



NEW ZEALAND COUNCIL OF TRADE UNIONS

Te Kauae Kaimahi

**Submission of the
New Zealand Council of Trade Unions
Te Kauae Kaimahi**

to the

Government Administration Select Committee

on the

**Parental leave and Employment Protection
(Six Months Paid Leave and Work Contact
Hours) Amendment Bill**

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1. Summary of recommendations

1. That this Bill to increase paid parental leave to 26 weeks is passed.
2. The extension of paid parental leave to six months encompasses a very strong values proposition by giving children a good start in life by ensuring secure attachment, reducing parental stress and providing reasonable financial support to parents is in the interests of New Zealand's future generations.
3. The extension of the PPL to six months enables mothers to maintain exclusive breast feeding for six months and is a World Health Organisation recommendation.
4. That the Select Committee commissions a report outlining the full costings of the increase to 26 weeks paid parental and that this includes the savings that are made from paid parental leave tax returns, reduction in child care subsidies and includes that consideration of savings that are generated from longer breast feeding.
5. That in order to prevent any coercion of people on parental leave to work as part of "work contact hours" the Bill specifies a description of "fair agreement"; that any one applying coercion should be subject to personal grievance proceedings and a penalty under s 135 of the Employment Relations Act 2000; that the provisions for "work contact hours" are consistent with the "keeping in touch days" in the Employment Standards Legislation Bill and that any agreement to "work contact hours" should be made in writing.
6. That the Select Committee recognise the low level of New Zealand paid parental leave payments and support an immediate rise in the maximum paid parental leave payment to the minimum wage level of \$590 and that paid parental leave payments should rise annually by the greater of the increase in the minimum wage and the increase in the average wage.
7. That a comprehensive evaluation of the parental leave scheme be a MBIE and Government priority.
8. That the Select Committee consider the anomaly in S 42 of the Parental Leave and Employment Act 1987 Bill which causes stress and pressure on parents returning to work in their first year after parental leave with a recommendation for repeal of this provision in the final Select Committee report.

9. That the Select Committee report recommends change to bring New Zealand into line with developments in other OECD countries with provisions for paid leave for fathers / partners in addition to the paid parental leave to the primary caregiver.

2. Introduction

- 2.1. This submission is made on behalf of the 31 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With 320,000 members, the CTU is one of the largest democratic organisations in New Zealand.
- 2.2. The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga) the Māori arm of Te Kauae Kaimahi (CTU) which represents approximately 60,000 Māori workers.
- 2.3. The CTU welcomes yet another opportunity to extend the period of time for paid parental leave (PPL) to 26 weeks. Our submission represents many of the same arguments from our 2012 submission to the Parental Leave and Employment Protection (Six Months Paid Leave) Amendment Bill. The very strong support for 26 weeks of PPL shown throughout the hearing of submissions on that Bill only strengthens the case.
- 2.4. That strong public support was evident in a *News-Colmar Buntton* poll, in 2013 that showed 62 percent of respondents supported paid parental leave to be extended from 14 to 26 weeks. Despite this show of support, the 2012 Bill was narrowly defeated in Parliament - by one vote. The strong public support, in effect, forced the Government to take action in Budget 2014 and PPL was increased from 14 weeks to 18 weeks in two steps: two weeks in 2015 and a further two in 2016.
- 2.5. Though this is welcome, New Zealand still lags on PPL provisions. The recent Government Bill before the Transport and Industrial Relations Select Committee, the Employment Standards Legislation Bill, extends eligibility to seasonal, casual and assures most workers on fixed term agreements of eligibility to PPL. While these improvements are welcome, they are also long overdue.
- 2.6. Overall, the steps to extend PPL and to improve eligibility to PPL in line with other comparable countries, are painfully slow. Therefore, this Bill provides us with another timely opportunity to make a step forward in line with OECD standards and international recommendations on PPL.

