



INTERSECTIONS AND INEQUALITY AT THE WORK FAMILY NEXUS: HOW LAW FAILS SOME MOTHERS MORE THAN OTHERS

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Intersections and inequality at the work family nexus: how law fails some mothers more than others

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The myth of New Zealand is that it is an egalitarian paradise where there is no sexism and no racism. The reality is that there is a persistent wage gap between men and women and the senior levels of most sectors of the labour market are dominated by men. Census and other data indicate that Māori and Pacific women are particularly disadvantaged and are more likely to be unemployed or in casualised, low paid, precarious work than women of European descent. Māori and Pacific women, as a group, also carry a greater burden of unpaid care work.

This research focuses on mothers. It adopts an intersectional approach to critically evaluating New Zealand laws intended to protect and support mothers in managing and reconciling paid work and care responsibilities. Welfare, work and discrimination law are analysed and it is suggested that the limited assistance that the law provides in terms of enabling mothers to manage work and caring responsibilities is only likely to be helpful to relatively privileged women in stable long term employment. Women in precarious employment receive little or no help from the law and mothers in receipt of welfare benefits face a stringent and punitive regime intended to coerce them into paid work. Mothers on benefits and in precarious work are more likely to be Māori and Pacific who are also more likely to be discriminated against than women of European descent in terms of gaining access to work. Unfortunately, New Zealand's discrimination law is weakly enforced and unsuited to providing redress for the multiple disadvantages that Māori and Pacific mothers may encounter.

It is concluded that while the disadvantage of Māori and Pacific women in New Zealand is the product of complex interlocking inequality regimes in which law is only one factor, at present, law reinforces the disadvantage. It is further concluded that proposals for law reform should reflect a nuanced understanding of the causes of inequality and an emphasis on the concerns of currently marginalised mothers. Some recommendations for law changes are provided which go some way to addressing this.

I. INTRODUCTION

New Zealand is a small country comparable in population to Ireland, Singapore and Norway.¹ It was one of the first countries in the world to introduce suffrage for women and it has had two female Prime Ministers. Nonetheless the senior levels of most sectors of the labour market remain dominated by men.² There is also persistent pay gap between men and women which, far from improving, has recently worsened.³

The causes for this inequality are complex. However, the fact that women continue to bear more responsibility for care work⁴ is a significant contributing factor. Masselot has discussed how New Zealand law and policy serves to reinforce this gender imbalance by ‘anchor[ing] women to traditional domestic roles while at the same time pushing them to be economically active through flexible, precarious and low paid employment...’⁵ Here it is argued that, apart from reinforcing gender inequality, current laws reinforce inequality *between women*.

Gender is not the only source of inequality in New Zealand. Ethnicity is also associated with inequality.⁶ New Zealand’s population mix is as follows: 67.6% of the population are of European descent, 14.6% are Māori who were the indigenous first occupants, 6.9% are of Pacific descent and have settled in New Zealand within the last 50 years.⁷ Across a range of indicators the group with best outcomes is European and the groups with the poorest outcomes are Māori and Pacific. The disparity is such that the UN Committee on the Elimination of Racial Discrimination recently recommended that New Zealand “should intensify efforts to improve the outcomes of Māori and Pacific in the fields of employment, health and in the administration of justice.”⁸

¹ Statistics New Zealand *New Zealand in Profile 2013: an Overview of New Zealand’s People, Economy and Environment* (2013).

² Human Rights Commission *New Zealand Census of Women’s Participation* (2012).

³ Amelia Wade “Pay Gap Between Men and Women Slowly Widening” *The New Zealand Herald* (New Zealand, 27 April 2013).

⁴ Ministry of Women’s Affairs *The Status of Women in New Zealand: CEDAW Report 2010* at 28.

⁵ Annick Masselot “The Rights and Realities of Balancing Work and Family Life in New Zealand” in N Busby and G James (eds) *Families, Care-giving and Paid Work: Challenging Labour Law in the 21st Century* (Edward Elgar: Cheltenham). See also Human Rights Commission *National Conversation About Work* (2010) at 20 “Currently the uptake of working arrangements developed to meet the needs of working families has a significant gender imbalance and emphasizes the cultural norm that care responsibility for children is primarily that of women.”

