

Parental Leave and Employment Protection (Paid Parental Leave) Amendment Bill

Government Bill

Explanatory note

General policy statement

Overview

The Bill implements Government policy to introduce a Government-funded entitlement to up to 12 weeks' paid parental leave for women entitled to parental leave under the Parental Leave and Employment Protection Act 1987 ("the principal Act"). This entitlement will partly compensate working families for the loss of income associated with taking leave from work at the time of arrival of new babies or adopted children, and will thereby reduce the costs of employment for parents, help to provide a better start for families, reduce financial stress, and enhance health and well-being.

Eligibility

The Bill amends the principal Act to extend the definition of spouse to include same sex partners, consistent with the Human Rights Act 1993. Where 2 spouses jointly adopt a child under 5 years of age, they must nominate which of them is to be primarily entitled to the parental leave payment.

The principal Act is also amended to cover homeworkers. This will bring it into line with the Employment Relations Act 2000, the Minimum Wage Act 1983, and the Holidays Act 1981.

The Bill amends the eligibility criteria to avoid disadvantaging employees who meet the tenure eligibility requirement for parental leave but work atypical working hours, such as those who work fluctuating hours, those who take authorised periods of unpaid leave,

and those with job share, rostering, or on-call arrangements involving a week or more off work. Under the principal Act, employees are eligible for parental leave if, at the expected date of delivery, they will have been employed by the same employer for at least 10 hours a week for at least 12 months. The Bill amends the 10-hour threshold to require employees to have worked for an average of 10 hours over the year's employment with the employer, on the basis of at least 1 hour every week and/or at least 40 hours every month. Where employment is continuous, employees will not be disqualified from paid parental leave by any period of authorised leave, whether paid or unpaid, during the period of eligibility tenure. Periods of authorised unpaid leave will be treated as continuous employment unless the employer and employee agree otherwise.

Employees whose expected date of delivery is 1 July 2002 or later, or whose baby is born (or adopted) on or after 1 July 2002, are covered by the new provisions. Employees who are already on parental leave at 1 July 2002, but whose expected date of delivery is 1 July 2002 or later, or whose baby is born (or adopted) on or after 1 July 2002, are also covered. In some cases, such as where women may start maternity leave early, employees may have already started their parental leave before 1 July 2002.

Transferability

The Bill allows mothers to transfer their entitlement to payment for parental leave to their spouses or partners, if eligible. This is consistent with the principle established in the principal Act that the entitlement to 12 months' unpaid parental leave may be shared by the mother with her spouse. In the case of adoptive parents, the nominated spouse may transfer this entitlement to the other spouse or partner, if eligible.

Amount and period of payment

The payment introduced by the Bill is for the first 12 weeks of the parental leave, taken in a continuous period. The payment must relate to leave taken, and will not be paid for a period in which the employee who holds the entitlement has returned to work. The mother (or nominated adoptive parent) may transfer all or part of the entitlement to her or his spouse or partner, if eligible. The Bill

provides flexibility around these rules to allow for changing circumstances. For example, eligibility for payment will continue until the mother returns to work if the child is miscarried, dies, or is given up for adoption. If the mother dies or loses legal guardianship at the time of the birth or during the leave period, the entitlement to payment may be transferred to her spouse or partner, if eligible, on her or his request. If there is a fixed-term employment agreement, payments for parental leave will be available only to the end of the fixed term, up to the maximum of 12 weeks, and the employee and employer will be required to notify the delivery agency on application of the date on which the agreement is to terminate.

Payment is intended to replace a proportion of the employee's income from any or all jobs in respect of which they are eligible for, and take, parental leave. The payment will fully replace the employee's ordinary income from the job or jobs, up to a cap set initially at \$325 per week. This payment system is designed to ensure that a higher proportion of the income of lower income mothers will be replaced than for higher income mothers. The maximum rate will be reviewed on the basis of movements in average ordinary income, and will be adjusted by Order in Council from time to time. The maximum rate will be adjusted annually on the basis of movements in average weekly earnings as measured by the Quarterly Employment Survey (QES), subject to the condition that there will be no negative adjustments in the event of a negative movement in the average weekly wage.

