

# **Regulatory Systems (Workforce) Amendment Bill (No 2)**

Government Bill

As reported from the Education and Workforce Committee

## **Commentary**

### **Recommendation**

The Education and Workforce Committee has examined the Regulatory Systems (Workforce) Amendment Bill (No 2) and recommends that it be passed with the amendments shown.

### **About the bill as introduced**

The bill is one of three omnibus bills that contain amendments to legislation administered by the Ministry of Business, Innovation and Employment and the Ministry of Housing and Urban Development.

The objective of the bill is to improve regulatory systems by:

- clarifying and updating statutory provisions to give effect to the purpose of the principal Acts and their provisions
- addressing regulatory duplication, gaps, errors, and inconsistencies within and between different pieces of legislation
- keeping the regulatory system up to date and relevant
- removing unnecessary compliance costs and costs of doing business.

The bill would amend the Employment Relations Act 2000, the Holidays Act 2003, and the Parental Leave and Employment Protection Act 1987. It would also make a consequential amendment to the Remuneration Authority Act 1977.

The bill seeks to:

- enable the Remuneration Authority to set the remuneration of Employment Relations Authority members who are delegated to take over the responsibilities of the Chief of the Employment Relations Authority

- clarify that where investigating a question of employment, labour inspectors may use their investigative powers
- clarify the maximum penalty for a person involved in a breach of the Holidays Act
- clarify when the spouse or partner of a biological mother could become the primary carer of the biological mother's child for the purposes of a parental leave payment and primary carer leave.

## **Proposed amendments to the Parental Leave and Employment Protection Act**

This commentary covers the amendments we recommend to the bill as introduced.

### **Entitlement to parental leave payments**

Section 7(1)(b) of the Act specifies when the spouse or partner of a biological mother is considered a primary carer. Clause 14 of the bill would insert section 7(1)(b)(iii) to provide that the spouse or partner could become the primary carer if all of the following apply:

- the child is under 1 year of age
- the spouse or partner has taken permanent primary responsibility for the child's welfare for any reason, such as the death of the biological mother
- when the spouse or partner took permanent primary responsibility for the child, the biological mother had either not applied for, or did not qualify for, a parental leave payment.

Clause 20 of the bill as introduced would amend section 71D of the Act. It would ensure that a spouse or partner who is a primary carer under new section 7(1)(b)(iii) is not disqualified from a parental leave payment due to having taken partner's leave before becoming the primary carer. Clause 20 refers to "an employee" as a primary carer under proposed new section 7(1)(b)(iii). However, the parental leave payments referred to in section 71D apply to self-employed individuals as well as employees. Therefore, we recommend amending clause 20 by replacing "an employee" with "a person".

### **Applying for parental leave payments**

Clause 21, new section 71I(2A), would clarify that an employee who has become the primary carer under section 7(1)(b)(iii) could request a parental leave payment within a reasonable period after the employee became the primary carer.

Firstly, for the same reasons discussed for clause 20, we recommend replacing "an employee" with "an employee or self-employed person".

Secondly, we consider that the timing requirement of a "reasonable period after the employee becomes the primary carer" should be reworded.

As introduced, the requirement appears to be more restrictive than the requirements for other primary carers defined under section 7. Those other primary carers are required to make applications under the existing section 71I(2)(a), which must be made before the earliest of:

- the date on which the person returns to work
- the date on which the child attains the age of 12 months (in the case of a child born to the person or to the person's spouse or partner)
- the date that is one year after the first date on which either the person or the person's spouse or partner became the primary carer in respect of the child.

In the situations for primary carers under proposed new section 7(1)(b)(iii), the timing of a "reasonable period" after becoming the primary carer is not as clear. We are concerned that "reasonable period" may be interpreted more narrowly than intended.

This could lead to unfairness. For example, a spouse or partner who becomes a primary carer under proposed new section 7(1)(b)(iii) due to the death of the biological mother may not consider making a parental leave application on becoming the primary carer. They should be allowed at least the same degree of flexibility as other primary carer applicants.

We think the timing requirements in proposed new section 71I(2A) should more closely align with those in section 71I. We also believe that there should be extra latitude to apply for parental leave payments for a person who becomes a primary carer in the circumstances described in new section 7(1)(b)(iii).

Specifically, we think that the timing requirement for applications to be made should be before, or within a reasonable period after, the earliest of the following:

- the date on which the person returns to work
- the date that is the first anniversary of the date on which the person became the primary carer in respect of the child.

We consider that this additional flexibility is consistent with the policy intent of the bill. We therefore recommend amending proposed new section 71I(2A) accordingly.

## Appendix

### Committee process

The Regulatory Systems (Workforce) Amendment Bill (No 2) was referred to the committee on 21 February 2019. The closing date for submissions was 25 March 2019. We received and considered four submissions from interested groups and individuals. We heard oral evidence from one submitter.

We received advice from the Ministry of Business, Innovation and Employment.

