper n.d., 2.
16. For a description of New Zealand's participation see Keith Sinclair Walter Nash Auckland : Auckland University Press 1976, 238 - 239.
17. Op.cit. n.15 supra.
18. Ibid.
19. International Labour Organisation Conventions and Recommendations Adopted by the International Labour Conference 1919 - 1966 Geneva : International Labour Office 1966, 12, 835, 841, 1113.
20. International Labour Conference Thirty-Fifth Session Geneva 1952 Record of Proceedings Geneva : International Labour Office 1953, 838.
21. Ibid., 338
22. Ibid., 341.
23. Ibid., 351.
24. Op.cit., n.10 supra, 837.
25. Article 5 (2).

26. Article 6. Prohibition of dismissal in certain circumstances is a common feature of industrial legislation. For example, a worker cannot in New Zealand be dismissed when a dispute of interest is before a conciliation council, unless the dismissal is not on account of the dispute. The onus is on the employer to prove this. Industrial Relations Act 1973, S.81
27. Op.cit., 841.
28. Idem.
29. Ibid., 841 - 842.
30. Ibid., 842.
31. Idem.
32. Ibid., 843.
33. International Labour Conference Forty-Nineth Session Geneva 1965 Record of Proceedings Geneva : International Labour Office, 1965, 638.
34. Ibid., LXIII - LXV.
35. Ibid., 638.
36. Ibid., 639.
37. Ibid., 387.
38. Op.cit., 1113 - 1114. An example of this type of policy being implemented in legislation is found in Article 28 of the Cuban Family Code : "Both spouses have a right to exercise a profession or an occupation and have a duty to provide mutual co-operation and help for each other in their work, and in the studying or the improvement of knowledge, but they shall, in every case, organise their life in the home in a manner such that their activities are compatible with the fulfilment of the duties that this code imposes on them." See also articles 24, 26, 27. Anthony H. Angelo (ed) The Family Codes of Costa Rica and Cuba Wellington : Victoria University of Wellington, 1979.

39. Ibid., 1115.
40. Ibid., 1060.
41. "Revision of the Maternity Protection Convention."
International Labour Review 66 No.4 1952, 272.
42. International Labour Office, Office for Women Workers"
Questions Women at Work
43. "Maternity Protection in Selected Latin-American Countries"
Women at Work 1 1978, 8 - 12. The countries were:
Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica,
Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti,
Honduras, Mexico, Nicaragua, Panama, Paraguay, Uruguay,
Venezuela. It must seriously be questioned how far the
legal provisions accord with practice. Unfortunately the
ILO does not provide this information.
44. "Maternity Protection in Selected Socialist Countries"
Women at Work 2 1978, 14 - 15. The countries were:
Bulgaria, Czechoslovakia, German Democratic Republic,
Hungary, Poland, Romania, USSR.
45. "Maternity Protection in Selected African Countries"
Women at Work 3 1977, 14 - 18. The countries were:
Algeria, Benin (Dahomey), Botswana, Burundi, Cameroon,
Central African Empire, Chad, Egypt, Ethiopia, Gabon,
Ghana, Guinea, Ivory Coast, Kenya, Lesotho, Libya,
Madagascar, Mali, Mauritania, Mauritius, Morocco,
Nigeria, Rwanda, Senegal, Somalia, Swaziland, Tanzania,
Tunisia, Uganda, Upper Volta, Zaire.
46. "Legislative Action" Women at Work 2 1978, 12.
47. International Labour Office Social and Labour Bulletin
2 1978, 189.
48. Social and Labour Bulletin 1 1979, 55.
49. Employment Protection Act 1975 (UK) preamble.
50. S.34 The exceptions are if the woman is incapable of
working because of pregnancy, or if the woman cannot
continue working without contravening a duty or
restriction under any enactment.

51. S.48
52. S.48 SS.4 and 5.
53. S.36.
54. S.37.
55. S.40.
56. Dorothy R. Kittner "Maternity Benefits Available to Most Health Plan Participants". Monthly Labour Review May 1978, 53.
57. Nashville Gas Co. v Satty No. 75-536 6 December 1977 quoted in Social and Labour Bulletin 2 1978, 198.
58. Maternity Leave (Australian Government Employees) Amendment Act 1978 5. 7.
59. S. 8 ss. 7 13 (1).
60. S. 11.
61. New Zealand Government Report to the International Labour Organisation for the period ending 31 December 1976 on ILO Recommendation No. 123 (unpublished paper) 1976.
62. Ibid., 10.
63. Department of Labour Women in Paid Employment - Issues Relating to their Physical and Mental Health paper prepared for the conference on Women and Health Wellington : 14 - 18 February 1977, Appendix B.
64. Op.cit., 1.
65. Op.cit., n.9 supra.
66. For a summary of these see New Zealand Public Service Association "Elimination of Discrimination Against Women in the Public Service" News Release February 1978.