⁶ It must be acknowledged that as a socio-cultural concept ethnicity is problematic as a means of distinguishing behavioural characteristics. Individuals often have more than one ethnicity. Linguistic and cultural heritages are not inherently biological and individuals and groups may adopt alternative languages and cultures. Hence in New Zealand ethnicity is not generally understood as biological concept but rather as a self-identified socio-cultural affiliation. See discussion at Statistics New Zealand *Fertility of New Zealand Women by Ethnicity* (2004) at 47

⁷ Statistics New Zealand *New Zealand in Profile 2013: an Overview of New Zealand’s People, Economy and Environment* (2013).

⁸ United Nations Committee on the Elimination of Racial Discrimination ‘Concluding Observations’ (2013) CERD/C/NZL/CO/18-20 at 5.

In terms of employment, European women fare well relative to Māori and Pacific women. More European women are employed than Māori and Pacific women⁹ and European women are more likely to be employed in higher skilled, higher paid positions than Māori and Pacific women.¹⁰ Median hourly wages earnings vary by ethnicity and European women earn more per hour than Māori and Pacific women.¹¹ European women are also more likely to earn in the highest quintile than Māori and Pacific women.¹² Not unrelatedly there is also inequality in education. European women are more likely than Māori or Pacific women to have post school and degree qualifications and Māori and Pacific women are more likely than other women to have no qualifications.¹³

It is also apparent that Māori and Pacific women carry a greater burden of care work than European women in that Māori and Pacific women have more children than European women. The average number of children born per women by ethnicity is 1.83 for European women, 2.79 for Māori women and 2.84 for Pacific women.¹⁴

This research adopts an intersectional approach to considering mothers in relation to other mothers and in relation to the law. It considers work law, welfare and discrimination law as viewing any of these in isolation would only provide a partial picture of the extent to which law supports or fails women as workers and as care givers. Its central thesis is that New Zealand law does not sufficiently address inequality between women in their roles as mothers and as workers but instead supports some while failing others. Rather than addressing and remedying the complexity of the causes underpinning inequality between mothers, the law in New Zealand reinforces it.

Of course, inequality and the distribution of paid work and care work are not just women's issues. They impact upon men as well and ultimately shifting societal norms will require a focus on both men and women. However, here the focus is upon mothers in relation to other mothers as it is important (as will be argued in the paper) that in the quest of overall equality between men and women, the differences between women are not overlooked.

The paper is structured as follows: in the first part the intersectional approach taken in the paper is explained and justified. In the second part New Zealand law is summarised and analysed to show how it serves some mothers better than others. The third and final part concludes and makes recommendations.

⁹ In mid 2011 59 per cent of European women, 49 per cent of Māori women, and only 45 per cent of Pacific women were employed NZIER Report to the Ministry of Women's Affairs *Changes in Women's Earnings: Key Changes* (2012) at 22.

¹⁰ NZIER Report to the Ministry of Women's Affairs *Changes in Women's Earnings: Key Changes* (2012) at 26

¹¹ In 2008, European women earned more per hour (\$18.22) than women in each of the Māori, Pacific, and Other (\$15, \$14,\$16 respectively) NZIER Report to the Ministry of Women's Affairs *Changes in Women's Earnings: Key Changes* (2012) at 30.

¹² In 2008, European women were more likely than women of all other ethnic groups to have a weekly income in the highest quintile with 13.7 per cent of European women having a median weekly income of at least \$1,030 per week. This compares with 8.5 per cent of Māori women, and 7.0 per cent of Pacific women. NZIER Report to the Ministry of Women's Affairs *Changes in Women's Earnings: Key Changes* (2012) at 30.

¹³ In 2008 49.7 per cent of European women held a Post school qualification, compared with 41.1 per cent of Māori women and 30.9 per cent of Pacific women. NZIER Report to the Ministry of Women's Affairs *Changes in Women's Earnings: Key Changes* (2012) at 26.

