

House of Representatives
Supplementary Order Paper

Tuesday, 2 September 2008

**Employment Relations (Breaks and Infant
Feeding) Amendment Bill**

Proposed amendments

Hon Trevor Mallard, in Committee, to move the following amendments:

Clause 1

To omit “and Infant Feeding” (lines 3 and 4 on page 2) and substitute “, Infant Feeding, and Other Matters”.

Clause 2

To omit lines 6 and 7 on page 2 and substitute the following:

- (1) This Act comes into force on the day after the date on which it receives the Royal assent.
- (2) However, **sections 5 and 6** come into force on 1 April 2009.

Clause 4

To omit this clause (lines 12 to 20 on page 2) and substitute the following clause:

4 Purpose

The purpose of this Act is—

- (a) to insert new **Parts 6C and 6D** into the principal Act to—
 - (i) require facilities and breaks to be provided, so far as is reasonable and practicable in the circumstances, for employees who wish to breastfeed in the workplace or during work periods; and
 - (ii) require employees to be provided with rest breaks and meal breaks; and
- (b) to make it a ground for a personal grievance for an employee’s employment to be adversely affected because he or she is a member of a KiwiSaver scheme or a complying superannuation fund.

New clause 4A

To insert the following clause after *clause 4* (after line 20 on page 2):

4A Application

- (1) The amendments made by **sections 5A and 5B**, to the extent that they relate to terms and conditions in employment agreements,—
 - (a) apply to employment agreements entered into on or after 2 September 2008; and
 - (b) do not apply to employment agreements entered into before 2 September 2008; and
 - (c) apply to variations of employment agreements entered into before 2 September 2008 if the variations were made on or after 2 September 2008.
- (2) The amendments made by **sections 5A and 5B**, to the extent that they relate to other matters, apply—
 - (a) only to matters occurring on or after 2 September 2008; and
 - (b) whether or not an employee’s employment agreement was entered into before 2 September 2008.

Clause 5: new section 69ZE

Subsection (2)(a): to omit “rest period” (line 24 on page 5) and substitute “rest break”.

Subsection (4): to omit “meal break” (line 36 on page 5) and substitute “meal breaks”.

New clauses 5A and 5B

To insert the following clauses after *clause 5* (after line 25 on page 6):

5A Personal grievance

- (1) Section 103(1)(g) is amended by adding “; or”.
- (2) Section 103(1) is amended by adding the following paragraph:
 - “(h) that the employee’s employment has been adversely affected because the employee is a member of a Kiwi-Saver scheme within the meaning of section 4 of the KiwiSaver Act 2006 or a complying superannuation fund within the meaning of section YA 1 of the Income Tax Act 2007.”

5B New section 110A inserted

The following section is inserted after section 110:

“110A Membership of KiwiSaver scheme or complying superannuation fund

- “(1) For the purposes of section 103(1)(h), an employee’s employment is adversely affected if—

- “(a) the employee is a member of a KiwiSaver scheme within the meaning of section 4 of the KiwiSaver Act 2006 or a complying superannuation fund within the meaning of section YA 1 of the Income Tax Act 2007; and
 - “(b) the employee’s employer 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 similar qualifications, experience, or skills (**comparable employees**) employed in the same or substantially similar circumstances; and
 - “(c) the reason (wholly or in part) for the employer doing any of those things is that the employee is a member of a KiwiSaver scheme or a complying superannuation fund.
- “(2) Without limiting **subsection (1)**, an employee’s employment is adversely affected if—
- “(a) the employee’s salary or wages are less than the salary or wages of other comparable employees employed by the employee’s employer; and
 - “(b) the reason (wholly or in part) for the situation described in **paragraph (a)** is that the employer has taken into account the compulsory contributions (within the meaning of section 101B(6) of the KiwiSaver Act 2006) the employer is required to make in relation to the employee.
- “(3) To avoid doubt, for the purposes of **subsection (2)(a)**, an employee’s salary or wages—
- “(a) do not include any amount that recognises (wholly or in part) compulsory contributions (within the meaning of section 101B(6) of the KiwiSaver Act 2006) made by the employer in relation to the employee; but
 - “(b) do include deductions made by an employer on behalf of the employee, being the employee’s contributions to a KiwiSaver scheme or a complying superannuation fund.”

New clause 7

To insert the following clause after *clause 6* (after line 28 on page 6):

7 Consequential amendment to KiwiSaver Act 2006

Section 101B of the KiwiSaver Act 2006 is amended by repealing subsection (5) and substituting the following subsection:

- “(5) For the avoidance of doubt,—

- “(a) the duty of good faith described in section 4 of the Employment Relations Act 2000 always applies when parties to an employment relationship bargain for terms and conditions relating to compulsory contributions and associated matters; and
- “(b) **sections 103(1)(h) and 110A** of the Employment Relations Act 2000 apply in relation to the contractual terms and conditions of the parties to an employment relationship, subject to **section 4A** of the Employment Relations (Breaks, Infant Feeding, and Other Matters) Amendment Act **2008** .”
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Explanatory note

This Supplementary Order Paper amends the Employment Relations (Breaks and Infant Feeding) Amendment Bill. The amendments relate principally to employees’ membership of a KiwiSaver scheme or a complying superannuation fund.

Clause 1, the Title clause, is amended to reflect that the Bill is not limited to breaks and infant feeding.

Clause 2, the commencement clause, is redrafted so that—

- the amendments made by the Supplementary Order Paper relating to Kiwisaver schemes and complying superannuation funds come into force on the day after the date on which the Bill receives the Royal assent; and
- the amendments in the rest of the Bill come into force on 1 April 2009.

Clause 4, which sets out the purpose of the Bill, is redrafted to add a further purpose. This is to make it a ground for a personal grievance for an employee’s employment to be adversely affected because he or she is a member of a Kiwi-Saver scheme or a complying superannuation fund.

New clause 4A provides that the amendments made by *new clauses 5A and 5B*, to the extent that they relate to terms and conditions in employment agreements, apply—

- to employment agreements entered into on or after 2 September 2008; and
- to variations of employment agreements entered into before 2 September 2008, but only if the variations were made on or after 2 September 2008.

The clause also provides that the amendments made by *new clauses 5A and 5B*, to the extent that they relate to other matters, apply only to matters occurring on or after 2 September 2008, whether or not an employee’s employment agreement was entered into before 2 September 2008.

The amendments to *clause 5* are drafting amendments.

New clause 5A amends section 103 of the principal Act, which specifies the grievances that constitute personal grievances for the purposes of the principal Act. The amendment inserts a new ground that an employee’s employment

has been adversely affected because the employee is a member of a KiwiSaver scheme under the KiwiSaver Act 2006 or a complying superannuation fund.

New clause 5B inserts *new section 110A* in the principal Act. The new section specifies what behaviour by an employer constitutes the new ground for a personal grievance inserted by *new clause 5A*.

New clause 7 makes a consequential amendment to the KiwiSaver Act 2006.