3. New Zealand Lags

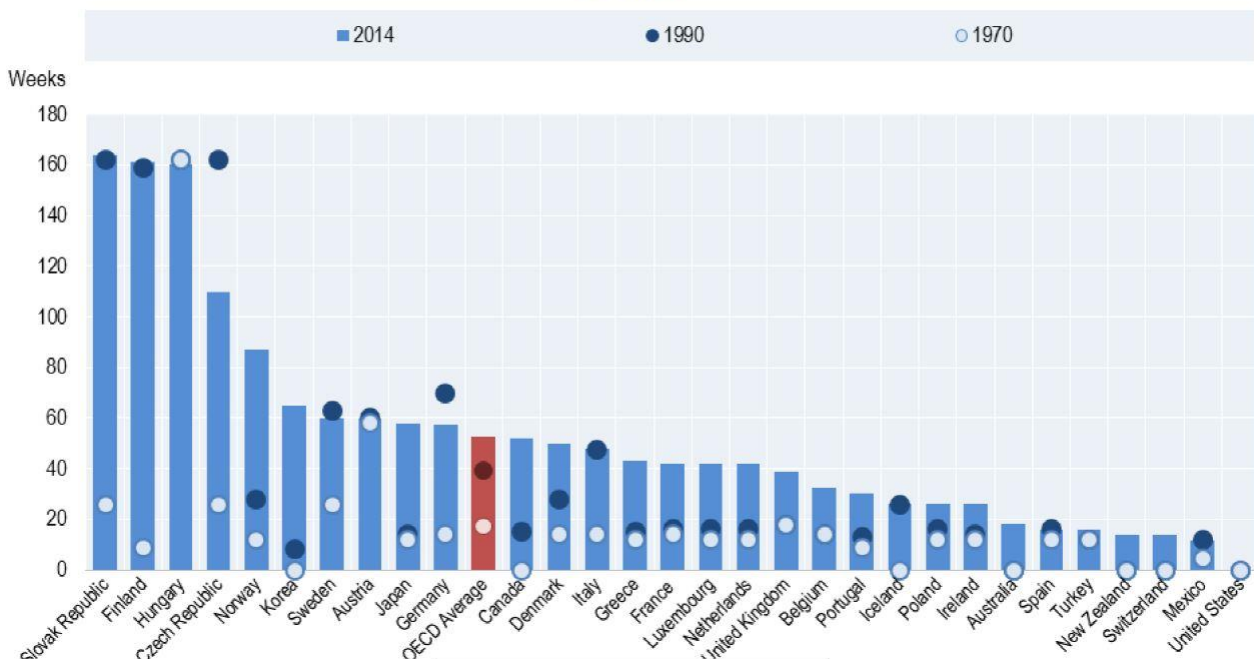
- 3.1. Our paid parental leave record is not good. This is disappointing given that New Zealand led the way in 1893 on voting rights for women and in 1949 played such a

pivotal role in the Declaration of Human Rights which sets out expectations of equal rights and opportunities for men and women. Despite this proud history, on rights and parental leave protections, we are a laggard.

3.2. New Zealand was one of the last countries in the OECD to introduce paid parental leave in 2002 (almost 50 years behind Sweden, who introduced legislation in 1955). Not only was it introduced late, but the length of PPL has been slow to increase. The OECD comments on this pattern, “The length of leave available to mothers tends to be much longer in countries that introduced leave earlier”, in a review of trends of parental leave policies (OECD, 2015).

3.3. Our PPL leave, at 14 weeks, was static between 2004 and 2015. Though now at 16 weeks we are still at the bottom three OECD countries (just ahead of Mexico and the United States. OECD figures, compiled by the New Zealand Parliamentary Library in 2015, showed New Zealand is in 29th place, equal with Spain and Turkey, out of the world's 34 developed countries in the OECD rankings (“NZ behind in paid parental leave,” 2015). New Zealand parents are missing out.

Chart PF2.5.A. Length of paid leave available to mothers^a, 1970, 1990, and 2014
In weeks



From Trends in Parental Leave Policies (OECD, 2015).

3.4. New Zealand lags not only on the length of paid parental leave but also on the level of paid parental leave payments and as a result the health and welfare needs of children, families and the objectives of the Parental Leave and Employment Protection Act 1987 are not being met.