¹⁴ Statistics New Zealand *Fertility of New Zealand Women by Ethnicity* (2004) at 9.

II. INTERSECTIONAL APPROACH

Feminist theory has offered a range of responses to the problem of women's persistent inequality. This research adopts an intersectional lens to the problem as opposed to a perspective rooted in either equality or difference feminism for reasons which are now explained.

Equality feminism is a strand of feminism which emphasizes the importance of access to paid work for women¹⁵ and the dismantling of structural impediments to equality in terms of the ability of women to participate in the workforce with men. Undoubtedly access to paid work is important for women however the equality approach has limitations. A sole emphasis on access to paid work fails to address the "who will watch the children" problem or, rather, who will perform the care work if women are fully occupied in the workforce? The reality to date has been that women still do the vast majority of it. Equal access to work does not mean there is an equal distribution of care work within families. Effectively equality feminism forces women to choose between work and family. Women who try to have both are faced with a struggle to conform to workplace expectations that arise out of the "male" ideal worker norm; that is, an unencumbered individual available to work 40 hours a week and more, as and when required.¹⁶

Difference feminism offers an alternative perspective on how to address the inequality and it provides an answer to the "who will watch the children question?" which equality feminism fails to. It draws on a certain view of difference between men and women. In her book *In a Different Voice*,¹⁷ Gilligan most influentially articulated the view that women have differing moral and psychological tendencies than men. According to Gilligan, men think in terms of rules and justice and women are more inclined to think in terms of caring and relationships. Her social agenda is that both types of thinking should be equally valued in Western society. The logical extension of this idea into the domain of work family regulation is the proposal that care work ought to be valued and women should have both the freedom and the support to devote themselves to it. West suggests there should be "caretaker rights" which recognise as well as protect the fundamental value we place on the provision of care to dependants.¹⁸

Such a right would give the caretaker the right to provide high-quality care (continuous, long-term, and uninterrupted) for dependants, but without a resulting risk of extreme impoverishment.

There is some appeal in this idea; however, difference feminism is problematic in a number of ways. It skirts perilously close to biology as destiny and, if caution is not exercised, there is a real danger it will be used to reify women's inequality. Its rhetoric may deter men who wish to take on a greater care work burden and the sacralisation of motherhood as the key source of meaning in human life implies that somehow it is spiritual and elevated. This

¹⁵ See Shultz for a modern restatement of the principles of equality feminism. V Schultz "Life's Work" (2000) 100 Columbia Law Review 1881.

¹⁶ Joan Williams *Unbending Gender: Why Family and Work Conflict and What to Do About It* (Oxford University Press, New York, 2000) 1-6.

¹⁷ C Gilligan *In a Different Voice: Psychological Theory And Women's Development* (Harvard University Press, Cambridge, MA, 1982).

¹⁸ Robin West "A Right to Care" *Boston Review* April/May 2004.

glosses over the fact that much of the associated care work consists of hard unrelenting physical labour involving unglamorous tasks such as cleaning toilets, wiping noses and so forth.

A key limitation of both equality and difference feminism is that both treat women as a unitary category which does not sufficiently take account of the differences between them. Equality feminism does not address the fact many women may be disadvantaged for reasons other than their gender in terms of their ability to access paid work. An able bodied, white, middle class, heterosexual cis-gendered childless woman may well be able to access work and thereafter compete on a level playing field with her equivalent male counterpart but this will not be true of all women.

Difference feminism also conceptualises women as a single unitary category glossing over differences arising from factors such as class and ethnicity. These can, however, be significant factors in terms of perceived and actual options in relation to work and caregiving and there is a limit to how much palliative intervention by the state aimed at supporting mothers' rights to care for their dependents could conceivably mitigate this.

In practical terms a highly educated, middle class woman who lives in a nice house, in a safe area, with a supportive high earning partner is in a better position to offer high quality long term care to her dependents *without* risk of impoverishment than a teenage solo mother who lives in a poor quality rental in an unsafe area. Of course, in an ideal world, both mothers would be equally supported in their determination to care for their dependents. In the real world, failing a revolution and massive redistribution of wealth and social capital, the teenage solo mother who opts out of the workforce for an indefinite period, runs a far greater risk of long term impoverishment.

