

# Parental Leave and Employment Protection Amendment Bill

6 May 2004

Attorney-General

LEGAL ADVICE

CONSISTENCY WITH THE NEW ZEALAND BILL OF RIGHTS ACT 1990:

PARENTAL LEAVE & EMPLOYMENT PROTECTION AMENDMENT BILL

1. We have considered whether the Parental Leave and Employment Protection Amendment Bill (the "Bill") (PCO 5787/8) is consistent with the New Zealand Bill of Rights Act 1990 ("Bill of Rights Act"). We understand that the Bill will be considered by the Cabinet Legislation Committee at its meeting on Thursday, 13 May 2004.

2. In summary, the Bill would amend the Parental Leave and Employment Protection Act 1987 to:

- extend the duration of paid parental leave from 12 to 13 weeks for the period of 1 December 2004 to 30 November 2005, and then from 13 to 14 weeks from 1 December 2005; and
- provide for an employee to receive parental leave, including paid parental leave, where he or she has worked for his or her employer for at least an average of 10 hours a week for between 6 to 12 months (however, these employees are not entitled to extended leave).

3. We note that in December 2001 in relation to the Parental Leave and Employment Protection Amendment Bill (the "PPL Bill") we previously considered whether the paid parental leave scheme proposed by the PPL Bill 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 were of the view that, having regard to the degree of deference that is appropriately allowed to the government in dealing with complex social policy issues, the scheme did not introduce discrimination that is so unreasonable as to be considered "unjustified" in terms of section 5 of the Bill of Rights Act.

4. Given that the current proposals in the Bill simply:

- progressively increase the duration of paid parental leave from 12 weeks to 14 weeks; and
- extend the coverage of the current scheme by providing employee entitlement to parental leave where the employee has worked for his or her employer for at least an average of 10 hours a week for between 6 to 12 months.

We have, therefore, concluded that the Bill appears to be consistent with the Bill of Rights Act.

5. In accordance with your instructions, we attach a copy of this opinion for referral to the Minister of Justice. A copy is also attached for referral to the Minister of Labour, if you agree.

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Office of Legal Counsel	Bill of Rights/Human Rights Team

Cc Minister of Justice  
Minister of Labour

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