

House of Representatives

# Supplementary Order Paper

Tuesday, 12 June 2018

**Domestic Violence—Victims’ Protection Bill**

*Proposed amendments for the consideration of the Committee of the whole House*

**Key:**

- **this is inserted text**
- **~~this is deleted text~~**

**Note:** This Supplementary Order Paper shows amendments to the Bill that are being proposed by Jan Logie for the purposes of consideration in Committee of the whole House. This document does—

- **NOT have official status in terms of unamended text**
- **NOT have the status of an as-reported version of the Bill.**



### **Explanatory note**

This Supplementary Order Paper sets out amendments to the Domestic Violence—Victims’ Protection Bill. The amendments are those set out in Appendix B of the Justice Committee’s narrative report on the Bill presented to the House on 10 May 2018.

**Jan Logie, in Committee, to propose the amendments shown in the following document.**



*Jan Logie*

## **Domestic Violence—Victims’ Protection Bill**

Member’s Bill

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Domestic Violence—Victims’ Protection Act **2016**.

**2 Commencement**

This Act comes into force on ~~the day after the date on which it receives the Royal assent~~ **1 April 2019**.

**Part 1**  
**Domestic Violence Act 1995**

**3 Principal Act**

This **Part** amends the Domestic Violence Act 1995 (the **principal Act**).

**4 Section 2 amended (Interpretation)**

In section 2, insert in its appropriate alphabetical order:

**domestic violence document** means—

- (a) a police report confirming attendance at an incident involving domestic violence; or
- (b) a record of a police caution relating to domestic violence; or
- (c) a record of criminal proceedings for an offence relating to domestic violence; or
- (d) a record of a conviction for an offence relating to domestic violence; or
- (e) a record of a court’s finding of fact of domestic violence against a person by another person; or
- (f) a court order relating to domestic violence; or
- (g) a report from a medical practitioner stating that a person has injuries or a condition consistent with having suffered domestic violence; or
- (h) a report from a domestic violence support organisation relating to a person who has suffered domestic violence; or
- (i) any other document prescribed in regulations made under this Act

**5 Section 5 amended (Object)**

In section 5, after subsection (2), insert:

(2A) A victim of domestic violence,—

- (a) for the purposes of this Act, is a person who suffers domestic violence;
- (b) for the purposes of other enactments, is a person who is able to produce a domestic violence document because—
  - (i) the person has suffered domestic violence; or

- (ii) ~~the person provides care or support to an individual in the person’s immediate family or household who requires care or support because the individual suffers domestic violence in the individual’s family.~~

## Part 2 Employment Relations Act 2000

### 6 Principal Act

This **Part** amends the Employment Relations Act 2000 (the **principal Act**).

#### *Amendments to Part 6AA (flexible working)*

### 6A Section 69AA amended (Object of this Part)

Replace section 69AA(a) with:

- (a) provide employees with a statutory right to make, or to have made on their behalf, a request for a variation of their working arrangements (other than a variation covered by **Part 6AB** (flexible working short-term for people affected by domestic violence)); and

### 6B Section 69AAA amended (Interpretation)

- (1) In section 69AAA, insert in their appropriate alphabetical order:

**additional terms that need variation**, in relation to an employee, means 1 or more of the following:

- (a) the location of the employee’s workplace;  
 (b) the employee’s duties at work;  
 (c) the extent of the contact details that the employee must provide to the employer;  
 (d) any other term of the employee’s employment—  
     (i) that is not a term covered by **paragraphs (a) to (c)** of this definition or by **paragraphs (a) to (c)** of the definition in this section of working arrangements; and  
     (ii) that, in the employee’s view, needs variation to enable the employee to deal with the effects of being a person affected by domestic violence

**child** has the meaning given to it in section 2 of the Domestic Violence Act 1995

**domestic violence** has the meaning given to it in section 3 of the Domestic Violence Act 1995

**person affected by domestic violence** means a person who is 1 or both of the following:

- (a) a person against whom any other person inflicts, or has inflicted, domestic violence;
  - (b) a person with whom there ordinarily or periodically resides a child against whom any other person inflicts, or has inflicted, domestic violence
- (2) In section 69AAA, replace the definition of **request** with:  
**request** means a request made under this Part that—
- (a) is written; and
  - (b) requests an employer to vary an employee’s terms and conditions of employment relating to the employee’s working arrangements (other than by making a variation that the employee can request under **Part 6AB** (flexible working short-term for people affected by domestic violence)); and
  - (c) is made by the employee or on the employee’s behalf
- (3) In section 69AAA, definition of **working arrangements**, after paragraph (c), insert:
- (d) if the employee is a person affected by domestic violence, additional terms that need variation.

*New Part 6AB inserted*

- 7 **New Part 6AB inserted (Flexible working for victims of domestic violence)**  
After section 69AAL Part 6AA, insert:

**Part 6AB**  
**Flexible working for victims of domestic violence**

**69AB Object of this Part**

The object of this Part is to—

- (a) ~~provide certain employees who are victims of domestic violence with a statutory right to request a variation of their working arrangements or to have a variation of their working arrangements requested on their behalf; and~~
- (b) ~~require an employer to deal with a request as soon as possible and no later than 3 months after receiving it; and~~
- (e) ~~provide that an employer may refuse a request only if it cannot be accommodated on certain grounds; and~~
- (d) ~~if an employer does not deal with a request in accordance with the process specified in this Part, provide for reference of the matter to a Labour Inspector, then to mediation, and then to the Authority.~~