The tendency to equate all women and to use gender as a singular lens was first identified as problematic by black American feminists who argued that it effectively privileged the concerns of white American women and ignored the multiple sources of disadvantages black American women might be subject to. Crenshaw most influentially used the metaphor of an intersection to illustrate the complexity of the relationship between identity and the causes of subordination.¹⁹ A black American woman's identity as a woman may intersect with her identity as a black. She may be discriminated against on either grounds or on both grounds cumulatively. Crenshaw's critique called for attention to the intersections of subordination and for the concerns of those at the margins to be moved to the centre.

From this original standpoint intersectionality as a concept has been extensively elaborated on as well as critiqued. It has been picked up by a range of disciplines and it has been given some recognition in discrimination law in the European Union²⁰ and by the United Nations Committee on Economic, Social and Cultural Rights.²¹ For some it has been seen as a way to

¹⁹ Kimberle Crenshaw "Demarginalising the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics" (1989) University of Chicago Legal Forum 137.

²⁰ Susanne Burri and Dagmar Schiek *Multiple Discrimination in EU Law: Opportunities for Legal Responses to Intersectional Gender Discrimination* (European Commission 2009).

²¹ United Nations Committee on Economic, Social and Cultural Rights 'General Comment No 20: Non-Discrimination in Economic, Social and Cultural Rights (article 2)' (2009) UNDoc E/C.12/GC/20.

give voice to individuals who are silenced by paradigms which posit identity as singular. It has certainly generated a great deal of personal narrative writing by individuals recounting their experiences although some have seen the focus on personal narrative and identity based analysis as limiting.²²

Nonetheless, the core insight that when the experiences of white middle class women are essentialised as the experience of all women their concerns are privileged over those of other women, remains as relevant as ever. As a political project it continues to be appropriate to try to ensure that the disadvantage of those at the margins is addressed.

Conaghan utilises organisation theorist's Joan Acker concept of inequality regime to provide a useful paradigm of how intersectional analysis can be part of a practical equality seeking strategy²³ which transcends subjective located experience and simplistic grid analysis. Acker defines inequality regimes as 'loosely interrelated practices, process, actions and meanings that result in and maintain class, gender and racial inequalities within particular organizations'²⁴ Individual organisations have inequality regimes i.e. internal practices, informal norms and policies which prevent some individuals from progressing within organisation or which may mean individuals are not employed in the first place. Although Acker's focus is on business organisations it is possible to extend the logic of inequality regimes to other forms of "organisation."²⁵ For example as legal system, an education system or a family could all be conceptualised as capable of generating inequality regimes. Importantly inequality regimes do not operate in isolation. Each operates against the background of existing regimes and intersects with other regimes. Inequality is a product of multiple interlocking ordering social ordering processes in multiple regimes both local and global.

Within New Zealand a variety of inequality regimes are operating to cause Māori and Pacific women to be disadvantaged relative to European women so that as a group they more often end up in less well paid, less secure jobs or dependent on benefits. Conaghan proposes that "law's equality seeking strategies should flow directly from an analysis of the inter operation of inequality regimes, including but not restricted to the ordering effects of law itself."²⁶ This paper responds to this challenge by considering the question of inequality in New Zealand with particular reference to current law and to the inequality of mothers. It does not identify or elaborate on all the inequality regimes that may be contributing to the disadvantage of Māori and Pacific women but it does recognise the need for a more nuanced approach to this underlying complexity than current law evidences. It is not concerned with the representative function of law but rather it is concerned with how law is one factor which may address or alternately reinforce the inequality which is the product of interlocking inequality regimes.

²² Joan C Williams *Reshaping the Work-Family Debate: Why Men and Class Matter* (Harvard University Press 2010) at 147.

²³ Joanne Conaghan "Intersectionality and the Feminist Project in Law" in D Cooper (ed) *Law, Power and the Politics of Subjectivity: Intersectionality and Beyond* (Routledge London, 2008) at 20. (All page references are to the version available in the Kent Academic Repository)

²⁴ Joan Acker "Inequality Regimes: Gender, Class and Race in Organizations" (2006) *Gender and Society* 441 at 443.