### Committee membership

Dr Parmjeet Parmar (Chairperson)

Simeon Brown

Hon Clare Curran

Hon Nikki Kaye

Denise Lee

Marja Lubeck

Jo Luxton

Mark Patterson

Chlöe Swarbrick

Jan Tinetti

Nicola Willis

**Regulatory Systems (Workforce) Amendment Bill  
(No 2)**

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously

~~text deleted unanimously~~



*Hon David Parker*

## **Regulatory Systems (Workforce) Amendment Bill (No 2)**

Government Bill

### **Contents**

	Page
1 Title	2
2 Commencement	2
<b>Part 1</b>	
<b>Amendments to Employment Relations Act 2000 and consequential amendment</b>	
Subpart 1—Amendments to Employment Relations Act 2000	
3 Amendments to Employment Relations Act 2000	2
4 Section 171 amended (Salaries and allowances)	2
5 New section 229A inserted (Investigating question of employment)	2
229A Investigating question of employment	3
6 Section 230 amended (Entry of dwellinghouses)	3
7 Section 231 amended (Entry warrant)	3
8 Section 233 amended (Obligations of Labour Inspectors)	4
9 Section 233A amended (Obligation of Labour Inspector and department not to disclose information)	4
Subpart 2—Consequential amendment	
<i>Amendment to Remuneration Authority Act 1977</i>	
10 Amendment to Remuneration Authority Act 1977	4
<b>Part 2</b>	
<b>Amendment to Holidays Act 2003</b>	
11 Amendment to Holidays Act 2003	4

**Part 3**  
**Amendments to Parental Leave and Employment Protection Act 1987**

12	Amendments to Parental Leave and Employment Protection Act 1987	4
13	Section 1B amended (Outline)	4
14	Section 7 amended (Meaning of primary carer)	5
15	Section 8 amended (Entitlement to primary carer leave)	5
16	Section 10 amended (Date of commencement of primary carer leave)	5
17	Section 30B amended (Employee may make request)	5
18	Section 31 amended (Obligation to notify employer)	5
19	Section 36 amended (Obligation to notify employee)	5
20	Section 71D amended (Entitlement to parental leave payments)	6
21	Section 71I amended (Applications for payment)	6
22	Section 71K amended (Start of parental leave payment)	6

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

**1 Title**

This Act is the Regulatory Systems (Workforce) Amendment Act **(No 2) 2018**.

**2 Commencement**

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This Act comes into force on the day that is 2 months after the date on which it receives the Royal assent.

**Part 1**

**Amendments to Employment Relations Act 2000 and consequential amendment**

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Subpart 1—Amendments to Employment Relations Act 2000

**3 Amendments to Employment Relations Act 2000**

This subpart amends the Employment Relations Act 2000.

**4 Section 171 amended (Salaries and allowances)**

In section 171(3), after “Chief of the Authority”, insert “or of a member of the Authority to whom a delegation has been made under section 166B”. 15

**5 New section 229A inserted (Investigating question of employment)**

After section 229, insert:



**229A Investigating question of employment**

- (1) For the purpose of performing the Labour Inspector’s functions and duties under any Act specified in section 223(1), a Labour Inspector may, subject to sections 229(5), (5A) and (6) and 230 to 233, also exercise any of the powers under section 229 to investigate whether— 5
- (a) any place is a workplace; or
  - (b) any person performing work is an employee (as distinct, for example, from an independent contractor or a volunteer); or
  - (c) any person for whom work is being performed is an employer.
- (2) In relation to the exercise of those powers in such an investigation, section 229 is to be read with any appropriate modifications, including that— 10
- (a) the power of entry under section 229(1)(a) applies with respect to any premises where the Labour Inspector has reasonable grounds to believe work is being performed; and
  - (b) the power to interview under section 229(1)(b) applies with respect to any person present in such premises; and 15
  - (c) **employee**, except in the reference in section 229(1)(a) to any other employee of the department, includes any person who performs work; and
  - (d) **employer** includes any person for whom work is performed; and 20
  - (e) the powers under section 229(1)(c) and (d) apply with respect to any record or document that the Labour Inspector reasonably believes may assist in determining a matter referred to in **subsection (1)(a) to (c)**.
- (3) Every person for whom work is performed and who, without reasonable cause, fails to comply with any requirement made of that person under section 229(1)(c) or (d) as modified by **subsection (2)(e)** is liable, in an action brought by a Labour Inspector, to a penalty under this Act imposed by the Authority. 25

**6 Section 230 amended (Entry of dwellinghouses)**

In section 230(1), replace “section 229” with “section 229 or **229A**”. 30

**7 Section 231 amended (Entry warrant)**

Replace section 231(a) and (b) with:

- (a) is a place in which any person is employed or is the only practicable means through which such a place may be entered; or
- (b) in any case to which **section 229A** applies, is a place in which any person performs work or is the only practicable means through which such a place may be entered,— 35

**8 Section 233 amended (Obligations of Labour Inspectors)**  
In section 233(1), (2), and (3), replace “section 229(1)(a)” with “section 229(1)(a) or **229A**”.