**69ABA Interpretation**

In this Part, unless the context requires another meaning,—

**domestic violence** has the meaning given to it in section 2 of the Domestic Violence Act 1995

**domestic violence document** has the meaning given to it in section 2 of the Domestic Violence Act 1995

**mediation** means mediation provided under section 144

**request** means a request made under this Part that—

- (a) is written; and
- (b) requests an employer to vary an employee’s terms and conditions of employment relating to the employee’s working arrangements; and
- (e) is made by the employee or on the employee’s behalf

**victim of domestic violence** has the meaning given to it in **section 5(2A)(b)** of the Domestic Violence Act 1995

**working arrangements** means 1 or more of the following terms of an employee’s employment:

- (a) hours of work;
- (b) days of work;
- (e) place of work, whether his or her home, workplace, or some other place;
- (d) location of workplace;
- (e) duties at work;
- (f) the extent of the contact details that the employee must provide to the employer;
- (g) any other term that, in the employee’s view, needs variation to enable him or her to deal with the effects of being a victim of domestic violence.

**69ABB Request**

- (1) A request may be made in the following circumstances:
  - (a) the employee is a victim of domestic violence; and
  - (b) the employee has been employed by his or her employer for the 6 months immediately preceding the date on which the request is made; and
  - (e) if a previous request has been made, at least 12 months have passed since the date on which the previous request was made.
- (2) A request must—
  - (a) be in writing; and
  - (b) state—

- ~~(i) the employee’s name; and~~
- ~~(ii) the date on which the request is made; and~~
- ~~(e) state that the request is made under this Part; and~~
- ~~(d) state—~~
  - ~~(i) the variation of the working arrangements requested; and~~
  - ~~(ii) whether the variation is permanent or for a period of time; and~~
- ~~(e) state—~~
  - ~~(i) the date on which it is proposed that the variation take effect; and~~
  - ~~(ii) if the variation is for a period of time, the date on which it is proposed that the variation end; and~~
- ~~(f) state how, in the employee’s view, the variation will enable the employee to deal with the effects of being a victim of domestic violence; and~~
- ~~(g) state what changes, if any, in the employee’s view, the employer may need to make to the employer’s arrangements if the employee’s request is approved; and~~
- ~~(h) have attached to it a copy of the employee’s domestic violence document.~~

**69ABC Employer’s duties**

An employer must—

- ~~(a) deal with a request as soon as possible and not later than 3 months after receiving it; and~~
- ~~(b) refer the employee to appropriate domestic violence support services; and~~
- ~~(c) notify the employee whether the request has been approved or refused; and~~
- ~~(d) if the request is refused,—~~
  - ~~(i) notify the employee of the applicable ground in **section 69ABD**; and~~
  - ~~(ii) provide an explanation of the reasons why the ground applies.~~

**69ABD Refusal**

- ~~(1) An employer may refuse a request if the employer determines that the circumstances described in **section 69ABB(1)** do not exist.~~
- ~~(2) An employer may refuse a request if the employer determines that the request cannot be accommodated because of 1 or more of the following:~~
  - ~~(a) an inability to reorganise work among existing staff;~~
  - ~~(b) an inability to recruit additional staff;~~

Proposed amendments to

- ~~(e) the potential for a detrimental impact on quality;~~
- ~~(d) the potential for a detrimental impact on performance;~~
- ~~(e) the potential for a detrimental effect on ability to meet customer demand;~~
- ~~(f) insufficiency of work during the periods the employee proposes to work;~~
- ~~(g) planned structural changes;~~
- ~~(h) the burden of additional costs.~~
- ~~(3) An employer must refuse a request if—~~
  - ~~(a) the request relates to—~~
    - ~~(i) an employee who is bound by a collective agreement; and~~
    - ~~(ii) working arrangements to which the collective agreement applies; and~~
  - ~~(b) the employee’s working arrangements, if the employer were to approve the request, would be inconsistent with the collective agreement.~~

**69ABE Disputes**

- ~~(1) This section applies if an employee believes that his or her employer—~~
  - ~~(a) has not complied with **section 69ABC**; or~~
  - ~~(b) has made a wrong determination under **section 69ABD(1)**.~~
- ~~(2) The employee may refer the matter to a Labour Inspector who must, to the extent practicable in the circumstances, assist the employee and employer to resolve the matter.~~
- ~~(3) If the employee is dissatisfied with the result of the reference to a Labour Inspector, the employee may refer the matter to mediation, at which the matter is treated as an employment relationship problem.~~
- ~~(4) If the employee is dissatisfied with the result of the reference to mediation, the employee may apply to the Authority for a determination, but must make the application within 12 months after—~~
  - ~~(a) the date on which the employer notifies the employee of the employer’s refusal, if the date is within 3 months after the employer received the request; or~~
  - ~~(b) the date 3 months after the date on which the employer received the request, in any other case.~~
- ~~(5) If the Authority determines that one of the grounds in **subsection (1)** applies to the employer, the employer must rectify the matter as soon as practicable.~~
- ~~(6) An employee may challenge his or her employer’s refusal of a request or failure to respond to a request only under this section.~~
- ~~(7) An employer who does not comply with **section 69ABC** is liable to a penalty not exceeding \$2,000, imposed by the Authority and payable to the employee concerned.~~

**69ABF Labour Inspectors**

~~For the purposes of this Part, a Labour Inspector may provide employees and employers with the assistance he or she considers appropriate in the circumstances.~~

**Part 6AB**

**Flexible working short-term for people affected by domestic violence**

**69AB Object of this Part**

The object of this Part is to—

- (a) provide employees who are people affected by domestic violence with a statutory right to make, or to have made on their behalf, a request for a short-term (2-month or shorter) variation of their working arrangements (including any additional terms that need variation), for the purpose of assisting the employees to deal with the effects on the employees of being people affected by domestic violence; and
- (b) require an employer to deal with a request as soon as possible but not later than 5 working days after receiving it; and
- (c) provide that an employer may refuse a request only if proof of domestic violence is required and not produced, or the request cannot be accommodated reasonably on certain non-accommodation grounds; and
- (d) if an employer does not deal with a request in accordance with this Part, provide for reference of the matter to a Labour Inspector, mediation, or the Authority.