3.5. The CTU policy is for 52 weeks paid parental leave alongside a month of paid paternity / partner leave available solely for the father / partner. In our submission on Part 1 of the Employment Standards Legislation Bill we submitted on other aspects of parental leave policy and legislation which are detrimental to child development, maternal and parental health and family life. These include the low levels of parental leave payment, the lack of assured flexible arrangements for returning to work following parental leave, the unfairness of a section in the Parental Leave and Employment Protection Act on annual leave payments following return from parental leave and the lack of any legislative paid parental leave for fathers/partners (New Zealand Council of Trade Unions, 2015).

4. The Case for Six Months Paid Parental Leave

4.1. Though our labour force participation rate for women in New Zealand is relatively high, it is still lower than many other OECD countries. PPL plays a critical role in sustaining women in the workforce through financial support and connection with employment.

4.2. The stated purpose of the Parental Leave and Employment Protection Act 1987 set out in s 1A of the Act is to:

- (a) set minimum entitlements with respect to parental leave for male and female employees; and
- (b) protect the rights of employees during pregnancy and parental leave; and
- (c) entitle certain employees and self-employed persons to up to 16 weeks of paid parental leave

4.3. Maternity leave and parental leave acknowledges the importance of maternal health and wellbeing for the biological mother after child birth and establishes a foundation to meet the World Health Organization (WHO) recommendation to breast feed newborn babies for six months.

4.4. In 2009 the Australian Government Productivity Commission referred to the “compelling evidence of the health and welfare benefits for mothers and babies for a period of postnatal absence from work for the primary caregiver of around six months gives reasonable grounds to expect benefits from longer periods of exclusive parental care” (Australian Government Productivity Commission, 2009).

4.5. Our own New Zealand Government science advisor, Sir Peter Gluckman, comments, “The early years of life have a unique and formative impact on child

health, development and relationships throughout life. Secure mother infant attachment is an important predictor of resilience in later life including higher self-esteem, reduced anxiety and reduced hormonal responses to stress” (Gluckman, P, 2011).

- 4.6. Unions have fought hard to improve parental leave provisions. Women constitute approximately 58 percent of the CTU membership and union membership overall. Maternity and parental leave policies are core employment issues for trade unions. Adequate parental leave advances gender equity as it is women who still take the overwhelming bulk of parental leave. Paid parental leave improves both gender equity in the workplace and improves the balance between work life and family life. Longer PPL may mean that some women, who would have resigned under unpaid leave, will return to work after the longer paid leave period.
- 4.7. For trade unions PPL ensures income and employment protection for low-income workers. Low-income workers are less likely to be able to take time off work making paid parental leave a vital income. The Service and Food Workers Union (now E tū) comments, “Low paid workers and their families are disadvantaged by the current inadequate provisions of paid parental leave. They do not have the benefits more often enjoyed by higher earners of greater annual leave, employer-provided additional parental leave or more flexible work arrangements, and are unlikely to have a partner with sufficient income to provide for the family while they take unpaid time off work. Childcare is expensive and difficult to obtain and for our members and there are additional issues around anti-social and irregular hours of work” (SFWU Ngā Ringa Tota, 2012).
- 4.8. Paid parental leave of 18 weeks is insufficient on numerous counts. The most compelling reason is that returning to work too early undermines the recommendation by the WHO of six months exclusive breast feeding for children. The WHO recommendation is clear that exclusive breast feeding for the first six months of a child life is the best food for babies and the best mechanism to protect and nourish the health of a child through the transfer of antibodies from mother to child. Breast feeding meets the full nutritional needs of a child up to six months through the supply of nutrients in a hygienic, cost effective, balanced and easily absorbed method.
- 4.9. Breast feeding reduces the incidence and severity of infectious diseases amongst babies. The health benefits of breast feeding cannot be over stated. Providing the

necessary time for this without pressure to return to work is essential. Given the need to protect and improve the health of our youngest citizens and the importance of the first year of life, it is a critical reason for the extension of paid parental leave to six months.