Parental leave payments are treated in the Bill as taxable and subject to student loan repayments and child support deductions, but not to ACC levies, although the right to choose to purchase ACC cover while on parental leave continues. A consequence of this provision is that people receiving parental leave payments will retain access to social assistance, including family assistance provided under the Income Tax Act 1994. Parental leave payments will be treated as income for the purposes of abating these payments.

Funding of paid parental leave

The Bill provides for parental leave payments to be paid out of general taxation, and for payments to be made directly to employees' bank accounts by the delivery agency. Employers will therefore bear no direct costs, and will face limited compliance costs over and

above their existing obligations to keep the employee's job open during parental leave. These costs will be associated mainly with substantiating the employee's application for payment, by providing information on tenure and earnings. Employers are already required to hold this information in time and wages records, and the process will become part of the existing process of approving applications for parental leave.

Relationship with parental tax credit

The parental tax credit will be retained, but will be available only to those not receiving payment for parental leave. This will allow people to choose the more beneficial scheme, without allowing access to both for the same child. However, no account will be taken of any payments for parental leave provided in an employment agreement, as these are matters for employers and their employees, who will be free to renegotiate them as they see fit.

Relationship with entitlements under employment agreements

Payments to which employees are entitled under their employment agreements will not be affected by the statutory payment. Employers and employees will be able to renegotiate these agreements as they see fit. However, employers must not reduce employees' contractual entitlements unilaterally.

Enforcement

The Bill amends the principal Act to enable Labour Inspectors to act for employees to enforce their rights under the Act. The Labour Inspectors currently investigate matters relating to minimum employment standards, and this amendment will enable them to assist employees with any disputes arising over parental leave or information provided by the employer in relation to applications for payment for parental leave.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 relates to commencement. Most of the Bill will come into force on **1 July 2002**. The regulation-making power in *clause 5*, however, will come into force earlier, to enable requirements about application forms and notices to be prescribed earlier.

Clause 3 provides that the Bill will apply to employees whose expected date of delivery is on or after **1 July 2002**, or whose baby is born on or after that date, irrespective of whether the leave starts before **1 July 2002**. Payments of paid parental leave will not start until **1 July 2002**, but applications may be made before that date, and payments may be backdated if the parental leave starts before that date.

Part 1

Paid parental leave

Clause 4 inserts the new paid parental leave provisions. The principal effects are as follows.

New section 71A sets out the purpose of the parental leave payment scheme.

New section 71D confers the entitlement to paid parental leave primarily on female employees—

- who meet the criteria for maternity leave under the Act; and
- who take parental leave from that employment in respect of the child (either under the Act or as non-statutory parental leave).

Those criteria (as amended by *Part 2*) are that the employee has become pregnant and will have been, at the expected date of delivery, for the immediately preceding 12 months in the employment of the same employer for at least an average of 10 hours a week during that period.

New section 71E provides that the employee who is primarily entitled to paid parental leave (usually the mother) may transfer the payment entitlement to her spouse. The new definition of **spouse** (in *clause 7(2)*) covers married couples and de facto partners, including same sex partners. There are various restrictions on the right to transfer. The main restrictions are that the transferee spouse must

also be entitled to parental leave under the Act (for example, have worked for at least 12 months for the same employer for an average of not less than 10 hours a week) and must take parental leave to care for the child.

In a case of adoption, an employee is entitled to a parental leave payment if the employee—

- meets the criteria for parental leave under the Act; and
- takes parental leave from that employment in respect of the child (either under the Act or as non-statutory parental leave).

The criteria for parental leave under the Act in respect of adoptions (as amended by *Part 2*) are that the employee—

- assumes (with a view to adoption by the employee or by the employee and his or her spouse jointly) the care of a child who is not more than 5 years of age; and
- will have been, at the date on which the employee first assumes the care of the child with a view to adoption, for the immediately preceding 12 months in the employment of the same employer for at least an average of 10 hours a week during that period.