**69ABA Interpretation**

In this Part, unless the context otherwise requires,—

**additional terms that need variation**, in relation to an employee, means 1 or more of the following:

- (a) the location of the employee’s workplace;
- (b) the employee’s duties at work;
- (c) the extent of the contact details that the employee must provide to the employer;
- (d) any other term of the employee’s employment—
  - (i) that is not a term covered by **paragraphs (a) to (c)** of this definition or by **paragraphs (a) to (c)** of the definition in this section of working arrangements; and
  - (ii) that, in the employee’s view, needs variation to enable the employee to deal with the effects of being a person affected by domestic violence

**child** has the meaning given to it in section 2 of the Domestic Violence Act 1995

**domestic violence** has the meaning given to it in section 3 of the Domestic Violence Act 1995

**mediation** means mediation provided under section 144

**non-compliance with section 69ABE** includes, without limitation, making a wrong determination under 1 or both of **section 69ABF(1)(a) and (b)**

**person affected by domestic violence** means a person who is 1 or both of the following:

- (a) a person against whom any other person inflicts, or has inflicted, domestic violence;
- (b) a person with whom there ordinarily or periodically resides a child against whom any other person inflicts, or has inflicted, domestic violence

**request** means a request made under this Part that—

- (a) is written; and
- (b) requests an employer to vary an employee’s terms and conditions of employment relating to the employee’s working arrangements; and
- (c) is made by the employee or on the employee’s behalf

**working arrangements**, in relation to an employee, means 1 or more of the following:

- (a) hours of work;
- (b) days of work;
- (c) place of work (for example, at home or at the employee’s place of work);
- (d) additional terms that need variation.

*Employee’s statutory right to make request*

**69ABB When and why employee may make request**

- (1) An employee who is a person affected by domestic violence may make a request—
  - (a) at any time; and
  - (b) for the purpose of assisting the employee to deal with the effects on the employee of being a person affected by domestic violence.
- (2) **Subsection (1)** applies regardless of how long ago the domestic violence occurred, and even if the domestic violence occurred before the person became an employee.
- (3) A request made under this Part for a short-term (2-month or shorter) variation of the employee’s working arrangements (as defined in **section 69ABA**) does

not prevent a request also being made under Part 6AA by or on behalf of the employee for a permanent, or fixed-period longer than 2 months, variation under that Part of the employee’s working arrangements (as defined in section 69AAA).

**69ABC Requirements relating to request**

A request must be in writing and—

- (a) state—
  - (i) the employee’s name; and
  - (ii) the date on which the request is made; and
  - (iii) that the request is made under this Part; and
- (b) specify the variation of the working arrangements requested and the period of time (which must be no longer than 2 months) for which the variation is requested; and
- (c) specify the date on which the employee proposes that the variation take effect and the date on which it is proposed that the variation end; and
- (d) specify how, in the employee’s view, the variation will assist the employee to deal with the effects of being a person affected by domestic violence; and
- (e) explain, in the employee’s view, what changes, if any, the employer may need to make to the employer’s arrangements if the employee’s request is approved.

*Duties of employer*

**69ABE Employer must notify decision as soon as possible**

- (1) An employer must deal with a request as soon as possible, but not later than 5 working days after receiving it, and must notify the employee in writing of whether his or her request has been approved or refused.
- (2) In or before giving the notification under **subsection (1)**, the employer must provide the employee with information about appropriate specialist domestic violence support services.
- (3) If the employer refuses an employee’s request, the notification given under **subsection (1)** must—
  - (a) state that the request is refused because of 1 or both grounds specified in **section 69ABF(1)(a) and (b)**; and
  - (b) state the ground or grounds for refusal; and
  - (c) explain the reasons for that ground or those grounds.

**69ABEA Proof of domestic violence**

- (1) An employer may require proof that an employee is a person affected by domestic violence to be produced—
  - (a) to the employer; and
  - (b) by or on behalf of an employee; and
  - (c) for the purposes of a request made by or on behalf of the employee; and
  - (d) as soon as practicable after that proof is required by the employer under this section; and
  - (e) within 5 working days after the employer receives the request.
- (2) However, the employer may require proof of that kind only if—
  - (a) the employer informs the employee as early as possible that the proof is required; and
  - (b) the employer requires the proof within 3 working days after the employer receives the request.

Compare: 2003 No 129 s 68

**69ABF Grounds for refusal of request by employer**

- (1) An employer may refuse a request only if the employer determines 1 or both of the following:
  - (a) that proof required to be produced under **section 69ABEA** was not produced within 5 working days after the employer receives the request:
  - (b) that the request cannot be accommodated reasonably on 1 or more of the non-accommodation grounds specified in **subsection (2)**.
- (2) The non-accommodation grounds are—
  - (a) inability to reorganise work among existing staff:
  - (b) inability to recruit additional staff:
  - (c) detrimental impact on quality:
  - (d) detrimental impact on performance:
  - (e) insufficiency of work during the periods the employee proposes to work:
  - (f) planned structural changes:
  - (g) burden of additional costs:
  - (h) detrimental effect on ability to meet customer demand.
- (3) An employer must not refuse a request just because—
  - (a) the request is from an employee who is bound by a collective agreement; and
  - (b) the request relates to working arrangements to which the collective agreement applies; and

- (c) the employee’s working arrangements would be inconsistent with the collective agreement if the employer were to approve the request.

