

Submission on the Parental Leave and Employment Protection Amendment Bill

17 February, 2006



This submission is from the New Zealand Father and Child Society (office at 28 Saint Vincent Street, Nelson 7001.)

Background

The Father and Child Society was established in March 1998 and formally incorporated in November 1998. It was created to give local father groups / organisations support in setting up and running initiatives, as well as to improve access to information and improve communication between these groups. It was also formed to represent fathers on a national level through the government's ongoing consultation process with the community. For further information see our website (<http://www.fatherandchild.org.nz/>)

Our submission

We will keep this submission brief. We support the extension of leave to the self employed. However, we have a more fundamental problem with the underlying legislation. We prepared a submission for the Select Committee considering the introduction of paid parental leave in 2002. In it we gave our support for the concept of paid parental leave but argued that the proposed legislation unnecessarily discriminated against fathers. Subsequently we have appeared before further select committees considering amendments to the legislation, again arguing the legislation was unnecessarily discriminatory. We also lodged a complaint to the Human Rights Commission, a complaint that was never resolved. Subsequent to this, we took a complaint to the Human Rights Tribunal. This resulted in a very detailed letter from the Office of Human Rights Proceedings informing us that while “The Society’s complaint does raise several significant questions of law (p.3)” and that the “resolution of this complaint would affect a large number of people” (p.3), taking the case forward was declined primarily because the case was not seen “as involving a high level of harm.” (full copies of our various submissions and official responses to them can be found at: <http://www.fatherandchild.org.nz/submissions.htm>).

We also note that when undertaking the reviews of parental leave, fathers groups have not been contacted as part of the consultation process.

In this submission, we would like to turn the question around and ask the select committee to consider what possible harm there would be in giving both parents in

heterosexual biological couples equal rights in the decision as to who would take the period of paid leave (as against the current legislation giving the primary right to take the leave to mothers). In our various submissions we have already set out the potential benefits to fathers, mothers and children of giving fathers equal rights in this decision making process, so it is worth trying to assess why the government remains determined to exclude fathers from such decision making. In our previous submissions we have also set out models of other countries where fathers have rights to take paid parental leave (again see <http://www.fatherandchild.org.nz/submissions.htm>).

There are a number of possible reasons why the government has chosen to discriminate against fathers:

Possible problem 1. Giving fathers equal rights in the decision making process may mean that 'bullying' men will prevent their partners taking their leave and will keep the money for themselves.

Answer: This can already happen under the current legislation. If the male partner is eligible for job protection he could force his partner, if she was also eligible, to pass the leave over to him. There is, however, no evidence that this is taking place.

Fathers of adopted children already have equal rights to take leave as the mothers of the adopted children. There has been no evidence that this has been abused.

Possible problem 2. Giving fathers equal rights in the decision making process will mean that, as fathers generally earn more than mothers, fathers rather than mothers will take the leave.

Answer: In fact, the income data show that, in an increasing number of couples, before a mother has a first child the woman is the higher earner. In addition, education data indicate that well-educated women in prime childbearing ages now greatly outnumber well-educated men. Under the current legislation, there is no evidence that women are not taking the leave because their partner would earn a higher level of payment. The cap on payment also prevents much of this type of behaviour. In fact, the cap is so low that it is more likely to work the other way – the higher earner will lose more than the lower earner by substituting leave payment for earnings. Note that: "The payment fully replaces the employee's earnings, at the rate of their ordinary weekly pay or average weekly earnings (whichever is greater), up to a maximum payment. Currently this is \$357.30 per week (or \$18,579.60 per year) before tax."

{http://www.ers.dol.govt.nz/parentalleave/71T_print.html}

We do not believe that giving equal rights to mothers and fathers will lead to any significant change to the pattern of leave taking. Based on overseas evidence, most couples will decide to give most the leave, especially in the early weeks, to the mother. However, as we have set out in previous submissions, for a small, but important, number of families it may be better if the father takes the main period of leave or takes some of the leave. While we realise that this will occur in a minority of couples, we note that the

current legislation is designed to support another minority group, that of same sex couples.

Possible problem 3: As an extension to problem 2, it may be that fathers would be encouraged to take leave and this would work against the potential health goals of parental leave.

Answer: Again, overseas evidence suggests very few men take the main part of paid leave in the early weeks of a child's life (many take leave from work around the birth however). But there will be some situations where it is better for the mother and the child if it is the father who takes the initial period of leave or some of the leave. While bringing in self employed mothers extends eligibility criteria for them (and thus their ability to pass the leave to their partner), the current arrangements will still rule out this transfer if the mother is not eligible for leave.

Possible problem 4: There will be unresolvable disputes in families as to who can take the leave.

Answer. This can happen anyway with current legislation. There is, however, no evidence of this happening. Ultimately there is an institution that can resolve any dispute, which is the Family Court.

Conclusion

We believe that the continuing refusal to give heterosexual biological fathers and mothers equal rights in deciding who takes the period of leave is based on patronising ideology rather than careful consideration of arguments or facts. We believe that, given equal choices, the vast majority of couples will make the choices that are best for themselves and their new infant. Giving fathers equal rights in the decision making process would also give a clear signal that they are valued in families.

We do not wish to appear before the select committee.