In the case of adoption, the entitlement to paid parental leave is not conferred primarily on the female employee. Married couples and de facto partners who jointly adopt will have to nominate one of themselves as the person on whom the entitlement to payment is primarily conferred. The nominated person may transfer all or part of that entitlement to the other spouse, as provided for in the new transfer provisions.

New sections 71F to 71I set out the principal restrictions on statutory parental leave payments, which are that—

- an employee is not entitled to a parental leave payment within 12 months of the end of the previous period of parental leave in respect of another child (*new section 71F*). This means employees must work for 12 months in-between children for whom they claim statutory parental leave payments under the scheme. This mirrors the existing rules on leave entitlements in the principal Act:
- employees will not receive both a parental leave payment under the scheme and a parental tax credit under the income tax system in respect of the same child (*new section 71G*).

The parental tax credit is a credit of tax to provide support for working families with a newborn child under section KD 2AB of the Income Tax Act 1994. Under that section, the qualifying person for a dependent child that is born on or after 1 October 1999 is allowed a credit of tax, called the 'parental tax credit', for up to the first 56 days after the date of the dependent child's birth if, at any time during that period, the person and their spouse do not receive certain specified payments. A companion measure is inserted in the Income Tax Act 1994 by *Schedule 1* to provide that people will not be able to claim a parental tax credit if they have benefited from a parental leave payment:

- an employee must apply for the parental leave payment (*new section 71I*). Applications must be made before the date on which the employee returns to work or the parental leave otherwise ends. The detail of the application requirements will be prescribed in regulations. As a matter of practice, applications should ideally be made at the start of the parental leave; but the Bill provides that the application may be made, and payments backdated, if the application is made before the parental leave ends.

New section 71J provides that a parental leave payment is payable—

- for 1 continuous period not exceeding 12 weeks; or
- if part of the entitlement is transferred to the spouse, for 1 continuous period per employee, so long as the 2 continuous periods do not together exceed 12 weeks.

New section 71K provides that parental leave payment starts on the date of commencement of the parental leave.

New section 71L provides that parental leave payment ends on the earlier of—

- 12 weeks after the date of commencement of the parental leave; or
- the date on which the employee returns to work.

Payment carries on regardless if—

- the employee's employment is terminated due to redundancy or dismissal for cause:

- the employee has a miscarriage or ceases to have the care of the child:
- the employee or the child dies.

But payment stops if a fixed-term employment contract expires.

New section 71M provides that the rate of parental leave payment is the lesser of—

- \$325 per week; or
- the greater of—
 - (i) 100% of the employee's ordinary pay before the commencement of the parental leave; or
 - (ii) 100% of the employee's average weekly earnings.

Ordinary pay and **average weekly earnings** are defined in the same way as they are in the Holidays Act 1981. Parental leave payments will be based on the total pay in respect of all of the employments from which the employee takes parental leave as an eligible employee.

New section 71N provides for annual indexing of the \$325 payment amount.

New section 71O provides for discretionary increases in the \$325 payment amount by Order in Council.

New section 71P provides that entitlements to parental leave payments are not reduced by other entitlements that employees may have under their employment agreements, such as weekly payments, or lump sums on returning to work, or lump sums on completing a further period of work after the leave. The new section provides for penalties in accordance with the Employment Relations Act 2000 if an employer, without the agreement of the employee, reduces any other entitlement that the employee may have under their employment agreement because of the employee's entitlement to a payment under the scheme. The Bill does not, however, prevent employers and employees from agreeing to renegotiate employment agreements if they consider it appropriate to do so, given the introduction of statutory paid parental leave.

New section 71Q provides for parental leave payments to be paid out of the Crown Bank Account.

New section 71R provides that parental leave payments are payable in arrears, and instalments will be paid into the bank account specified by the applicant for the purpose, unless the chief executive in any particular case otherwise determines.

New section 71S provides for backdating payments to the start of the parental leave if the application is received on or after the date of commencement of the parental leave.

