

Domestic Violence—Victims’ Protection Bill

Member’s Bill

Explanatory note

General policy statement

This Bill is an omnibus Bill. It amends the Domestic Violence Act 1995, Employment Relations Act 2000, Health and Safety at Work Act 2015, Holidays Act 2003, and Human Rights Act 1993 with a view to enhancing legal protections for victims of domestic violence.

Domestic violence has a damaging, yet often hidden, impact on victims’ lives. The protections of this Bill acknowledge the harm experienced by victims and the influence in the workplace of that harm. The Bill supports victims to stay in paid employment, maintaining productivity and reducing recruitment and training costs for employers. Staying in employment is critical to reducing the effects of violence. Secure employment enables victims to maintain domestic and economic stability and assists them to find a pathway out of violence and to successfully rebuild their lives.

Domestic violence can lead to discrimination in terms of employment due to misconceptions about victims’ experiences and the circumstances in which they may find themselves. This Bill addresses any discrimination and in doing so removes the barriers experienced by victims.

The abuser may make it hard for a victim to get to work or target the victim at work. The most common form of domestic violence experienced at work is abusive calls and emails. The strain of dealing with domestic violence can undermine a worker’s productivity, performance, and well-being. Victims are particularly vulnerable in the workplace. This is due to the predictability of their location or working hours or both.

Domestic violence can also create problems for other staff and managers, who may be targeted as well, posing workplace safety and, ultimately, liability issues. In extreme cases, victims have been stalked and eventually killed by violent ex-partners whilst in the workplace.

Domestic violence does not easily fit the definitions and circumstances of other forms of workplace violence, such as workplace bullying or violence from customers or clients. This Bill addresses this current gap in legislation.

Domestic violence is a significant problem in New Zealand that requires a consistent society-wide response. We know that a significant number of victims who are killed have not been in touch with support agencies but their work colleagues have either known or suspected domestic violence. This makes the workplace a primary place for intervention.

The operation of the protections in the Bill will result in employers and others acquiring personal information about the domestic circumstances of victims. Under the Privacy Act 1993, the persons holding the information must not disclose it, except in tightly controlled instances. One such instance, which might be vital for victims, is the case of disclosure being necessary to prevent or lessen a serious threat to the life or health of the individual concerned.

This Bill provides legislation that signals domestic violence is unacceptable. This Bill will create a system to support businesses to respond effectively.

Clause by clause analysis

Clause 1 contains the Bill’s title.

Clause 2 states the commencement date.

Part 1

Domestic Violence Act 1995

Clause 3 provides that the Domestic Violence Act 1995 (**DVA**) is the Act being amended.

Clause 4 amends the interpretation section of the DVA to insert a definition of **domestic violence document**.

Clause 5 amends section 5 of the DVA to explain the meanings of the term “victim of domestic violence”.

Part 2

Employment Relations Act 2000

Clause 6 provides that the Employment Relations Act 2000 (**ERA**) is the Act being amended.

Clause 7 inserts a *new Part 6AB* into the ERA to provide for flexible working arrangements for employees who are victims of domestic violence.

Clause 8 amends section 105 of the ERA to add, as a prohibited ground of discrimination, being a victim of domestic violence.

Part 3

Health and Safety at Work Act 2015

Clause 9 provides that the Health and Safety at Work Act 2015 (**HSWA**) is the Act being amended.

Clause 10 amends section 16 of the HSWA primarily to replace the definition of **hazard**. The effect of the amendment is that a person conducting a business or undertaking (PCBU) must, in taking all practicable steps to ensure that workers are not exposed to hazards, address the hazard of a worker suffering domestic violence.

Clause 11 amends section 37 of the HSWA to require PCBUs to have policies on handling situations arising from the hazard of a worker suffering domestic violence.

Clause 12 amends clause 10 of Schedule 2 of the HSWA to require PCBUs to take all practicable steps to ensure that health and safety representatives receive training in supporting workers who are victims of domestic violence.

