

# Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Bill

28 July 2005

Attorney-General

## LEGAL ADVICE

CONSISTENCY WITH THE NEW ZEALAND BILL OF RIGHTS ACT 1990:

PARENTAL LEAVE AND EMPLOYMENT PROTECTION (PAID PARENTAL LEAVE FOR SELF-EMPLOYED PERSONS) AMENDMENT BILL

1. We have considered whether the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Bill (the "Bill") (PCO 6554/8) is consistent with the New Zealand Bill of Rights Act 1990 (the "Bill of Rights Act"). We understand that the Bill will be considered by the Cabinet Legislation Committee at its meeting on Thursday, 4 August 2005.
2. We understand that a subsequent version of the Bill with minor amendments will be provided to the Cabinet Legislation Committee for its consideration. Officials from the Department of Labour have advised us that these are unlikely to give rise to Bill of Rights Act issues. If any subsequent amendments do give rise to a Bill of Rights Act issue, we will advise you immediately.
3. In summary the Bill would amend the Parental Leave and Employment Protection Act 1987 to:
  - entitle certain self-employed persons to parental leave payments and provide for the administration of those payments;
  - extend the jurisdiction of the Employment Relations Authority to hear challenges by paid parental leave applicants to determinations made by the Department of Labour in regard to their applications;
  - allow the Department of Labour limited discretion to approve paid parental leave applications that would otherwise be ineligible due to irregularities as a matter of form; and
  - lower the eligibility threshold for a subsequent period of parental leave from 12 months to six months.
4. 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.

5. Given that the current proposals in the Bill simply:
  - Extend the coverage of the current scheme by providing self-employed persons the entitlement to parental leave. Self-employed mothers who have been working an average of 10 hours per week, during either the previous six or 12 months before the expected date of delivery of a child, or who assume the care of a child (with a view to adoption) will be entitled to 14 weeks paid parental leave;
  - provide the Department of Labour with the power to accept an application for parental leave payments despite an irregularity in the application;
  - provide an employee or a self-employed person with a right to apply to the Employment Relations Authority for a review of a decisions made by the Department of Labour about that person's eligibility for a parental leave payment; and
  - provide that to be entitled to a subsequent period of parental leave and parental leave payments on the birth or adoption of a subsequent child, an employee must work for an employer for 6 months following a previous period of parental leave, and a self-employed person must work a further six months following previous parental leave payments. Employees currently have to have worked for 12 months to be eligible for subsequent parental leave payments.

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

6. 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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CC Minister of Justice  
Minister of Labour

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