67. Van Gorkom v Attorney-General [1978] 2 NZLR 387 illustrates the situation before the revised conditions were implemented. The plaintiff, a married female teacher, was promoted to a teaching position in another city. She was paid her own personal transfer expenses (i.e. fares, motel expenses, and the shifting of personal effects) but not her husbands. In the Supreme Court Cooke J. held that the regulation providing for this had been validly made but the conditions laid down by the Minister were invalid because they discriminated against married women teachers on the basis of sex only. The Minister appealed on the ground that the regulations permitted the Minister to lay down discriminatory conditions. The appeal was dismissed. The Court (Richmond P. Woodhouse and Richardson J.J.) held that the conditions imposed by the Minister were invalid because discrimination between teachers on the basis of sex is not permitted by the regulations.
68. The following information is from Elimination of Discrimination Against Women in the State Services op.cit. n.9 supra
69. Compare this with the much more specific wording in the Equal Pay Act 1972, where degrees of skill, effort and responsibility are matched.
70. The Education Gazette Vol. 57 No. 3 15 February 1978, 46. The Post Primary Teachers' Association was not prepared to accept the Elimination of Discrimination Against Women in the State Services package. Eventually it was decided to apply the package to secondary teachers regardless of the PPTA's objections. The Education Gazette Vol. 57 No. 23 15 December 1978, 621. This disagreement did not affect maternity leave and grants however, which were the same before and after the package was implemented.
- 70a. Op.cit., n.9 supra.
71. Op.cit., n. 66 supra.
72. For example, the Government Service Equal Pay Act 1960, preceded equal pay in the private sector by more than a decade.
73. New Zealand National Party National Party 1975 General Election Policy Wellington : National Party 1975.
74. The First Annual Report of the National Development Council Subcommittee on the Role of Women op.cit., 15.

75. Op.cit., n.63 supra.
76. Maternity leave must be distinguished from domestic leave. The latter is a provision that allows workers to use their own unused sick leave entitlement to stay at home in the event of a spouse or child's illness.
77. "Award" is used to mean both an award and a collective agreement.
78. New Zealand Motor Corporation Assembly Plant, Nelson Metal Trades Employees - Collective Agreement (Voluntary) 26 January 1979 356 clause 14.
79. New Zealand University Students' Association Employees - Collective Agreement (Voluntary) 18 July 1978 7427 clause 20.
80. All the paternity leave provisions refer to either "spouse" or "wife", although some domestic leave provisions allow a man to take sick leave in the event of his de facto wife's illness.
81. New Zealand Engineering Union Auckland Clerical Employees - Collective Agreement (Voluntary) 7 December 1978 11097 clause 1.2. Presumably a man could take paternity leave more than once in a year if his wife had more than one child in any year.
82. New Zealand Public Service Association Inc. Employees - Collective Agreement (Voluntary) 20 July 1978 10217, clause 17,
83. Otago and Southland Fish Trade Employees - Award 26 October 1978 8881, clause 14.
84. Otago and Southland Manufacturing Chemists, Preserved Foods and Jam Factories' Employees - Award 27 November 1978 10257, clause 13.
85. Northern, Wellington, Nelson, Canterbury and Otago and Southland Biscuit and Confectionery Workers - Award 12 December 1978 10909, clause 22.
86. Ibid.

87. Op.cit. n.63 supra, 3. For a discussion of employers' attitudes to women generally see Society for Research on Women in New Zealand Employers' Attitudes : Work Opportunity for Women Report of a New Zealand Survey Wellington : Society for Research on Women in New Zealand 1971.
88. Wellington Industrial District Bacon and Smallgoods Workers - Award 8 December 1978 10397.
89. Op.cit. n.81 supra.
90. Op.cit. n.82 supra.
91. Nestle Company (New Zealand) Limited Papatoetoe Employees - Composite Agreement 15 September 1978 8269.
92. Op.cit. n.79 supra.
93. Wellington Chartered Accounts' Employees - Award 11 August 1978 7395.
94. Therese O'Connell, Field Officer Wellington Clerical Workers' Union, personal communication.
95. National Advisory Council on the Employment of Women Annual Report Wellington : Department of Labour 1977.
96. Elizabeth Orr, past chairman National Advisory Council on the Employment of Women, personal communication. It is interesting to note that parental leave appeared as a policy in the 1975 election manifesto of the National Party, but not in the 1978 manifesto. New Zealand National Party National Party 1975 General Election Policy Wellington : National Party 1975, Policy No. 41.
97. New Zealand Parliament Select Committee on Women's Rights The Role of Women in New Zealand Society Wellington : Government Printer 1975.
98. Ibid., 32.
99. Ibid., 24.