**9 Section 233A amended (Obligation of Labour Inspector and department not to disclose information)** 5  
In section 233A, replace “section 229” with “section 229 or **229A**”.

Subpart 2—Consequential amendment

*Amendment to Remuneration Authority Act 1977*

**10 Amendment to Remuneration Authority Act 1977**

(1) This section amends the Remuneration Authority Act 1977. 10

(2) In Schedule 4, replace the item relating to the Chief and other members of the Employment Relations Authority with:  
The Chief of the Employment Relations Authority, members of the Employment Relations Authority to whom a delegation has been made under section 166B of the Employment Relations Act 2000, and other members of the Employment Relations Authority 15

**Part 2**

**Amendment to Holidays Act 2003**

**11 Amendment to Holidays Act 2003**

(1) This section amends the Holidays Act 2003. 20

(2) In section 75(1)(a) and (b), after “employer”, insert “or the person who is involved in the failure to comply”.

**Part 3**

**Amendments to Parental Leave and Employment Protection Act 1987** 25

**12 Amendments to Parental Leave and Employment Protection Act 1987**  
This Part amends the Parental Leave and Employment Protection Act 1987.

**13 Section 1B amended (Outline)**

In section 1B(5),—

(a) replace “or for” with “, for”; and 30

(b) after “(see section 72B)”, insert “, or for the spouse or partner of a primary carer to become the primary carer of a child (see **section 7(1)(b)(iii)**)”.

**14 Section 7 amended (Meaning of primary carer)**

After section 7(1)(b)(ii), insert:

- (iii) neither subparagraph (i) nor (ii) applies and all of the following are true:
  - (A) the child is under 1 year of age; and
  - (B) the spouse or partner, because of the death of the biological mother or for any other reason, has taken permanent primary responsibility for the care, development, and upbringing of the child to the exclusion of the biological mother; and
  - (C) at the time the spouse or partner took that permanent primary responsibility, the biological mother either had not applied for, or did not qualify to apply for, a parental leave payment:

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**15 Section 8 amended (Entitlement to primary carer leave)**

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After section 8(2), insert:

- (3) Subsection (2) does not apply to an employee who is a primary carer under **section 7(1)(b)(iii)**.

**16 Section 10 amended (Date of commencement of primary carer leave)**

After section 10(a), insert:

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- (aa) in the case of an employee who is a primary carer under **section 7(1)(b)(iii)**, on the date, within a reasonable period after the date on which the employee becomes the primary carer in respect of the child, that the employee and the employer agree upon; or

**17 Section 30B amended (Employee may make request)**

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After section 30B(3)(a), insert:

- (aa) in the case of an employee who is a primary carer under **section 7(1)(b)(iii)**, within a reasonable period after the employee becomes the primary carer in respect of the child; or

**18 Section 31 amended (Obligation to notify employer)**

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After section 31(3), insert:

- (4) Despite subsection (3), in the case of an employee who is a primary carer under **section 7(1)(b)(iii)**, the notice under subsection (1) must be given within a reasonable period after the employee becomes the primary carer in respect of the child.

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**19 Section 36 amended (Obligation to notify employee)**

After section 36(2), insert:

(2A) In the case of an employee who is a primary carer under **section 7(1)(b)(iii)**, the employer must give notice under subsections (1) and (2) within a reasonable period, but not later than within the period provided for in those subsections.

**20 Section 71D amended (Entitlement to parental leave payments) 5**

After section 71D(2), insert:

(2A) Subsection (2) does not apply to ~~an employee~~ a person who is a primary carer under **section 7(1)(b)(iii)**.

**21 Section 71I amended (Applications for payment)**

After section 71I(2), insert: 10

~~(2A) Despite subsection (2), in the case of an employee who is a primary carer under **section 7(1)(b)(iii)**, the application must be made within a reasonable period after the employee becomes the primary carer in respect of the child.~~

(2A) In the case of an employee or a self-employed person who is a primary carer under **section 7(1)(b)(iii)**, subsection (2)(a) does not apply, and the application must be made before, or within a reasonable period after, the earliest of the following: 15

- (a) the date on which the person returns to work; or
- (b) the date that is the first anniversary of the date on which the person became the primary carer in respect of the child. 20

**22 Section 71K amended (Start of parental leave payment)**

After section 71K(3), insert:

(4) Despite subsections (1) to (3), in the case of a person who is a primary carer under **section 7(1)(b)(iii)**, the parental leave payment period begins,—

- (a) if the person is an employee who takes a period of paid leave at the start of his or her parental leave period, on the day after the date on which that period of paid leave ends, if the person so elects; and 25
- (b) otherwise, on the date that the person designates, which must be on, or within a reasonable period after, the date on which the person becomes the primary carer in respect of the child. 30

**Legislative history**

12 December 2018  
21 February 2019

Introduction (Bill 101–1)  
First reading and referral to Education and Workforce  
Committee