²⁵ Joanne Conaghan "Intersectionality and the Feminist Project in Law" in D Cooper (ed) *Law, Power and the Politics of Subjectivity: Intersectionality and Beyond* (Routledge London, 2008) at 20.

²⁶ Joanne Conaghan "Intersectionality and the Feminist Project in Law" in D Cooper (ed) *Law, Power and the Politics of Subjectivity: Intersectionality and Beyond* (Routledge London, 2008) at 21.

III. ANALYSIS OF NEW ZEALAND LAW

While legal writers on intersectionality generally focus on discrimination law here a more holistic approach is adopted and the interaction of welfare, work law and discrimination law are considered. This is because cumulatively all three of these areas of law have an impact upon the extent to which mothers can fairly access paid work while at the same time being supported in managing their care responsibilities.

A. *Welfare law*

Unemployment benefits in New Zealand are not generous and families on benefits experience poverty and hardship. Families on benefits are more likely to be those with greater caring responsibilities²⁷ and the vast majority of Domestic Purpose Benefits (i.e. the solo parent benefit) recipients are women. They are also more likely to be Māori or Pacific. On average over 2007 to 2011 one in 6 European children lived in poor households, one in four Pacific children and one in three Māori children. The latter is in alignment with the fact that a relatively high proportion of Māori children live in sole parent beneficiary families (43% of recipients were Māori in the 2007 to 2011 period).²⁸

Over the last few years there have been a number of reforms to the benefit system designed to “build a system that is more active [and] work focused... a key element of reforms is helping parents on benefit get into work...”²⁹

Consequently young parents who are 18 and under are now required to attend various courses including parenting and budgeting, working with a Youth Service provider and participation in education or work based training. Solo parents (in receipt so the Domestic Purposes Benefit) who are 19 and over, who have dependent children are also required to take part in various activities depending on the age of the child/ children. If the child is under five years old it will be necessary to take practical steps to get ready for work which includes activities such as preparing a CV or attending job-related training. If the child between five and 13 the requirement is to actively seek part-time work of at least 15 hours per week and accept any suitable job. If the child is 14 or older the requirement is to actively seek full-time work of at least 30 hours per week and accept any suitable job. Parents who do not satisfactorily take part in required activities or accept what are deemed to be suitable jobs are subjected to punitive financial sanctions in the form of benefit reductions.

From October 2012 due to concern that mothers on benefits were having further children while on benefits the government took the step of imposing more stringent work requirements on this group. For this group, work availability turn upon the age of the previous youngest child once the new born turns one year. If the previous youngest child is 5-13 the mother is required to look for and be available for part time work of at least 15 hours a week and to accept any offers of suitable work. While, if the previous youngest child

²⁷ Human Rights Commission “Submission to the Social Services Committee on the Social Security (Benefit Categories and Work Focus) Amendment Bill” at 15.

²⁸ Human Rights Commission “Submission to the Social Services Committee on the Social Security (Benefit Categories and Work Focus) Amendment Bill” at 8.

²⁹ Office of the Minister for Social Development “Paper C-Welfare Reform: Parents on Benefit who have Subsequent Children” (2012) at 1.

is 14 or older, the mother is expected to look for and be available for full time 30 hours a week and to accept any offers for of suitable work

There is some discretion to waive work requirement in extreme circumstances such as where a child has particularly high care needs or is the result of rape. Despite these minor concessions the law shows a distinct lack of sensitivity to the challenges that solo mothers face. It seems unlikely that mothers in this position will all be able to command reliable transportation and understanding employers willing to allow for a certain degree of flexibility when the children get sick, as children, particularly those living in poverty are likely to.