Part 4

Holidays Act 2003

Clause 13 provides that the Holidays Act 2003 (**HA**) is the Act being amended.

Clause 14 inserts a *new subpart 5* in Part 2 of the HA to allow victims of domestic violence to request domestic violence leave.

Part 5

Human Rights Act 1993

Clause 15 provides that the Human Rights Act 1993 (**HRA**) is the Act being amended.

Clause 16 amends section 21 of the HRA to add, as a prohibited ground of discrimination, being a victim of domestic violence.

Jan Logie

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Domestic Violence—Victims’ Protection Act **2016**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent. 5

Part 1
Domestic Violence Act 1995

3 Principal Act

This **Part** amends the Domestic Violence Act 1995 (the **principal Act**). 10

4 Section 2 amended (Interpretation)

In section 2, insert in its appropriate alphabetical order:

domestic violence document means—

- (a) a police report confirming attendance at an incident involving domestic violence; or 15

- (b) a record of a police caution relating to domestic violence; or
- (c) a record of criminal proceedings for an offence relating to domestic violence; or
- (d) a record of a conviction for an offence relating to domestic violence; or
- (e) a record of a court’s finding of fact of domestic violence against a person by another person; or 5
- (f) a court order relating to domestic violence; or
- (g) a report from a medical practitioner stating that a person has injuries or a condition consistent with having suffered domestic violence; or
- (h) a report from a domestic violence support organisation relating to a person who has suffered domestic violence; or 10
- (i) any other document prescribed in regulations made under this Act

5 Section 5 amended (Object)

In section 5, after subsection (2), insert:

- (2A) A victim of domestic violence,— 15
 - (a) for the purposes of this Act, is a person who suffers domestic violence:
 - (b) for the purposes of other enactments, is a person who is able to produce a domestic violence document because—
 - (i) the person has suffered domestic violence; or
 - (ii) the person provides care or support to an individual in the person’s immediate family or household who requires care or support because the individual suffers domestic violence in the individual’s family. 20

Part 2

Employment Relations Act 2000 25

6 Principal Act

This **Part** amends the Employment Relations Act 2000 (the **principal Act**).

7 New Part 6AB inserted (Flexible working for victims of domestic violence)

After section 69AAL, insert:

Part 6AB 30

Flexible working for victims of domestic violence

69AB Object of this Part

The object of this Part is to—

- (a) provide certain employees who are victims of domestic violence with a statutory right to request a variation of their working arrangements or to have a variation of their working arrangements requested on their behalf; and
- (b) require an employer to deal with a request as soon as possible and no later than 3 months after receiving it; and 5
- (c) provide that an employer may refuse a request only if it cannot be accommodated on certain grounds; and
- (d) if an employer does not deal with a request in accordance with the process specified in this Part, provide for reference of the matter to a Labour Inspector, then to mediation, and then to the Authority. 10

69ABA Interpretation

In this Part, unless the context requires another meaning,—

domestic violence has the meaning given to it in section 2 of the Domestic Violence Act 1995 15

domestic violence document has the meaning given to it in section 2 of the Domestic Violence Act 1995

mediation means mediation provided under section 144

request means a request made under this Part that—

- (a) is written; and 20
- (b) requests an employer to vary an employee’s terms and conditions of employment relating to the employee’s working arrangements; and
- (c) is made by the employee or on the employee’s behalf

victim of domestic violence has the meaning given to it in **section 5(2A)(b)** of the Domestic Violence Act 1995 25

working arrangements means 1 or more of the following terms of an employee’s employment:

- (a) hours of work:
- (b) days of work:
- (c) place of work, whether his or her home, workplace, or some other place: 30
- (d) location of workplace:
- (e) duties at work:
- (f) the extent of the contact details that the employee must provide to the employer:
- (g) any other term that, in the employee’s view, needs variation to enable him or her to deal with the effects of being a victim of domestic violence. 35