New section 71T requires employers to notify employees of their payment entitlements under the scheme. The employers have to give that notice within 21 days after receiving a notice of an employee's wish to take parental leave.

New section 71U requires employees to give notice of an early return to work if they are still receiving a parental leave payment when they return.

New section 71V provides that employees who do not return to work at the end of parental leave do not have to repay money received under the scheme.

New section 71W requires an employee or employer to supply information for the purpose of the scheme if requested to do so.

New section 71X enables the department to recover overpayments of parental leave payments. This is based on a similar provision in the ACC legislation.

However, *new section 71Y* prevents the department from recovering money paid out in error under the scheme if—

- the error was not intentionally contributed to by the recipient; and
- the recipient received the payment in good faith; and
- the recipient has so altered his or her position in reliance on the validity of the payment that it would be inequitable to require repayment.

This is based on a similar provision in the ACC legislation.

New section 71Z makes it an offence to mislead the department for the purpose of receiving money under the parental leave payment scheme. The penalty is a maximum fine of \$5,000.

New section 71ZA enables the chief executive of the department to delegate all or part of the administration of the parental leave payment scheme.

Clause 5 extends the regulation-making power in the Act so that regulations may—

- prescribe the manner in which applications and notices about parental leave payments must be made (for example, to whom an application must be sent); and
- prescribe the information and documents that employees and employers must give or attach to applications and notices about parental leave payments; and
- provide for the way in which annual QES indexing of the \$325 amount will work (for example, methodology issues as to which quarters will be used as the benchmark for adjustment calculations); and
- otherwise increase the \$325 amount. The Minister may recommend the making of regulations under this clause, at his or her discretion, as a separate thing from the annual increases that are linked to the QES index. Any regulations made under this clause will expire unless they are specifically confirmed by a later Act of Parliament; and
- extend the class or classes of person entitled to a parental leave payment under the new paid parental leave scheme. Any regulations made under this clause will expire unless they are specifically confirmed by a later Act of Parliament.

Clause 6 makes amendments to other Acts relating to parental leave payments. The principal effect of the amendments is as follows:

- Labour Inspectors are able to be designated for the purposes of the principal Act (amendment to section 223 of the Employment Relations Act 2000). This is a companion measure to *new section 70A* (inserted by *clause 16*):
- parental leave payments are made subject to PAYE income tax (amendments to definition of **salary or wages** and **employer** in section OB 1, and to section CC 1, of the Income Tax Act 1994):
- parental leave payments are made subject to deductions for child support and student loan repayments (amendment to definition of **salary or wages** in section OB 1 of the Income Tax Act 1994):
- parental leave payments will not prevent a person from receiving family tax credit under Part KD of the Income Tax

Act 1994 (amendment to definitions of **salary or wages** and **full-time earner** in section OB 1 of the Income Tax Act 1994):

- employees will not receive both a parental leave payment under the scheme and a parental tax credit under the income tax system in respect of the same child (new section KD 2AC of the Income Tax Act 1994). This is a companion measure to *new section 71G* (inserted by *clause 4*) to close off double-dipping from the tax system end:
- parental leave payments will not prevent a person from receiving the Transitional Tax Allowance in section KC 3 of the Income Tax Act 1994 (amendment to section KC 3(3) of the Income Tax Act 1994):
- parental leave payments will not have earner levy deducted (amendment to section 11 of the Injury Prevention, Rehabilitation, and Compensation Act 2001):
- paid parental leave under the Act is treated as unpaid parental leave for the purpose of the provision in the ACC legislation that applies to weekly earnings of employees who are on unpaid parental leave immediately before their incapacity starts (amendment to clause 44 of Schedule 1 of the Injury Prevention, Rehabilitation, and Compensation Act 2001):
- parental leave payments will be counted as income for the purpose of social welfare payments (amendment to the Social Security Act 1964).