- 4.10. The extension of the PPL to six months enables mothers to maintain exclusive breast feeding as per the WHO recommendation. While there are legislative provisions for breast feeding breaks, the reality is that breast feeding very young babies at work is difficult and in a time-intensive activity. The time spent breastfeeding decreases after birth, but even at six months of age, breastfed infants feed for an average 2.5 hours a day (J. P. Smith & Forrester, R, 2013).
- 4.11. An Australian study looking at breast feeding and maternal health confirmed the difficulties women experience in breast feeding at work related to lack of employer support and lack of privacy (Cooklin AR, Rowe HJ, & Fisher JR, 2012) .We know that is also the experience for many New Zealand women in workplaces.
- 4.12. There are other strong health reasons for longer parental leave. A study examining the health of children across 16 countries and measuring it against parental leave entitlements found that parents who had longer paid parental leave payments were healthier than their counterparts with less paid parental leave. And there are impacts for lower income families too. Children from lower income families are more susceptible to ill health with the evidence showing that longer paid parental leave reduced the number of childhood diseases (Ruhm, 2000).
- 4.13. Research is showing links between reduced infant mortality and more generous paid parental leave. A study examining aggregate effects of child health outcomes using data from 18 OECD countries from 1969 to 2000 reported that a 10 week extension in paid leave predicts a decrease in infant mortality rates by 2.3 percent and 2.5 percent respectively (Tananka, S, 2005). This supports the earlier findings of Ruhm's study who found that more generous paid parent leave reduces the deaths of infants and young children (Ruhm, C, 2000).
- 4.14. A New Zealand study (Crichton, S, 2008) found that 40 percent of PPL recipients were working six months after starting parental leave and nearly 70 percent were working 13 - 18 months later. Three quarters of recipients returned to work within 12 months of starting parental leave and two thirds of those returned to work after taking six months or less. These results show that the objective of work attachment

is being achieved, but that a large cohort of parental leave recipients are returning to work around six months after starting parental leave. This links strongly with the 2006 evaluation of PPL that found that PPL recipients are returning to work for financial reasons (Department of Labour, 2007).

- 4.15. Key findings from the DOL evaluation were that paid parental leave is taken almost solely by mothers; most mothers return to work when their baby is six months old but would like to return when their baby is twelve months old and the biggest barrier in all income groups to taking the full twelve months leave is financial pressure. The evaluation found widespread support for PPL amongst mothers, father and employers with almost universal recognition that job protection and financial support from PPL is essential for parents. Over 80 percent of mothers who took PPL said it lessened money worries, eased the transition from two incomes to one, and contributed to financial security.
- 4.16. The evaluation reported that 55 percent of those that took PPL agreed or strongly agreed that the ending of PPL payments had a significant impact on deciding when to return to paid work. Collins examining this concludes that "...parents are aware of the impact a lowered income will have on themselves and their children, and many will sacrifice bonding time for this. Lengthened PPL would not entail this sacrifice" (Collins, S).
- 4.17. The extension to six months also encompasses a very strong values proposition. New Zealand's spending on its young citizens ranks it at the bottom of the OECD. Our children are worth more. Giving children a good start in life by ensuring secure attachment, reducing parental stress and providing reasonable financial support to parents is something in the interests of New Zealand's future generations.

5. The 2012 Bill and Select Committee Report

- 5.1. The report of the Select Committee on the 2012 Parental Leave and Employment Protection (Six Months Paid Leave) Amendment Bill is instructive. The report states that "although we recognise the proposal in the bill offer benefits, we also acknowledge they have financial implications. Therefore we have been unable to reach agreement on whether the Bill should be passed". (Report of the Government Administration Committee, p, 2). There were clearly high levels of agreement in the Select Committee with the only issue of disagreement being cost.

- 5.2. Of the 3809 submissions received on the 2012 Bill, 3975 (99.6 percent) supported it. The Bill was not passed due to the government's position on costs and the position of the Finance Minister, Hon Bill English, who had threatened to use a financial veto to prevent it being passed. Presumably not a path the Government wanted.
- 5.3. The Report on the 2012 Bill (Ministry of Business, Innovation & Employment, 2013) reinforces the strong level of support for the extension of the PPL. There were 126 unique submissions on the Bill. Of these, 112 submissions supported the Bill, 10 submitters opposed the Bill and four submitters neither supported nor opposed it.