Furthermore, no additional resources have been made available to support mothers who are required to work once their youngest turns one to access childcare. This, despite the fact, that obtaining care for the one year old as well as other children will be imperative, if it is to be at all possible to manage work and care responsibilities. In fact, mothers in this position will probably struggle to find suitable childcare as shortage of appropriate childcare has been identified in other research as a significant factor in the New Zealand environment. Many working parents are constrained in their employment options because there are no early childhood education centres in their locality. Where child care centres are available the cost is frequently prohibitive and people on low incomes have no choice but to use informal arrangements.³⁰ Early childhood education also often does not match working patterns and shift workers find accessing child care particularly challenging.³¹

To add further insult to injury 2013 law changes impose “social obligations” on beneficiary parents. They are now required to have their dependent child aged three years or over attending early childhood education for 15 hours a week, enrolled in and attending school from the age of 5 or 6, and enrolled with a primary health care provider. These are in line with generally accepted parenting norms in New Zealand culture, indeed attendance at school for children over the age of 6 is mandatory for all New Zealand children. However, the fact that beneficiaries are being singled out as in need of extra coercion in these matters amounts to “stigmatisation of families on benefits as it implies that this group needs to be coerced into parenting norms.”³²

Moreover, the consequences for beneficiary parents who do not comply are extremely harsh. In the case of a first failure there will be a reduction in benefit of 50 per cent until the parent recompiles. If the parent has not re-complied within four weeks the benefit is further reduced by 50 per cent (amounting to a 100% reduction). In the case of a second failure the benefit is suspended until the parent recompiles. In the case of a third failure the benefit is cancelled. Given how low benefits are the financial hardship that could result from this is considerable.

In summary, current welfare law is designed to stigmatise and coerce parent recipients of benefits into paid work. If successful in obtaining work such parents will still have to manage the care of their dependents, without the help of a partner or guaranteed easy access to quality child care, so effective legal mechanisms to support them in this would be desirable.

³⁰ Human Rights Commission *National Conversation About Work* (2010) at 20 A number of people on low incomes such as cleaners in the Hutt Valley said that cost of ECE meant they had to either use informal arrangements or not work.

³¹ Human Rights Commission *National Conversation About Work* (2010) at 19 and 20

³² Human Rights Commission “Submission to the Social Services Committee on the Social Security (Benefit Categories and Work Focus) Amendment Bill” at 5.

Considering relative education levels and work history many individuals in this position will be unable to access highly paid secure employment and there is a good chance they will end up precariously employed in casualised work.

B. Work law

A range of laws exist in New Zealand which could potentially be used to support mothers to reconcile work and family responsibilities. A key feature of most of them is that they are only available to employees with a relatively stable employment history.

For example, anyone who has had responsibility for small children will be aware of how frequently they are sick. In New Zealand, for employees, there is a minimum provision of five days' paid sick leave a year after the first six months of employment and an additional five days' sick leave after each subsequent 12-month period.³³ This may be used for care of sick dependents. There is no entitlement to paid sick leave in the first six months of employment however.

Part 6AA of the Employment Relations (Flexible Working Arrangements) Amendments Act 2007 provides employees who have the care of any person have a right to request a change in working arrangements. The employer has a duty to consider the request, but having done so, may decline it on reasonable grounds which may include business necessity. Employers who fail to do this may be subject to a maximum penalty of \$2,000. It is questionable how much of an impact this legislation has had in real terms. Awareness of it is not high.³⁴ Nonetheless, it at least provides a legislative steer towards employers giving consideration to requests for flexibility. At the current time the formal right to request is restricted to employees of 6 months. As such it is not available to employees of shorter duration.

On 26th April 2013 a Bill was introduced to Parliament which could have the effect of amending the provision to remove the 6 month tenure requirement to access provisions. This was in partial response to a review of the law which found that "there are some groups of employees in New Zealand who have little or no access to flexible work, particularly low-income employees, employees with no qualifications and Pacific employees."³⁵

This amendment could go some way towards better supporting labour market participation of marginalised mothers with care responsibilities in that "allowing the right to request at the outset of employment could encourage employers to consider whether jobs could be organised flexibly at the recruitment phase."³⁶ However, it remains questionable whether employees in insecure, casualised employment would want to run the risk of making such a request. No doubt some employers would take such requests seriously but would all do so given the unlikelihood of any significant penalty for failure to do so? Logically it will remain

³³ Holidays Act 2003

³⁴ Noelle Donnelly, Sarah Proctor-Thomson and Geoff Plimmer "The role of 'voice' in matters of 'choice': flexible work outcomes for women in the New Zealand Public Services (2012) 54(2) *Journal of Industrial Relations* 78-99.