69ABB Request

- (1) A request may be made in the following circumstances:
- (a) the employee is a victim of domestic violence; and
 - (b) the employee has been employed by his or her employer for the 6 months immediately preceding the date on which the request is made; and
 - (c) if a previous request has been made, at least 12 months have passed since the date on which the previous request was made.
- (2) A request must—
- (a) be in writing; and
 - (b) state—
 - (i) the employee’s name; and
 - (ii) the date on which the request is made; and
 - (c) state that the request is made under this Part; and
 - (d) state—
 - (i) the variation of the working arrangements requested; and
 - (ii) whether the variation is permanent or for a period of time; and
 - (e) state—
 - (i) the date on which it is proposed that the variation take effect; and
 - (ii) if the variation is for a period of time, the date on which it is proposed that the variation end; and
 - (f) state how, in the employee’s view, the variation will enable the employee to deal with the effects of being a victim of domestic violence; and
 - (g) state what changes, if any, in the employee’s view, the employer may need to make to the employer’s arrangements if the employee’s request is approved; and
 - (h) have attached to it a copy of the employee’s domestic violence document.

69ABC Employer’s duties

- An employer must—
- (a) deal with a request as soon as possible and not later than 3 months after receiving it; and
 - (b) refer the employee to appropriate domestic violence support services; and
 - (c) notify the employee whether the request has been approved or refused; and
 - (d) if the request is refused,—

- (i) notify the employee of the applicable ground in **section 69ABD**; and
- (ii) provide an explanation of the reasons why the ground applies.

69ABD Refusal

- (1) An employer may refuse a request if the employer determines that the circumstances described in **section 69ABB(1)** do not exist. 5
- (2) An employer may refuse a request if the employer determines that the request cannot be accommodated because of 1 or more of the following:
 - (a) an inability to reorganise work among existing staff: 10
 - (b) an inability to recruit additional staff: 10
 - (c) the potential for a detrimental impact on quality:
 - (d) the potential for a detrimental impact on performance:
 - (e) the potential for a detrimental effect on ability to meet customer demand:
 - (f) insufficiency of work during the periods the employee proposes to work:
 - (g) planned structural changes: 15
 - (h) the burden of additional costs.
- (3) An employer must refuse a request if—
 - (a) the request relates to—
 - (i) an employee who is bound by a collective agreement; and
 - (ii) working arrangements to which the collective agreement applies; and 20
 - (b) the employee’s working arrangements, if the employer were to approve the request, would be inconsistent with the collective agreement.

69ABE Disputes

- (1) This section applies if an employee believes that his or her employer— 25
 - (a) has not complied with **section 69ABC**; or
 - (b) has made a wrong determination under **section 69ABD(1)**.
- (2) The employee may refer the matter to a Labour Inspector who must, to the extent practicable in the circumstances, assist the employee and employer to resolve the matter. 30
- (3) If the employee is dissatisfied with the result of the reference to a Labour Inspector, the employee may refer the matter to mediation, at which the matter is treated as an employment relationship problem.
- (4) If the employee is dissatisfied with the result of the reference to mediation, the employee may apply to the Authority for a determination, but must make the application within 12 months after— 35

- (a) the date on which the employer notifies the employee of the employer’s refusal, if the date is within 3 months after the employer received the request; or
- (b) the date 3 months after the date on which the employer received the request, in any other case. 5
- (5) If the Authority determines that one of the grounds in **subsection (1)** applies to the employer, the employer must rectify the matter as soon as practicable.
- (6) An employee may challenge his or her employer’s refusal of a request or failure to respond to a request only under this section.
- (7) An employer who does not comply with **section 69ABC** is liable to a penalty not exceeding \$2,000, imposed by the Authority and payable to the employee concerned. 10

69ABF Labour Inspectors

For the purposes of this Part, a Labour Inspector may provide employees and employers with the assistance he or she considers appropriate in the circumstances. 15

8 Section 105 amended (Prohibited grounds of discrimination for purposes of section 104)

- (1) In section 105(1)(m), replace “orientation.” with “orientation:”.
- (2) After section 105(1)(m), insert: 20
 - (n) being a victim of domestic violence.