6. The Costs

- 6.1. There is strong public support for PPL. The research provides a compelling case for the extension of PPL to 26 weeks. The reason why the 2012 Bill did not pass was for one single reason: the issue of cost. This was the only objection that the National Party MPs raised.
- 6.2. Given that since that time there has been an increase of four weeks and this is budgeted for, and that the Government books are now back into surplus, the argument that it is unaffordable no longer holds. The costs of extending PPL are now significantly less given the incremental change to 18 weeks. The increase is now only 8 weeks with the Bill introducing the increase in two tranches: to 22 weeks in 2016 and to 26 weeks in 2018.
- 6.3. The argument that "there is no money" is something the Government can claim at any time over any issue but the Prime Minister is on record saying that "would not rule out extending the leave period once the government returns to surplus (TV3 news, 2013). The Government books are in surplus now. The priorities that the public support should be driving the spending of the surplus.
- 6.4. The discussion on costs must also consider the benefits to families, women and new-born children (who will become adults) of providing adequate amount of time for parents to be with new-born children. Without adequate support and leave at this time, parents' economic wellbeing suffers, at a time when it needs to be improved. There may also be reduced health costs because of extended breastfeeding and reduced labour force turnover. Further, the work done by people on PPL including caring for children and household tasks, even if not recognised as employment nor in GDP, do contribute to society and have economic benefits.

- 6.5. The fiscal costing should take account of not only direct costs (payments to parents) but the savings in childcare subsidies when a parent is at home and taxes paid on parental leave payments (it is the net payment that matters). There may also be changes in behaviour with longer paid parental leave. For example, parents may take a small proportion of leave available so leave payments may not increase in proportion to entitlements. With longer leave, employers may be more likely to employ a fixed term replacement whose income may generate tax revenue. Changes in taking unpaid leave may also occur.
- 6.6. Without information on these factors, and without publicly available costs, it is not possible to make an accurate estimate of the fiscal impact of the advances in PPL proposed, so we have not attempted to do so. Costings used for public debate on this policy should be transparent as to what factors they take into account and how they have done so.
- 6.7. We recommend the Select Committee commission a report of the full costing of the increase to 26 weeks PPL and that this includes the savings that will be generated from increased tax return, reduction in child care subsidies and consideration of savings that are generated from longer periods of breast feeding.

7. Work Contact Hours

- 7.1. The CTU generally supports the work contact hours but have concerns about mother, parents and partners on parental leave being pressured by employers to fill in and cover for staff absences and the effect of that compromising them, their child or children and the objectives of the Parental Leave and Employment Protection Act 1987. To ensure that parents on PPL are not being pressured to work “contact hours”, we recommend tightening up the provisions.
- 7.2. These provisions are necessary as the evidence in our Employment Standards Legislation Bill submission shows. This Bill attempts to do this by stating that there must be “fair agreement” though we would recommend a description of “fair agreement”. The amendment to s 56 to include work contact hours also provides another protection by enabling any abuse or coercion to be the subject of a parental leave complaint.
- 7.3. If work contact hours are extended into the unpaid parental leave time, the framework needs to be consistent with the “keeping in touch days” which will be passed with the passage of the Employment Standards Legislation Bill. In general,

we think that the framework proposed in cl 14 of the Bill is sound. However, we have a number of technical recommendations to strengthen this framework.

