

Symposium on Parental Rights and Work/Family Balance

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This symposium draws together a collection of papers that reflect on the potential to extend parental rights for employees and facilitate the combination of work and family responsibilities. The enduring difficulties of integrating paid work with family commitments, and the significance of this tension for the persistence of employment inequalities between men and women, ensure that these are issues of considerable importance in contemporary society. However, policy development and implementation are frequently contested, while barriers such as the gendered division of domestic labour appear almost impervious to change. Nonetheless, policy advances have been made, and much can be learnt from investigating different approaches and the impediments to change. The symposium seeks to make a contribution to this endeavour.

The papers included here were initially presented at a workshop held in April 1999 as part of the gender stream of the Reshaping Australian Institutions Project at the Research School of Social Sciences, Australian National University. The workshop was supported by Sociology and Political Science Programs within the Research School, and brought together a range of participants from academia, government and women's organisations. The timing was apposite. It was held a few months prior to the International Labour Conference session at which the Maternity Protection Convention (International Labour Organisation [ILO] Convention no.103) was to be reviewed. It was also a time when the New Zealand government was faced with a private member's bill proposing paid parental leave – an initiative which, if successful, would have made the absence of paid parental leave in Australia even more conspicuous internationally. Significant

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changes were also in progress in the United Kingdom, where the *Employment Relations Bill 1999* proposed the introduction of parental leave and simplification of existing provisions on maternity rights. In Australia, the Human Rights and Equal Opportunities Commission was conducting the National Pregnancy and Work Inquiry, and the Work and Family Unit within the federal Department of Workplace Relations and Small Business was preparing a report on family friendly employment practices.

Several of these issues were discussed at the workshop. Visiting British academic Jill Earnshaw spoke on the difficulties of protecting maternity rights under the complex legislative arrangements that have evolved in the United Kingdom, and the potential of the new legislation to simplify the situation. Jennifer Curtin (University of Canberra) analysed the politics of the New Zealand initiative, Jennifer Earle (Women's Legal Centre) spoke on the ILO deliberations and the need to extend provisions in Australia, and Gillian Whitehouse presented the results of collaborative research with Di Zetlin which sought to identify the distribution of work and family measures in Australian workplaces, and some of the impediments to their implementation. A further issue raised was the development of a Draft Code of Practice and Guidelines on Pregnancy and Work in New South Wales. Philippa Hall, Deputy Director of the NSW Department for Women, informed the workshop of progress on this initiative, which was designed to set out and explain legal obligations as they have been defined in statutes and in case law, and provide guidance in ensuring work and workplaces are safe, fair and consistent with the entitlements of pregnant women and new mothers. The Report of the National Pregnancy and Work Inquiry has subsequently recommended that, once adopted in NSW, the code and guidelines be included in the National Occupational Health and Safety Commission database as a source of practical advice on risk control relating to pregnancy at work, and be reviewed with a view to implementing such a Code nationally (Recommendations 22 and 23 of the *Report of the National Pregnancy and Work Inquiry*, Human Rights and Equal Opportunities Commission, 1999).

The decision to bring a selection of the papers together as a symposium reflects the need to generate ongoing debate and research over policy directions. The first three papers focus specifically on parental rights, covering recent developments in the United Kingdom, New Zealand and Australia, and the ILO Maternity Protection Convention review process. The fourth paper extends the Australian case by examining the implementation of a broad range of work and family measures within Australian workplaces. The papers have been substantially revised since the workshop,

and subsequent developments such as the outcomes to date of the International Labour Conference's consideration of maternity rights, and the fate of the New Zealand initiative, have been included in the respective analyses.

Overall, the analytical focus is on possibilities for, and impediments to, an extension of parental rights and an improvement of work/family balance. Jill Earnshaw's paper elaborates the gradual process of extension of maternity rights in the United Kingdom through successive legislative changes, the influence of European law, and interpretation through case law. Her combination of academic and practical expertise (she has been a part-time Chair of Employment Tribunals since 1990) allows considerable insight into the process of interpretation, and the complexity of the legal system in which maternity rights are delivered. Not only do comparisons across Europe show that the United Kingdom is not among the leaders in provision of maternity rights, the provisions that are in place have been described as exhibiting the 'worst excesses of a taxing statute'. However, Earnshaw's analysis does suggest a gradual simplification and extension of rights, partly through case law and a purposive construction of the provisions, and now with the assistance of new legislation and regulations.

Although this is described only as the first sign of light at the end of the tunnel for the United Kingdom, the prospects in New Zealand and Australia appear far less promising by comparison. These are countries without legislated provision for paid parental leave, and, on the basis of the analyses presented here, unlikely to achieve this in the near future. Jennifer Curtin's paper examines the political complexities of the recent New Zealand proposal for paid parental leave and the reasons for its demise. For a country that has been described, along with Australia, as a 'radical' variant of a liberal welfare state, the provision of basic parental rights continues to be elusive. In Curtin's view, both New Zealand and Australia have always been at the liberal end of the spectrum in relation to such matters, and recent policy directions have shifted New Zealand further in this direction on all issues. Curtin's analysis is not entirely pessimistic, however, and she does raise the possibility that new electoral arrangements in New Zealand may increase the need for political compromise in a way that could permit the issue of paid parental leave to re-emerge on the agenda.

Jenny Earle's paper provides an analysis of maternity rights in Australia within the context of the recent process of review initiated by the ILO on its Maternity Protection Convention and Recommendation. She provides little reason for optimism about either the extension of basic standards at ILO level or the advancement of Australian provisions. While providing a feminist perspective on the arguments for extending basic maternity rights

standards at ILO level, Earle describes how the ILO process tends to produce conservative outcomes, and notes the pressures that emerged at the conference for a less prescriptive convention. With respect to Australia, she argues that even if the revised convention is less prescriptive, there is no guarantee that Australia will proceed to ratification and then to legislation.

In the final paper in the symposium, Whitehouse and Zetlin take a broader look at 'work and family' provisions in Australia, arguing that the distribution of such provisions is uneven across the labour market, and that a number of problems are evident with their implementation even where provision is commendable. Their analysis combines survey and case study data to examine the practical application of work and family provisions, with a particular focus on the potential to enhance career prospects for women. Again, the conclusions tend to be somewhat pessimistic, and the authors note the importance of effective minimum standards as opposed to reliance on corporate goodwill or rationality.

Overall, the papers suggest that the extension of parental rights at work will be achieved only slowly. They do indicate that the situation in Australia and New Zealand falls well behind European standards, and that the current ILO deliberations appear unlikely to provide the impetus for progressive change. Nevertheless, as comparative research continues to highlight more extensive parental rights, and studies help to illuminate the most effective ways to proceed, pressures for change continue to mount. It is hoped that further research will maintain the current high profile on these issues, and that a more encouraging story can be told in the future.