*Resolving disputes*

**69ABG Employee has choice of procedure at initial stage**

- (1) This section applies if an employee believes that the employee’s employer has not complied with **section 69ABE**.
- (2) The employee may do 1 of the following:
- (a) refer the matter to a Labour Inspector who must, to the extent practicable in the circumstances, assist the employee and employer to resolve the matter; or
  - (b) refer the matter to mediation, at which the matter is treated as an employment relationship problem; or
  - (c) apply to the Authority for a determination as to whether the employer has complied with **section 69ABE**.
- (3) A reference or application under **subsection (2)(a), (b), or (c)** must be made within 12 months after the relevant date.
- (4) In **subsection (3)**, **relevant date** means,—
- (a) if the employer notifies a refusal within 5 working days after receiving a request, the date on which the employer notifies the employee of the employer’s refusal; or
  - (b) in any other case, the date that is 5 working days after the employer received the employee’s request.

**69ABH Mediation after initial reference to Labour Inspector**

- (1) This section applies if the employee is dissatisfied with the result of the reference under **section 69ABG(2)(a)** to a Labour Inspector.
- (2) The employee may refer the matter to mediation, at which the matter is treated as an employment relationship problem.
- (3) A reference under **subsection (2)** must be made within 12 months after the earlier of—
- (a) the date when the result of the reference first became known to the employee; or
  - (b) the date when the result of the reference should reasonably have become known to the employee.

**69ABI Application to Authority after initial or later reference to mediation**

- (1) This section applies if the employee is dissatisfied with the result of the reference under **section ABG(2)(b) or ABH(2)** to mediation.

- (2) The employee may apply to the Authority for a determination as to whether the employer has complied with **section 69ABE**.
- (3) An application under **subsection (2)** must be made within 12 months after the earlier of—
- (a) the date when the result of the reference first became known to the employee; or
- (b) the date when the result of the reference should reasonably have become known to the employee.

**69ABJ Penalty**

- (1) An employer who does not comply with **section 69ABE** is liable to a penalty under this Act imposed by the Authority.
- (2) The penalty is payable to the employee concerned.
- (3) For the purposes of the 12-month time limit in section 135(5), the date on which the cause of action for the recovery of the penalty first became known to the employee, or should reasonably have become known to the employee, must be taken to be a date after, as the case requires,—
- (a) the relevant date under **section 69ABG(3)**; or
- (b) the applicable date under **section 69ABI(3)(a) or (b)**.

**69ABK Limitation on challenging employer**

An employee may challenge his or her employer’s refusal of a request, or failure to respond to a request, only—

- (a) if the employee believes his or her employer has not complied with **section 69ABE**; and
- (b) to the extent provided by **sections 69ABG to 69ABJ**.

**7A Section 69J amended (Employment of employee who elects to transfer to new employer treated as continuous)**

In section 69J(2)(a)(i), replace “and bereavement leave” with “bereavement leave, and domestic violence leave”.

*Amendments related to adverse treatment in employment of people affected by domestic violence*

**7B Section 103 amended (Personal grievance)**

After section 103(1)(d), insert:

- (da) that the employee has been treated adversely in the employee’s employment on the ground that the employee is, or is suspected or assumed or believed to be, a person affected by domestic violence; or

**8 Section 105 amended (Prohibited grounds of discrimination for purposes of section 104)**

- (1) In section 105(1)(m), replace “orientation.” with “orientation:”.
- (2) After section 105(1)(m), insert:
  - (n) being a victim of domestic violence.

**8 New section 108A inserted (Adverse treatment in employment of people affected by domestic violence)**

After section 108, insert:

**108A Adverse treatment in employment of people affected by domestic violence**

- (1) For the purposes of **sections 103(1)(da) and 123(1)(d)**, an employee is **treated adversely in the employee’s employment on the ground that the employee is, or is suspected or assumed or believed to be, a person affected by domestic violence** if, on the ground that the employee is, or is suspected or assumed or believed to be, a person affected by domestic violence (as that term is defined in **section 69ABA**), that employee’s employer or a representative of that employer—
  - (a) dismisses that employee, in circumstances in which other employees employed by that employer on work of that description are not or would not be dismissed; or
  - (b) refuses or omits to offer or afford to that employee the same terms of employment, conditions of work, fringe benefits, or opportunities for training, promotion, and transfer as are made available for other employees of the same or substantially the same qualifications, experience, or skills employed in the same or substantially similar circumstances; or
  - (c) subjects that employee to any detriment, in circumstances in which other employees employed by that employer on work of that description are not or would not be subjected to such detriment; or
  - (d) retires that employee, or requires or causes that employee to retire or resign.
- (2) **Subsection (1)** applies regardless of how long ago the domestic violence occurred or is suspected or assumed or believed to have occurred, and even if the domestic violence occurred or is suspected or assumed or believed to have occurred before the person became an employee.

**8A Section 111 amended (Definitions relating to personal grievances)**

- (1) In section 111, after “sexual harassment,” insert “**adverse treatment in employment of people affected by domestic violence**.”
- (2) In section 111, after “108,” insert “**108A**.”