³⁵ Office of the Minister of Labour "Employment Relations Amendment Bill 2012: Paper One- Collective Bargaining and Flexible Working Arrangements" (2012) at 8.

³⁶ Office of the Minister of Labour "Employment Relations Amendment Bill 2012: Paper One- Collective Bargaining and Flexible Working Arrangements" (2012) at 8.

of more potential use to long term employees in stable jobs. Also, as it is a mechanism which has to be activated and negotiated at an individual level, it is not well suited to effecting systemic change in work place cultures.

For those workers who become pregnant the Parental Leave and Employment Protection Act 1987 establishes employees may be entitled to parental leave if they have worked for the same employer for an average of at least 10 hours per week, and at least one hour in every week or 40 hours in every month, for either the six or 12 months before the expected due date of their baby. Employees who meet the six-month employment eligibility criteria are entitled to 14 weeks' state funded paid parental leave. A much less generous parental tax credit of a maximum value of \$150 per week may be available for 8 weeks to some parents unable to satisfy the 6 month employment eligibility criteria. Various other entitlements are also available to those who can meet 12 month eligibility criteria.³⁷

In summary, the support that New Zealand law provides to mothers in managing work and family is largely conditional upon recent and continuous labour market attachment. The most vulnerable workers (those in atypical and precarious employment) receive the least support.

C. Discrimination law

The discussion above has highlighted that welfare law in New Zealand is designed to provide a bare minimum of financial support to beneficiary parents and their children coupled with stigmatisation, harsh penalties for non-compliance and an increasing amount of coercive pressure to prioritise participation in paid work above the provision of care for dependents. Work law provides some mechanisms intended to assist or at least to create some space for mothers in the paid work force provided they are able to demonstrate recent and continuous labour market employment. All mothers in New Zealand, who are on benefits or in the precarious workforce are not particularly well supported by law in terms of managing their dual roles as mothers and workers and a disproportionate number of these mothers are Māori and Pacific. Māori and Pacific mothers however may encounter additional challenges in terms of accessing, progressing at, and retaining work.

There is reason to believe that mothers are discriminated against in New Zealand. Masselot's research suggests pregnant women are discriminated against.³⁸ There is also a growing international recognition that mothers are frequently discriminated against through unconscious biases which make them less likely to be employed or promoted as well as held to higher standards and there is no reason to believe that New Zealanders are immune to this. Māori and Pacific peoples are also more likely to report experiencing racial discrimination in

³⁷ S71B Employees who meet the 12-month eligibility criteria are also entitled to up to 52 weeks' unpaid extended leave (less any parental leave taken). This can be shared with a spouse/partner if they also meet the 12-month eligibility criteria. A spouse/partner with six months' service may be entitled to an additional one weeks' unpaid paternity/partner's leave, and a spouse/partner with 12 months' service may be entitled to two weeks' unpaid paternity/partner's leave. To be eligible, the spouse/partner must meet the minimum hours test above. Up to 10 days' unpaid special leave for pregnancy-related reasons is available for a pregnant mother before parental leave begins.

³⁸ Annick Masselot <http://www.comsdev.canterbury.ac.nz/rss/news/?feed=news&articleId=715>

the workplace than Europeans.³⁹ Thus Māori and Pacific mothers may be vulnerable to multiple forms of discrimination.⁴⁰

Unfortunately, although New Zealand has legislation in place which prohibits discrimination on a variety of grounds including sex, family status, and race, it is not designed to be effective at preventing multiple forms of discrimination. To succeed in a claim of discrimination, a complainant will have to show she has suffered a disadvantage as a result of one of the prohibited grounds. Disadvantage is established by comparison with a notional other.⁴¹ However, as has been extensively addressed in literature elsewhere, a comparison based approach is problematic when it comes to addressing multiple grounds of discrimination such as ethnicity, gender and family status.⁴²