1. Idem.
2. New Zealand Royal Commission of Inquiry Contraception Sterilization and Abortion in New Zealand : Wellington Government Printer 1977.
3. Idem.
4. Op.cit. n.2 supra.
5. Op. cit. n.96 supra.
6. Ibid.
7. Virginia Branney, Research Officer Federation of Labour personal communication.
8. It is not stated who decides this question. If there is a dispute between a woman and her employer, it is likely the union would intervene and advise the employer which scheme in their opinion the woman would be covered by. Whether unions and employers would be prepared to make an issue of the decision would depend more on other considerations (such as the employer - worker relations in the industry) than the actual question itself.
9. Maternity Leave and Employment Protection Bill (unpublished) April 1979.
10. The Bill makes no reference to whether she should be married to be entitled, nor do any of the awards. In the light of the discussions leading up to the Bill it seems likely all women will be covered.
11. Clause 2.
12. C 4 (a).
13. Clause 13 (1) (a).
14. Op. cit. n.88 supra.
15. S. 91 ss 4.

16. For a discussion of this see D. L. Mathieson Industrial Law in New Zealand Supplement to Volume 1 Wellington : Sweet & Maxwell 1975, 99 n. 93.
17. Clause 5.
18. Social Security Act 1964 S 88, S 91, S 106-115.
19. S.54 "The later stages of pregnancy (three months before confinement) are usually regarded as qualifying for sickness benefit where there is a loss of earnings and this may be continued for up to three months after confinements in certain circumstances." New Zealand Royal Commission of Inquiry Social Security in New Zealand, Wellington : Government Printer 1972, 267. But note s 54A (2).
20. Op. cit. n.24 supra.
21. Social Security Act 1964 s 32, s37.
22. Op. cit. n.61 supra, 2.
23. Op. cit. n.19 supra, 1115.
24. Committee on Women letter to the Hon. G. F. Gair, op.cit. n. 1 supra, 3.
25. Found, for example, in the Northern, Wellington, Marlborough, and Nelson Winery Workers - Award 13 February 1979, 1519, clause 15.
26. New Zealand Clerical Workers - Award 4 April 1979 1301, clause 21.
27. New Zealand Corso Employees - Award 13 February 1979 1193, clause 32.
28. See, for example, Taranaki, Wellington, Marlborough, and Nelson Hospital Boards' Laundry Workers - Award 26 January 1979 461, Clause 11.

16. For a discussion of this see G. J. Harrison
Industrial law in New Zealand Supplement to
 Volume 1 Wellington : Sweet & Maxwell 1975
 pp. 21-22.

17. Clause 2.

18. Social Security Act 1955 s 68, s 91, s 104-112.

19. 2.55 "The later stages of pregnancy (three months
 before confinement) are usually regarded as qualifying
 for sickness benefit where there is a loss of earnings
 and this may be continued for up to three months after
 confinement in certain circumstances." New Zealand
 Social Security Act 1955 : Government Printer 1955, 267.
 But note s 2A (2).

20. Op. cit. p. 26 supra.

21. Social Security Act 1955 s 92, 93.

22. Op. cit. p. 21 supra, s. 2.

23. Op. cit. p. 19 supra, 112.

24. Committee on Women letter to the Hon. G. F. Blair, op. cit.
 p. 1 supra, 7.

25. Found, for example, in the Northern, Wellington, Marlborough
 and Nelson Wharfedale Workers - Award 13 February 1979, 1218,
 clause 13.

26. New Zealand Clerical Workers - Award 1 April 1979 1301,
 clause 21.

27. New Zealand Glass Employees - Award 13 February 1979 1197,
 clause 24.

28. See, for example, Taranaki, Wellington, Marlborough, and
 Nelson Hospital Boards' Laundry Workers - Award 20
 January 1979 s. 11, clause 11.

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