**8B Section 123 amended (Remedies)**

Replace section 123(1)(d) with:

- (d) if the Authority or the court finds an employee to have been sexually or racially harassed in the employee’s employment, or treated adversely in the employee’s employment on the ground that the employee is, or is suspected or assumed or believed to be, a person affected by domestic violence, recommendations to the employer—
- (i) concerning the action the employer should take in respect of the person who made the request referred to in section 108(1)(a) or was guilty of the harassing behaviour or of the adverse treatment on that ground, which action may include the transfer of that person, the taking of disciplinary action against that person, or the taking of rehabilitative action in respect of that person:
- (ii) about any other action that it is necessary for the employer to take to prevent further harassment, or adverse treatment on that ground, of the employee concerned or any other employee.

*Consequential amendments related to new Part 6AB*

**8C Section 137 amended (Power of Authority to order compliance)**

In section 137(1)(a)(ii), after “Parts 1, 3 to 6,” insert “**6AB**.”

**8D Section 161 amended (Jurisdiction)**

(1) Repeal section 161(1)(cc).

(2) After section 161(1)(d), insert:

(daa) determining whether an employer has complied with section 69AAE:

(dab) determining whether an employer has complied with **section 69ABE** (including, without limitation, whether the employer has avoided non-compliance with **section 69ABE**, as that term is defined in **section 69ABA**):

**8E Section 179B amended (Limitations on consideration by Employment Court of matters arising under Part 6AA)**

(1) In the heading to section 179B, after “**Part 6AA**”, insert “**or 6AB**”.

(2) In section 179B(1), (2), (3), and (4), after “Part 6AA”, insert “**or 6AB**”.

*Transitional, savings, and related provisions*

**8F Schedule 1AA amended**

(1) In Schedule 1AA, before clause 1, insert the Part heading set out in **Part 1 of the Schedule** of this Act.

(2) In Schedule 1AA, clause 1, replace “schedule” with “Part”.

- (3) In Schedule 1AA, after clause 4, insert the **Part 2** set out in **Part 2** of **the Schedule** of this Act.

### **Part 3**

#### **Health and Safety at Work Act 2015**

##### **9 Principal Act**

This **Part** amends the Health and Safety at Work Act 2015 (the **principal Act**).

##### **10 Section 16 amended (Interpretation)**

- (1) In section 16, insert in their appropriate alphabetical order:

**domestic violence** has the meaning given to it in section 2 of the Domestic Violence Act 1995

**domestic violence document** has the meaning given to it in section 2 of the Domestic Violence Act 1995

**victim of domestic violence** has the meaning given to it in **section 5(2A)(b)** of the Domestic Violence Act 1995

- (2) In section 16, replace the definition of **hazard** with:

**hazard** includes—

- (a) a person’s behaviour where that behaviour has the potential to cause death, injury, or illness to a person (whether or not that behaviour results from physical or mental fatigue, drugs, alcohol, traumatic shock, or another temporary condition that affects a person’s behaviour); and
- (b) a situation in which a person’s behaviour stems from being a victim of domestic violence or from being the person who inflicted the domestic violence referred to in the victim’s domestic violence document

##### **11 Section 37 amended (Duty of PCBU who manages or controls workplace)**

In section 37, insert as subsection (1A):

- (1A) Every PCBU who manages or controls a workplace must have a policy on dealing with situations in which a person’s behaviour—

- (a) stems from being a victim of domestic violence or from being the person who inflicted the domestic violence referred to in the victim’s domestic violence document; and
- (b) is an actual or potential cause or source of harm, to the person or another person, within a workplace or outside a workplace.

##### **12 Schedule 2 amended (Obligations of PCBU to health and safety representative)**

In Schedule 2, clause 10(1), insert:

- (da) ~~take all reasonable and practicable steps to provide any health and safety representative for a work group with training in supporting workers who are victims of domestic violence.~~

## Part 4 Holidays Act 2003

### 13 Principal Act

This **Part** amends the Holidays Act 2003 (the **principal Act**).

#### *Consequential amendments*

#### **13A Section 3 amended (Purpose)**

After section 3(d), insert:

- (e) domestic violence leave to assist employees to deal with the effects on the employees of being people affected by domestic violence.

#### **13B Section 4 amended (Overview)**

In section 4(2)(b)(i), replace “and bereavement leave” with “bereavement leave, and domestic violence leave”.

#### **13C Section 5 amended (Interpretation)**

- (1) In section 5(1), insert in their appropriate alphabetical order:
- domestic violence** has the meaning given to it in section 3 of the Domestic Violence Act 1995
- domestic violence leave** means paid domestic violence leave provided under **subpart 5 of Part 2**
- person affected by domestic violence** has the meaning given to it by **section 72B**
- (2) In section 5(1), definition of **former Act**, replace “Injury Prevention, Rehabilitation, and Compensation Act 2001” with “Accident Compensation Act 2001”.
- (3) In section 5(1), definition of **in advance**, after paragraph (b), insert:
- (c) in relation to domestic violence leave, means any domestic violence leave taken by the employee before the entitlement to the leave has arisen under **section 72C**
- (4) In section 5(1), definition of **leave pay**, replace “or bereavement leave” with “, bereavement leave, or domestic violence leave”.

#### **13D Section 9 amended (Meaning of relevant daily pay)**

In section 9(1) and (2), replace “or bereavement leave” with “bereavement leave, or domestic violence leave”.

**13E Section 9A amended (Average daily pay)**

In section 9A(1), replace “or bereavement leave” with “bereavement leave, or domestic violence leave”.

