

19 January 2023

Hon David Parker, Attorney-General

**Consistency with the New Zealand Bill of Rights Act 1990: Parental Leave and Employment Protection (Shared Leave) Amendment Bill**

1. We have considered whether the Parental Leave and Employment Protection (Shared Leave) Amendment Bill (the Bill), a member's Bill in the name of Nicola Willis MP, is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act).
2. The Bill amends the Parental Leave and Employment Protection Act 1987 (the principal Act) to allow parental leave split between partners or spouses to be taken concurrently to allow them to care for the child together. Section 71E of the principal Act allows a person who is entitled to parental leave (someone who is pregnant, who has given birth, or who has taken permanent primary responsibility for a child under 6) to transfer all or part of their parental leave entitlement to a partner or spouse. The Bill amends the Act to allow the partner or spouse to take the transferred leave at the same time as the person who transferred the leave, provided the total leave taken by both partners or spouses does not exceed the statutory entitlement.
3. In previous advice on the Parental Leave and Employment Protection Act 1987, we have considered whether the paid parental leave scheme gave rise to an issue of discrimination on the grounds of sex and marital status under section 19(1) of the Bill of Rights Act. We concluded that, having regard to the degree of deference that is appropriate when dealing with complex social policy issues, the discrimination could be justified in terms of section 5 of the Bill of Rights Act.
4. We do not consider this amendment gives rise to any additional concerns under section 19(1), as it does not meaningfully change anyone's entitlement to parental leave. Instead, it merely provides greater flexibility as to how the leave may be taken by those already entitled to parental leave under the principal Act.
5. On this basis, we have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.



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