- 7.4. First, proposed s 71HA (5) stating, “Nothing in this section requires an employee to work during the period when he or she is on parental leave” is ineffectual. We are concerned that an employer may attempt to use contractual terms, coercion or persuasion to push a worker into returning. Stronger protections are needed. We suggest that an employer who applies undue influence to make a worker come back to work prematurely should be subject to personal grievance proceedings and a penalty under s 135 of the Employment Relations Act 2000.
- 7.5. Second, there is a challenge with the concept of hourly rate as this applies to workers on daily, weekly, fortnightly or salaried rates of pay. It may be necessary to either set out a formula for calculating this rate or to adapt one of the existing rates in the Holidays Act 2003 (such as average daily pay under s 9A). Average daily pay may be the most useful calculation but would need to be calculated based on the rates applicable on the worker’s last day before going on parental leave.
- 7.6. Third, while we do not oppose the concept of a grant of time-in-lieu as opposed to payment, additional safeguards are necessary. Time-in-lieu must be granted on at least a 1:1 basis with actual hours worked. The value of time-in-lieu must also be clearly established so that if a worker leaves their employment before taking that leave they are entitled to be paid for that time. This may be achieved by stating something like “accrued time in lieu is to be treated in the same manner as accrued annual holiday entitlements under the Holidays Act 2003.
- 7.7. Fourth, we recommend that any agreement as to work contact hours should be made in writing (as employment agreements are). This creates greater certainty and transparency for all parties.
- 7.8. Fifth, it is unclear how the hours limits will be monitored and by whom. We recommend that all agreed work contact hours are specially coded in PAYE and that IRD should send letters to the worker both when IRD receives notice that they are undertaking agreed contact hours and subsequently when it appears to IRD that the worker is nearing the limit of these hours.
- 7.9. Sixth, it is unclear what would happen if agreed work contact hours exceed the thresholds set out in the Act. There is also a risk that people could inadvertently go over their work contact hours and thus be at risk of losing their parental leave

payments or being considered to have returned to work because they have gone over the limit allowed. Some sort of enforcement mechanism is needed.

8. Other issues

- 8.1. A significant issue is slippage in the level of paid parental leave payments. At the time of the introduction of paid parental leave in 2003, the maximum weekly payment was \$5.00 above the minimum wage for forty hours' work. Currently the maximum payment is \$516.85, before tax; well below to the weekly minimum wage of \$590 for forty hours' work. The maximum paid parental leave payment is now 87 percent of the minimum wage.
- 8.2. The adjustments to the paid parental leave payments are made according to average wage movements. Because increases in the minimum wage (especially between 2002–2008) were higher than the increases in the average wage, paid parental leave payments have dropped relative to the minimum wage.
- 8.3. We recommend that there be an immediate rise in the maximum paid parental leave payment to the minimum wage level of \$590 and that the paid parental leave payments should rise annually by the greater of the increase in the minimum wage and the increase in the average wage.
- 8.4. Parental leave plays a critical role in sustaining women in the workforce and promoting equality through financial support and connection with employment. We support and have raised with MBIE the need for new research and evaluation of the parental leave scheme. We recommend that an evaluation of the parental leave scheme be a MBIE and Government priority.
- 8.5. There is a long standing issue of concern that we have with s 42 of the Parental Leave and Employment Protection Act 1987. This provision states that when leave is accrued while on parental leave or in the 12 months following return to work from parental leave, what someone is paid for that leave is calculated based on their earnings over the preceding 12 months. This will more often than not mean that parents receive no paid holiday leave on returning from parental leave at the very time when paid holiday leave is most needed. We urge that the Select Committee consider this anomaly in the Bill which causes stress and pressure and that there is a recommendation for change in the final Select Committee report.

- 8.6. Finally, as commented earlier, New Zealand's parental leave legislation and policy is well out of step with other OECD countries in having no provision for paid paternity / partner leave. The 2005/2006 DOL evaluation found that most fathers take some sort of leave around the birth or adoption of a child but very few fathers take unpaid leave and are instead using annual leave at the time of the birth/ adoption of their child. Germany and Sweden have now legislated that some of the leave has to be used by the other parent.
- 8.7. The important role of father in raising children is getting more attention and Victoria University academic, Amanda O' Reilly, is currently undertaking work on this subject following the publication of a study by the Families Commission who reported that 49 percent of fathers feel their role is not sufficiently recognised. An America study reports that parental leave has the potential to boost father's emotional investment in and connection with infants (O'Brien, M, 2009).

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