Furthermore, although it is theoretically possible to make a discrimination complaint discrimination law is weakly enforced. The UN Committee on CEDAW recently noted that while it welcomed the role of the Human Rights Commission in providing a mechanism to hear discrimination complaints, it has concerns that the information on this complaints mechanism has not been sufficiently disseminated and that the Human Rights Commission lacks sufficient resources.⁴³ Subsequently the government has announced plans to freeze funding on the Human Rights Commission until 2020 which has resulted in a proposal to cut 15% of its staff.⁴⁴

IV. CONCLUSION AND RECOMMENDATIONS

Law alone cannot provide complete redress for the socio-economic inequality that Māori and Pacific women encounter in New Zealand. It is only one factor in an environment which consists of an array of interlocking inequality regimes which include the education and health provision systems as well as the internal dynamics of individual families. Ultimately, the provision of universally available high quality child care and a booming economy with full employment could be far more effective at addressing inequality than any changes around the law. However, law reform which reflects a nuanced understanding of the causes of inequality and which emphasizes the concerns of currently marginalised mothers might go some way towards addressing inequality.

³⁹ Statistics New Zealand *Working Together: Racial Discrimination in New Zealand* (2012) at 6.

⁴⁰ United Nations Committee on the Elimination of Discrimination against Women ‘Concluding Observations’ (2012) CEDAW/C/NZL/CO/7 at 9.

⁴¹ See *Quilter v Attorney-General* [1998] 1 NZLR 523, (1997) 16 FRNZ 298, (1997) 4 HRNZ 170, [1998] NZFLR 196 (CA); *Jian v Residence Review Board* HC Wellington CIV-2004-485-1600, 3 August 2006; *Claymore Management Ltd v Anderson* [2003] 2 NZLR 537, (2003) 7 NZELC 98,739 at 570; *Northern Regional Health Authority v Human Rights Commission* [1998] 2 NZLR 218, (1997) 4 HRNZ 37 (HC)

⁴² See N Duclos, “Disappearing Women: Racial Minority Women in Human Rights Cases” (1993) 6 CJWL 25; G Moon, “Multidimensional Discrimination: Justice for the Whole Person” Equal Opportunities Review, Michael Rubenstein Publishing Ltd, 2008; Susanne Burri and Dagmar Schiek *Multiple Discrimination in EU Law: Opportunities for Legal Responses to Intersectional Gender Discrimination* (European Commission 2009).

⁴³ United Nations Committee on the Elimination of Discrimination against Women ‘Concluding Observations’ (2012) CEDAW/C/NZL/CO/7 at 4.

⁴⁴ Matthew Backhouse “Jobs set to Go at Human Rights Commission” *The New Zealand Herald* (New Zealand, 20 April 2013)

Some preliminary recommendations to aid in achieving this are as follows:

With regards to welfare law the current punitive, coercive stigmatising approach should be rethought. While access to, and engagement in paid work, is important as a pathway out of poverty, a mother's ability to provide adequate care and sustenance to vulnerable children is also important. Concerns voiced by the CEDAW Committee that the on-going welfare reforms discriminate against disadvantaged groups of women and the suggestion that an independent evaluation of their gendered impact is required⁴⁵ should be taken seriously and acted upon.

With regards to work law, at present those who most have need of the support from law to manage work and family and are receiving the least support. Ways to extend work family support to mothers in casual, precarious work should be sought. One suggestion, as recommended by the CEDAW committee, is that appropriate paid parental leave for seasonal or fixed term workers with multiple employment relationships should be introduced.⁴⁶

Finally, New Zealand's discrimination law should be reviewed and reformed so as to provide meaningful adequate protection against multiple forms of discrimination.

⁴⁵ United Nations Committee on the Elimination of Discrimination against Women 'Concluding Observations' (2012) CEDAW/C/NZL/CO/7 at 10.

⁴⁶ United Nations Committee on the Elimination of Discrimination against Women 'Concluding Observations' (2012) CEDAW/C/NZL/CO/7 at 8.