**13F Section 12 amended (Determination of what would otherwise be working day)**

- (1) In section 12(1), replace “or to bereavement leave” with “to bereavement leave, or to domestic violence leave”.
- (2) In section 12(3)(d), after “or bereavement leave”, insert “or domestic violence leave”.
- (3) In section 12(3A), after “or bereavement leave”, insert “or domestic violence leave”.

**13G Section 14 amended (Meaning of gross earnings)**

- (1) In section 14(a)(iii), replace “or bereavement leave” with “bereavement leave, or domestic violence leave”.
- (2) In section 14(a)(vii) and (b)(ii), replace “Injury Prevention, Rehabilitation, and Compensation Act 2001” with “Accident Compensation Act 2001”.

**13H Section 16 amended (Entitlement to annual holidays)**

- (1) In section 16(2)(a)(i), after “leave under this Act”, insert “(for example, domestic violence leave)”.
- (2) In section 16(2)(a)(iv), replace “Injury Prevention, Rehabilitation, and Compensation Act 2001” with “Accident Compensation Act 2001”.
- (3) In section 16(2)(a)(v), after “or unpaid bereavement leave”, insert “or unpaid domestic violence leave”.

**13I New section 37A inserted (Employer must allow employee taking annual holidays to take domestic violence leave)**

After section 37, insert:

**37A Employer must allow employee taking annual holidays to take domestic violence leave**

- (1) This section applies to an employee who is taking annual holidays under this subpart and who then becomes entitled to take domestic violence leave under **section 72C**.
- (2) The employer must allow the employee to take any period related to the effects on the employee of domestic violence that the employee would otherwise take as an annual holiday as domestic violence leave.

Proposed amendments to

**13J Section 38 amended (Sickness, injury, or bereavement arising before scheduled annual holidays)**

- (1) In the heading to section 38, replace “**or bereavement**” with “**bereavement, or domestic violence**”.
- (2) In section 38(1)(b)(iii), after “section 69(2)”, insert “; or”.
- (3) After section 38(1)(b)(iii), insert:
  - (iv) becomes entitled to take domestic violence leave under **section 72C**.
- (4) After section 38(2)(b), insert:
  - (c) any period related to the effects on the employee of domestic violence that the employee would otherwise take as an annual holiday as domestic violence leave.

**13K Section 39 amended (Employer may allow employee to take annual holidays if sick leave or bereavement leave exhausted)**

- (1) In the heading to section 39, replace “**or bereavement leave**” with “**, bereavement leave, or domestic violence leave**”.
- (2) In section 39(1)(b), after “subpart 4” insert “; or”.
- (3) After section 39(1)(b), insert:
  - (c) an employee requires more leave to assist the employee to deal with the effects on the employee of being a person affected by domestic violence than he or she is entitled to under **subpart 5**.

**13L Section 61A amended (Sickness, injury, or bereavement on public holiday)**

- (1) In the heading to section 61A, replace “**or bereavement**” with “**bereavement, or domestic violence**”.
- (2) Replace section 61A(1)(b) with:
  - (b) the employee suffers or has suffered a bereavement as described in section 69(2); or
  - (c) the employee becomes entitled to take domestic violence leave under **section 72C**.
- (3) In section 61A(2)(a), replace “or bereavement leave” with “**, bereavement leave, or domestic violence leave**”.

**13M Section 71 amended (Payment for sick leave and bereavement leave)**

In section 71(2) and (3)(a), replace “Injury Prevention, Rehabilitation, and Compensation Act 2001” with “Accident Compensation Act 2001”.

*New subpart 5 of Part 2 inserted*

**14 New Part 2, subpart 5 of Part 2 inserted (~~Domestic violence leave~~)**

After section 72, insert:

**Subpart 5—Domestic violence leave**

**72A Purpose of this subpart**

The purpose of this subpart is to provide employees who are victims of people affected by domestic violence with a minimum entitlement to paid leave for the purpose of dealing—assisting the employees to deal with the effects on the employees of being victims of people affected by domestic violence.

**72B Interpretation Meaning of person affected by domestic violence**

(~~1~~) In this subpart,—

~~domestic violence~~ has the meaning given to it in section 2 of the Domestic Violence Act 1995

~~domestic violence document~~ has the meaning given to it in section 2 of the Domestic Violence Act 1995

~~domestic violence leave~~ means ~~paid domestic violence leave provided under this subpart~~

~~victim of domestic violence~~ has the meaning given to it in **section 5(2A)(b)** of the Domestic Violence Act 1995.

(1) In this subpart, a **person affected by domestic violence** means a person who is 1 or both of the following:

(a) a person against whom any other person is inflicting, or has inflicted, domestic violence;

(b) a person with whom there ordinarily or periodically resides a child against whom any other person is inflicting, or has inflicted, domestic violence.

(2) In this section, **child** has the meaning given to it in section 2 of the Domestic Violence Act 1995.

**72C Request for and approval of domestic violence leave**

(1) This section applies to an employee who is a victim of domestic violence.

(2) A request may be made by the employee or on the employee’s behalf to the employer to approve the employee’s taking domestic violence leave.

