

# **Regulatory Systems (Workplace Relations) Amendment Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

This Bill is an omnibus Bill and 1 of a package of 3 omnibus Bills that contain amendments to legislation administered by the Ministry of Business, Innovation, and Employment (the **Ministry**). This Bill, the Regulatory Systems (Workplace Relations) Amendment Bill, makes amendments in the workplace relations and safety areas. The policy objective of each Bill is to maintain the effectiveness and efficiency of the regulatory systems established by the Acts amended by the Bills and so reduce the chance of regulatory failure. The amendments will achieve this objective by—

- clarifying and updating statutory provisions in each Act amended to give effect to the purpose of that Act and its provisions; and
- addressing regulatory duplication, gaps, errors, and inconsistencies within and between different pieces of legislation; and
- keeping the regulatory system up to date and relevant; and
- removing unnecessary compliance costs and costs of doing business.

The amendments were identified as part of the Ministry’s regulatory systems work programme, which arises from the chief executive’s responsibility to relevant Ministers, under section 32 of the State Sector Act 1988, for the stewardship of the legislation administered by the Ministry.

The Bills respond to the New Zealand Productivity Commission’s June 2014 report, *Regulatory Institutions and Practices*. The New Zealand Productivity Commission found that it can be difficult to find time on the Parliamentary calendar for “repairs and maintenance” of existing legislation. As a result, regulatory agencies often have to work with legislation that is out of date or not fit for purpose. This creates unnecessary costs for regulators and regulated parties and means that regimes may not keep up with public or political expectations.

This Bill, the Regulatory Systems (Workplace Relations) Amendment Bill, is a vehicle for these smaller regulatory fixes in the workplace relations and safety areas to be progressed in a timely and cost-effective fashion in order to deliver the flow-on benefits to business and the wider economy. It includes the following amendments:

**Employment Relations Act 2000 (see Part 1)**

The Employment Relations Act 2000 amendments will improve legal clarity and certainty by clarifying provisions in relation to liability for breaches of employment standards for persons other than the employer.

**Parental Leave and Employment Protection Act 1987 (see Part 2)**

The amendments to the Parental Leave and Employment Protection Act 1987 will improve the clarity and certainty of the Act in relation to preterm and parental leave payments.

**Departmental disclosure statement**

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2016&no=187>

**Clause by clause analysis**

*Clause 1* is the Title clause.

*Clause 2* relates to commencement. The Bill comes into force on the day after the date of Royal assent.

**Part 1**

**Employment Relations Act 2000**

*Clause 3* provides that *Part 1* amends the Employment Relations Act 2000.

*Clause 4* amends section 142W to clarify the circumstances in which a person is regarded as being involved in a breach of employment standards, where the breach is committed by a company, partnership, limited partnership, or sole trader. In these circumstances, only officers of the entity can be regarded as being involved in the breach. The revised wording of section 142W(2) makes this clearer.

**Part 2**

**Parental Leave and Employment Protection Act 1987**

*Clause 5* provides that *Part 2* amends the Parental Leave and Employment Protection Act 1987.

*Clause 6* amends section 71K, which specifies the date on which parental leave payments start. The amendment removes an unintended consequence for a primary carer of a preterm baby who elects to forgo some or all of their entitlement to preterm baby payments and instead returns to work in between the birth of the baby and starting their period of parental leave. The amendment provides for the person's parental leave payment period to begin either when the person begins their period of parental leave or by the child's original due date of birth at the latest (rather than on the day after the date on which their preterm baby payment period ends).

*Clause 7* amends section 71L, which specifies the date on which parental leave payments end. The amendment corrects an error and will ensure that, in all cases, parental leave payments to a person end on the date on which that person returns to work.

*Clause 8* amends section 71N, which provides for the rates of parental leave payment to be adjusted, as at 1 July each year, by any percentage movement upward in average ordinary time weekly earnings. The amendments are technical changes that—

- make it clearer that the adjustment is automatic; and
- provide for the Chief Parliamentary Counsel to be advised of the adjusted rates so that the rates specified in section 71M can be kept up to date on the legislation website.



*Hon Steven Joyce*

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### **The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Regulatory Systems (Workplace Relations) Amendment Act **2016**.

**2 Commencement**

This Act comes into force on the day after the date of Royal assent.

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## Part 1 Employment Relations Act 2000

### 3 Principal Act

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

### 4 Section 142W amended (Involvement in breaches)

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Replace section 142W(2) and (3) with:

(2) However, if the breach is a breach by an entity such as a company, partnership, limited partnership, or sole trader, a person who holds a position in the entity may be treated as a person involved in the breach only if that person is an officer of the entity.

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(3) For the purposes of **subsection (2)**, the following persons are to be treated as officers of an entity:

(a) a person occupying the position of a director of a company if the entity is a company:

(b) a partner if the entity is a partnership:

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(c) a general partner if the entity is a limited partnership:

(d) a person occupying a position comparable with that of a director of a company if the entity is not a company, partnership, or limited partnership:

(e) any other person occupying a position in relation to the entity if the person is in a position to exercise significant influence over the management or administration of the entity.

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## Part 2 Parental Leave and Employment Protection Act 1987

### 5 Principal Act

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This Part amends the Parental Leave and Employment Protection Act 1987 (the **principal Act**).

### 6 Section 71K amended (Start of parental leave payment)

Replace section 71K(2) with:

(2) However, **subsection (3)** applies, instead of subsection (1), if—

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(a) a person is entitled to a preterm baby payment under section 71DA(1); and

(b) the parental leave payment period in respect of the child has not already begun but been suspended under section 71DA(5).

- (3) If this subsection applies, the period in relation to which a parental leave payment is payable to the person in respect of the child does not begin until the earlier of—
- (a) the date the person commences parental leave; and
  - (b) the original expected date of delivery, had the child not been born prematurely. 5

**7 Section 71L amended (End of parental leave payment)**

In section 71L(2), replace “Subsections (1)(b) and (c) do not apply, and parental leave payments continue to be payable until the date specified in subsection (1)(a)” with “Subsection (1)(c) does not apply, and parental leave payments continue to be payable until the earlier of the dates specified in subsection (1)(a) and (b)”. 10

**8 Section 71N amended (Annual adjustment of parental leave payment rates)**

- (1) In section 71N(1), replace “must be adjusted as at 1 July each year by any percentage movement upward in average ordinary time weekly earnings using the method specified in subsection (2)” with “and persons who are eligible for a parental leave payment as an employee and as a self-employed person under section 71M(1B) are adjusted, by this section, by increasing the rate by the same percentage as any percentage movement upward in average ordinary time weekly earnings as calculated under subsection (2)”. 15 20
- (2) In section 71N(2), replace “must be made” with “is calculated”.
- (3) In section 71N(2)(a), replace “on which the adjustment is based must be” with “is”. 25
- (4) In section 71N(2)(b)(ii), replace “must be based on” with “is”.
- (5) In section 71N(4), replace “must be set as at 1 July each year as” with “is adjusted, by this section, as at 1 July each year, as”.
- (6) Replace section 71N(5) with:
- (5) The Minister must, as soon as practicable after 1 July each year,—
- (a) publish the adjusted rates for employees and self-employed persons on an Internet site maintained by or on behalf of the department; and 30
  - (b) advise the Chief Parliamentary Counsel of those rates.