

Submission

By

Business|NZ

To

Social Services Select Committee

On

**Parental Leave and Employment
Protection Amendment Bill**

June 2004

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**PARENTAL LEAVE AND EMPLOYMENT PROTECTION AMENDMENT BILL
SUBMISSION BY BUSINESS NEW ZEALAND
JUNE 2004**

1. INTRODUCTION

- 1.1 Encompassing four regional business organisations (Employers' & Manufacturers' Association (Northern), Employers' & Manufacturers' Association (Central), Canterbury Employers' Chamber of Commerce, and the Otago-Southland Employers' Association), Business New Zealand is New Zealand's largest business advocacy body. Together with its 56-member Affiliated Industries Group (AIG), which comprises most of New Zealand's national industry associations, Business New Zealand is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.
- 1.2 In addition to advocacy on behalf of enterprise, Business New Zealand contributes to Governmental and tripartite working parties and international bodies including the ILO, the International Organisation of Employers and the Business and Industry Advisory Council to the OECD.
- 1.3 Business New Zealand's key goal is the implementation of policies that would see New Zealand retain a first world national income and regain a place in the top ten of the OECD (a high comparative OECD growth ranking is the most robust indicator of a country's ability to deliver quality health, education, superannuation and other social services). It is widely acknowledged that consistent, sustainable growth well in excess of 4% per capita per year would be required to achieve this goal in the medium term.
- 1.4 The health of the economy also determines the ability of a nation to deliver on the social and environmental outcomes desired by all. First class social services and a clean and healthy environment are possible only in prosperous, first world economies.

2. RECOMMENDATIONS

1. That the Bill not proceed
2. That the current parental leave payment be recognised as the welfare benefit it clearly is and made available to all new mothers.
3. That the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act be amended in accordance with recommendation 2, above.

3. DISCUSSION

- 3.1 Business New Zealand welcomes the opportunity to comment on the Parental Leave and Employment Protection Amendment Bill, understanding the Government's desire to extend the ambit of the current Act. However, the organisation has real concerns about the compliance cost implications for employers required to keep open jobs for individuals employed for a relatively short period of time. This is particularly the case as, under the regime that now applies, the employer can have no idea whether or not their employee will be returning to work and so whether any replacement employee will be required on a temporary or, frequently, on a permanent basis. Employers also face the added difficulty that suitable temporary staff members are often difficult to find as appropriately skilled or qualified persons are more usually looking for full-time positions. It is for these, and other reasons referred to later in this submission, that Business New Zealand rejects the statement under the heading "Business" in the explanatory note that: "the proposals do not impose any material increment in compliance costs to business". It is apparent that no consideration whatsoever has been given to the very real costs the proposals will impose.
- 3.2 In its submission to the review of the paid parental leave scheme Business New Zealand emphasised that as a fundamental principle, maternity leave payments must remain a cost to the taxpayer generally and not be funded either in whole or in part by the employer; it is therefore pleased that the Amendment Bill does not change this situation.
- 3.3 But Business New Zealand also stressed that if there were to be any move to extend eligibility away from the status quo the leave payment should be treated similarly to any other social benefit. This was the stance taken by Business New Zealand in its submission on the original Paid Parental Leave Bill and it has been consistently seen by the organisation as the most satisfactory approach to the issue of parental (leave) payments. Sending the current Bill to the Social Services, rather than to the Transport and Industrial Relations, Select Committee suggests that this reality is more widely recognised than might at first be apparent.
- 3.4 Business New Zealand's approach is founded on the fact that payment eligibility requires employees to take leave when all too often they may have no intention of returning to work. The obligation to keep a job open is, as previously noted, onerous for many employers, not only given the difficulty of finding a replacement employee but also because of the training costs involved and the uncertainty regarding return to work intentions.
- 3.5 Business New Zealand considers attachment to a particular employer for ten hours a week for 12 months an appropriate period for the granting of leave with the obligation to keep a job open. These criteria ensure proper protection for employees who genuinely wish to take leave from a job they have held for some time. Any shorter period, as now proposed, is quite unacceptable, the more so given that, since the introduction of paid leave the full ten hour period need no longer be worked on a weekly basis. The only mitigating aspect of the

Bill's extension of the pay and leave entitlements to employees who have worked for the same employer for between six and twelve months is that it does not also provide entitlement to the extended twelve-month leave period once the 13 (and subsequently 14) week pay period ends.

- 3.6 Because it considers that the requirement to grant leave should apply only where a reasonable degree of attachment to a particular job has been demonstrated, Business New Zealand has always recommended that a clear and separate distinction should be made between the period during which (subject to certain criteria) the employer is required to hold a job open (parental leave) and the question of the maternity payment.
- 3.7 Business New Zealand pointed out in its review submission that payments made to women on maternity leave effectively operate as a benefit and that to recognise them as such would remove current difficulties connected with extending the payments to self-employed individuals (who are unlikely to be able to take leave as such) and to those employed for only limited periods of time (such as seasonal workers who work for numbers of different employers). The payment could also then be made available to mothers not in paid employment whose "work" is other than in the paid employment sense.
- 3.8 Business New Zealand notes the reference in the Bill's explanatory note to the ILO's Maternity Leave Convention 183 and that regulatory action is needed to address current inconsistencies with that document. However, Convention 183 has been ratified by only eight countries, largely because, despite urgings when it was under discussion that it should concern itself with principle rather than prescriptive detail, the Convention's final form is entirely too directive. Countries need to be in a position to determine for themselves how best to implement the principle involved, rather than required to do so in a particular way - the more so as the consequence may be that compliance cost considerations may make employers wary of employing women of child bearing age. In New Zealand, for example, it can be argued that a welfare system that makes provision for new mothers and families to receive financial support where necessary has long been in compliance with the principle underlying the Convention's, and its predecessor's prescriptive detail.
- 3.9 The *raison d'être* for maternity/parental leave in New Zealand has always been to ensure that employers keep open jobs to which the employees concerned have demonstrated a clear degree of attachment (unlike the situation in many other countries where the intention is to ensure that women are able to take some time off work). Rather than discourage the employment of women seen as likely to have a relatively brief labour force attachment, it would be better to retain the current 12 months' eligibility period for all leave and make the payment itself a benefit available to every new mother, allowing for the possibility of transfer to her spouse if that were the woman's choice. Payment of a welfare benefit would overcome the obvious difficulties presented by self-employment (where, if length of self-employment were the measure those self-employed for a lesser time may have the greater need) and intermittent employment.

4. RECOMMENDATIONS

- 4.1. That the Bill not proceed
- 4.2. That the current parental leave payment be recognised as the welfare benefit it clearly is and made available to all new mothers.
- 4.3. That the current Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act be amended in accordance with recommendation 2, above.