(3) The request must—

(a) state that the request is made under this subpart; and

(b) state—

(i) the employee’s name; and

- (ii) ~~the date on which the request is made; and~~
- (e) ~~have attached to it a copy of the employee’s domestic violence document.~~
- (4) ~~As soon as is practicable after receiving a request, the employer must approve the employee’s taking domestic violence leave.~~
- (5) ~~The employee—~~
  - (a) ~~may take up to 10 days’ leave within a year of the date of the employer’s approval; and~~
  - (b) ~~may not carry forward any leave not taken in the year.~~
- (6) ~~Sections 63, 64, 67, 71, and 72(1) apply to domestic violence leave as if the references in them to sick leave or bereavement leave were references to domestic violence leave.~~

*Entitlement to domestic violence leave*

**72C Entitlement to domestic violence leave**

An employee may take domestic violence leave—

- (a) if the employee is a person affected by domestic violence (regardless of how long ago the domestic violence occurred, and even if the domestic violence occurred before the person became an employee); and
- (b) in accordance with **sections 72D and 72H.**

**72D When entitlement to domestic violence leave arises**

- (1) An employee is entitled to domestic violence leave—
  - (a) after the employee has completed 6 months’ current continuous employment with the employer; or
  - (b) if, in the case of an employee to whom **subsection (1)(a)** does not apply, the employee has, over a period of 6 months, worked for the employer for—
    - (i) at least an average of 10 hours a week during that period; and
    - (ii) no less than 1 hour in every week during that period or no less than 40 hours in every month during that period.
- (2) Domestic violence leave must be provided—
  - (a) to an employee to whom **subsection (1)(a)** applies, for—
    - (i) the 12-month period of continuous employment beginning at the end of the 6-month period specified in that subsection; and
    - (ii) each subsequent 12 months of current continuous employment;
  - (b) to an employee to whom **subsection (1)(b)** applies, for—

- (i) the 12-month period of employment beginning at the end of the 6-month period specified in that subsection; and
  - (ii) each subsequent 12-month period of employment as long as the circumstances referred to in **subparagraphs (i) and (ii)** of that subsection continue to apply.
- (3) However, an employer and employee may agree that—
- (a) the employee may take domestic violence leave in advance; and
  - (b) in the case of domestic violence leave taken in advance, the amount of leave taken is to be deducted from the employee’s entitlement under this section.

**72E Employee must notify employer of intention to take domestic violence leave**

An employee who intends to take domestic violence leave must notify the employer of that intention—

- (a) as early as possible before the employee is due to start work on the day that is intended to be taken as domestic violence leave; or
- (b) if that is not practicable, as early as possible after that time.

**72F Domestic violence leave need not be paid out**

An employee is not entitled to be paid for any domestic violence leave that has not been taken before the date on which the employee’s employment ends.

**72G Proof of domestic violence**

An employer may require proof that an employee is a person affected by domestic violence to be produced for domestic violence leave taken under **section 72C**.

**72H Duration of domestic violence leave**

An employee—

- (a) may take up to 10 days’ domestic violence leave in each of the 12-month periods specified in **section 72D(2)**; and
- (b) cannot carry forward any domestic violence leave not taken in any of those 12-month periods.

*Payment for domestic violence leave*

**72I Payment for domestic violence leave**

- (1) An employer must pay an employee an amount that is equivalent to the employee’s relevant daily pay or average daily pay for each day of domestic violence leave taken by the employee that would otherwise be a working day for the employee.

- (2) Despite **subsection (1)**, an employer is not required to pay an employee for any time for which the employee is paid weekly compensation under the Accident Compensation Act 2001 or former Act.
- (3) An employer must not require an employee to take as domestic violence leave any time for which the employee is being paid—
- (a) first week compensation by the employer under section 97 of the Accident Compensation Act 2001 or former Act; or
- (b) weekly compensation for a work-related injury within the meaning of that Act or former Act.
- (4) However, if an employer pays the difference between the employee’s first week compensation or weekly compensation and ordinary weekly pay, the employer may agree with the employee that the employer may deduct from the employee’s domestic violence leave entitlement 1 day for every 5 whole days that the employer makes that payment.

**72J When payment for domestic violence leave must be made**

- (1) An employer must pay an employee for domestic violence leave in the pay that relates to the pay period in which the leave is taken.
- (2) However, if an employee is required to provide proof under **section 72G** and fails, without reasonable excuse, to do so, the employer is not required to pay the employee for any domestic violence leave in respect of which the proof is required until the employee complies with that requirement.

*Consequential amendments*

**14A Section 74 amended (Who can enforce Act)**

In section 74(2), replace “or bereavement leave” with “bereavement leave, or domestic violence leave”.

**14B Section 75 amended (Penalty for non-compliance)**

After section 75(2)(d), insert:

(da) **sections 72C and 72H to 72J** (which relate to an employee’s entitlement to, and payment for, domestic violence leave):

**14C Section 81 amended (Holiday and leave record)**

In section 81(2)(g) and (h), replace “or bereavement leave” with “bereavement leave, or domestic violence leave”.

**14D Section 83 amended (Failure to keep or provide access to holiday and leave record)**

In section 83(1)(b) and (4)(b), replace “or bereavement leave” with “bereavement leave, or domestic violence leave”.

*Transitional, savings, and related provisions*

**14E Schedule 1AA amended**

- (1) In Schedule 1AA, before clause 1, insert the Part heading set out in **Part 3 of the Schedule** of this Act.
- (2) In Schedule 1AA, clause 1, replace “schedule” with “Part”.
- (3) In Schedule 1AA, after clause 2, insert the **Part 2** set out in **Part 4 of the Schedule** of this Act.

**Part 5**  
**Human Rights Act 1993**

**15 Principal Act**

This **Part** amends the Human Rights Act 1993 (the **principal Act**).

