

Employment Relations (Probationary Employment) Amendment Bill 2006

8 March 2006

Attorney-General

LEGAL ADVICE

CONSISTENCY WITH THE NEW ZEALAND BILL OF RIGHTS ACT 1990:

EMPLOYMENT RELATIONS (PROBATIONARY EMPLOYMENT) AMENDMENT BILL 2006

1. We have considered the Employment Relations (Probationary Employment) Bill 2006 ('the Bill'), a Members Bill in the name of Wayne Mapp MP, for consistency with the New Zealand Bill of Rights Act 1990 ('the Bill of Rights Act'). The Bill was introduced to the House of Representatives on 23 February 2006 and is currently awaiting its first reading. The Ministry understands that the next Members' Day is scheduled for 15 March 2006.
2. The purpose of the Bill is to introduce a 90 day probation period for new employees into the Employment Relations Act 2000 ('the principal Act'). The Bill provides that:
 - Either party to a probationary employment arrangement may terminate the employment at any time during or at the end of the probationary period;
 - Neither party may have recourse to dispute settlement under the principal Act by way of personal grievance or otherwise during the probationary period; and
 - The parties may agree to a longer period of probationary employment, and to terms and conditions that are more generous to the employee than is specified in the Bill.
3. For completeness, we note that the Bill contains a privative clause (Clause 5, proposed new section 69AD - *Limitation on recourse to dispute settlement*) which ousts the jurisdiction of the Employment Relations Authority and the Employment Court in respect of personal grievances, mediation services, actions to recover wage arrears, and any other dispute arising during the probationary period. However, subclause (4)(a) preserves the jurisdiction on the Human Rights Commission in respect of complaints of discrimination under the Human Rights Act 1993.
4. 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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