Part 3

Health and Safety at Work Act 2015

9 Principal Act

This **Part** amends the Health and Safety at Work Act 2015 (the **principal Act**). 25

10 Section 16 amended (Interpretation)

- (1) In section 16, insert in their appropriate alphabetical order:
 - domestic violence** has the meaning given to it in section 2 of the Domestic Violence Act 1995
 - domestic violence document** has the meaning given to it in section 2 of the Domestic Violence Act 1995 30
 - victim of domestic violence** has the meaning given to it in **section 5(2A)(b)** of the Domestic Violence Act 1995
- (2) In section 16, replace the definition of **hazard** with:
 - hazard** includes— 35

- (a) a person's behaviour where that behaviour has the potential to cause death, injury, or illness to a person (whether or not that behaviour results from physical or mental fatigue, drugs, alcohol, traumatic shock, or another temporary condition that affects a person's behaviour); and
- (b) a situation in which a person's behaviour stems from being a victim of domestic violence or from being the person who inflicted the domestic violence referred to in the victim's domestic violence document 5
- 11 Section 37 amended (Duty of PCBU who manages or controls workplace)**
- In section 37, insert as subsection (1A):
- (1A) Every PCBU who manages or controls a workplace must have a policy on dealing with situations in which a person's behaviour— 10
- (a) stems from being a victim of domestic violence or from being the person who inflicted the domestic violence referred to in the victim's domestic violence document; and
- (b) is an actual or potential cause or source of harm, to the person or another person, within a workplace or outside a workplace. 15
- 12 Schedule 2 amended (Obligations of PCBU to health and safety representative)**
- In Schedule 2, clause 10(1), insert:
- (da) take all reasonable and practicable steps to provide any health and safety representative for a work group with training in supporting workers who are victims of domestic violence. 20

Part 4 Holidays Act 2003

- 13 Principal Act** 25
- This **Part** amends the Holidays Act 2003 (the **principal Act**).
- 14 New Part 2, subpart 5 inserted (Domestic violence leave)**
- After section 72, insert:
- Subpart 5—Domestic violence leave
- 72A Purpose of this subpart** 30
- The purpose of this subpart is to provide employees who are victims of domestic violence with a minimum entitlement to paid leave for the purpose of dealing with the effects of being victims of domestic violence.

72B Interpretation

In this subpart,—

domestic violence has the meaning given to it in section 2 of the Domestic Violence Act 1995

domestic violence document has the meaning given to it in section 2 of the Domestic Violence Act 1995 5

domestic violence leave means paid domestic violence leave provided under this subpart

victim of domestic violence has the meaning given to it in **section 5(2A)(b)** of the Domestic Violence Act 1995. 10

72C Request for and approval of domestic violence leave

- (1) This section applies to an employee who is a victim of domestic violence.
- (2) A request may be made by the employee or on the employee’s behalf to the employer to approve the employee’s taking domestic violence leave.
- (3) The request must— 15
 - (a) state that the request is made under this subpart; and
 - (b) state—
 - (i) the employee’s name; and
 - (ii) the date on which the request is made; and
 - (c) have attached to it a copy of the employee’s domestic violence document. 20
- (4) As soon as is practicable after receiving a request, the employer must approve the employee’s taking domestic violence leave.
- (5) The employee— 25
 - (a) may take up to 10 days’ leave within a year of the date of the employer’s approval; and
 - (b) may not carry forward any leave not taken in the year.
- (6) Sections 63, 64, 67, 71, and 72(1) apply to domestic violence leave as if the references in them to sick leave or bereavement leave were references to domestic violence leave. 30

Part 5**Human Rights Act 1993****15 Principal Act**

This **Part** amends the Human Rights Act 1993 (the **principal Act**).

16 Section 21 amended (Prohibited grounds of discrimination)

- (1) In section 21(1)(m), replace “orientation.” with “orientation:”.
- (2) After section 21(1)(m), insert:
 - (n) being a victim of domestic violence, which has the meaning given to it in **section 5(2A)(b)** of the Domestic Violence Act 1995.

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