**16 Section 21 amended (Prohibited grounds of discrimination)**

- (1) In section 21(1)(m), replace “orientation.” with “orientation.”.
- (2) After section 21(1)(m), insert:
  - (n) being a victim of domestic violence, which has the meaning given to it in **section 5(2A)(b)** of the Domestic Violence Act 1995.

*Consequential amendment*

**16 Section 21A amended (Application of this Part limited if section 3 of New Zealand Bill of Rights Act 1990 applies)**

In section 21A(1)(a), replace “and social and racial harassment” with “sexual harassment, adverse treatment in employment of people affected by domestic violence, and racial harassment”.

*New section 62A inserted*

**17 New section 62A inserted (Adverse treatment in employment of people affected by domestic violence)**

After section 62, insert:

**62A Adverse treatment in employment of people affected by domestic violence**

- (1) It is unlawful for a person (in the course of that person’s involvement in any of the areas to which this subsection is applied by **subsection (2)**) to treat adversely any other person, or to make an implied or overt threat to treat adversely any other person, on the ground that the other person is, or is suspected or assumed or believed to be, a person affected by domestic violence.
- (2) The areas to which **subsection (1)** applies are—

- (a) the making of an application for employment;
- (b) employment, which term includes unpaid work.
- (3) In this section, an employer **treats adversely** an employee if the employer—
- (a) dismisses that employee, in circumstances in which other employees employed by that employer on work of that description are not or would not be dismissed or subjected to such detriment; or
- (b) refuses or omits to offer or afford to that employee the same terms of employment, conditions of work, fringe benefits, or opportunities for training, promotion, and transfer as are made available for other employees of the same or substantially the same qualifications, experience, or skills employed in the same or substantially similar circumstances; or
- (c) subjects that employee to any detriment, in circumstances in which other employees employed by that employer on work of that description are not or would not be subjected to such detriment; or
- (d) retires that employee, or requires or causes that employee to retire or resign.
- (4) For the purposes of this section,—
- child** has the meaning given to it in section 2 of the Domestic Violence Act 1995
- domestic violence** has the meaning given to it in section 3 of the Domestic Violence Act 1995
- person affected by domestic violence** means a person who is 1 or both of the following:
- (a) a person against whom any other person is inflicting, or has inflicted, domestic violence;
- (b) a person with whom there ordinarily or periodically resides a child against whom any other person is inflicting, or has inflicted, domestic violence.
- (5) **Subsection (1)** applies regardless of how long ago the domestic violence occurred or is suspected or assumed or believed to have occurred, and even if the domestic violence occurred or is suspected or assumed or believed to have occurred before the person became an employee.

*Transitional, savings, and related provisions*

**18 Schedule 1AA amended**

- (1) In Schedule 1AA, repeal the cross-heading above clause 1.
- (2) In Schedule 1AA, before clause 1, insert the Part heading set out in **Part 5 of the Schedule** of this Act.

- (3) In Schedule 1AA, after clause 1, insert the **Part 2** set out in **Part 6** of **the Schedule** of this Act.

**Schedule**  
**Transitional, savings, and related provisions**

**ss 8F, 14E, 18**

**Part 1**  
**New Part 1 heading inserted into Schedule 1AA**

**Part 1**  
**Provisions relating to Employment Relations Amendment Act 2014,  
Employment Relations Amendment Act 2016, and Employment  
Relations Amendment Act (No 2) 2016**

**Part 2**  
**New Part 2 inserted into Schedule 1AA**

**Part 2**  
**Provisions relating to Part 2 of Domestic Violence—Victims’  
Protection Act 2016**

**5** **Interpretation**

In this Part, **2018 Part** means **Part 2** of Domestic Violence—Victims’ Protection Act **2016**.

*Provisions relating to flexible working short-term for people affected by  
domestic violence*

**6** **Application to pre-commencement domestic violence**

**Part 6AB** applies even if all or any of the domestic violence occurred before  
the commencement of the 2018 Part.

*Provisions relating to adverse treatment in employment of people affected by  
domestic violence*

**7** **Application to pre-commencement domestic violence**

**Sections 103(1)(da), 108A, 111, and 123(1)(d)** apply even if all or any of  
the domestic violence occurred before the commencement of the 2018 Part.

**Part 3**  
**New Part 1 heading inserted into Schedule 1AA**

**Part 1**  
**Provisions relating to Holidays Amendment Act 2016**

**Part 4**  
**New Part 2 inserted into Schedule 1AA**

**Part 2**  
**Provisions relating to Part 4 of Domestic Violence—Victims’  
Protection Act 2016**

**3 Interpretation**

In this Part, **2018 Part** means **Part 4** of Domestic Violence—Victims’ Protection Act **2016**.

*Provisions relating to domestic violence leave*

**4 Application to pre-commencement domestic violence**

**Subpart 5 of Part 2** applies even if all or any of the domestic violence occurred before the commencement of the 2018 Part.

**Part 5**  
**New Part 1 heading inserted into Schedule 1AA**

**Part 1**  
**Provisions relating to Human Rights Amendment Act 2016**

**Part 6**  
**New Part 2 inserted into Schedule 1AA**

**Part 2**  
**Provisions relating to Part 5 of Domestic Violence—Victims’  
Protection Act 2016**

**2 Interpretation**

In this Part, **2018 Part** means **Part 5** of Domestic Violence—Victims’ Protection Act **2016**.

*Provisions relating to adverse treatment in employment of people affected by  
domestic violence*

**3 Application to pre-commencement domestic violence**

**Section 62A** applies even if all or any of the domestic violence occurred before the commencement of the 2018 Part.