Part 2

Other miscellaneous amendments to principal Act

Clause 7 has 5 principal effects:

- *subclause (1)* replaces the definition of **employee**, so that it is the same as in the Employment Relations Act 2000. As a result, homeworkers will come within the scope of the leave eligibility and paid leave provisions of the principal Act:
- *subclause (2)* replaces the definition of **spouse**. The new definition covers married couples and de facto partners, including same sex partners. The new definition of de facto partner follows the definition in section 2D of the Property

(Relationships) Act 1976, which does not specify any minimum length of relationship. As a result, same sex couples will come within the scope of the leave eligibility and paid leave provisions of the principal Act in the same way as other couples. *Clause 19* is a companion measure:

- *subclause (3)* updates the definition of **union**, to take account of the enactment of the Employment Relations Act 2000:
- *subclause (4)* inserts new definitions of **chief executive, department, and Minister**:
- *subclause (5)* is an amendment that is consequential on the relaxation of the current rule that employees are entitled to statutory parental leave only if they have worked for not less than 10 hours a week. This is a companion measure to *clause 10*.

Clause 8 clarifies the application of the Act to employees who have non-statutory rights to parental leave. No change in policy is intended. At present, the interface between statutory rights and non-statutory rights is spread between sections 4 and 72 of the principal Act, which is confusing.

Clause 9 enables midwives to give certificates for the purposes of the Act. Currently, an employee has to send her employer a medical certificate from her doctor about her expected date of delivery.

Clause 10 relaxes the current rule that employees are entitled to statutory parental leave only if they have worked for not less than 10 hours a week. The main leave entitlement sections in the Act are amended to instead require an employee to have worked for at least an average of 10 hours a week during the previous 12 months in order to be entitled to take statutory parental leave. This will have flow-on effects for eligibility for parental leave payments under the new provisions as well. *New section 72A* (inserted by *clause 18*) sets out rules to determine whether an employee has worked an average of not less than 10 hours a week.

Clause 11 entitles the eligible spouse of an employee who dies to succeed to the deceased employee's rights to parental leave under the Act. Currently, the surviving eligible spouse may not be able to start taking parental leave if his or her partner dies, because he or she will not ordinarily have given the required notice to the employer of a wish to take leave. Normally, an employee has to give 3 months

notice to the employer before being able to start leave. This requirement is now waived in the exceptional circumstance of a parent's death. However, the spouse may succeed only if—

- the spouse meets the criterion for parental leave under the Act; and
- the spouse gives reasonable notice to his or her employer.

The new provision will also apply if the spouse becomes sole legal guardian of the child.

Clause 12 updates a cross-reference to a section in the Holidays Act 1981.

Clause 13 entitles State employees to make parental leave complaints in the same way as non-State employees may under the Act (for example, if a complaint is not disposed of between the parties, a complaint may be referred to the Employment Relations Authority). The existing Act distinguishes between State employees and non-State employees as a hang-over from the pre-State Sector Act 1988 days when different procedures governed State employees.

Clause 14 updates a cross-reference in section 65 of the principal Act, as a result of the enactment of the Employment Relations Act 2000.

Clause 15 relates to the power of the Employment Relations Authority or the Court to grant relief to employees if they have failed to give proper notice to their employers of a wish to take statutory parental leave. The new provision provides that the Authority or the Court must waive the failure, and in appropriate cases confirm the right of the employee to take parental leave, if satisfied that—

- the employee's failure to comply with the notice requirements was in good faith; and
- the extent to which the employee did or did not comply with the notice requirements was reasonable in all the circumstances of the case.

Clause 16 confers extra jurisdiction on Labour Inspectors. If an employee's expected or actual date of delivery is on or after **1 July 2002**, Labour Inspectors will be able to assist employees to enforce their general rights to leave under the Act.

Clause 17 is a companion measure to *clause 8*. It re-enacts existing section 72(4), after the rest of section 72 is moved into section 4. No change of policy is intended.

Clause 18 sets out rules to determine whether an employee has worked an average of not less than 10 hours a week. That is, employees who have worked for at least an average of 10 hours a week during a 12-month period and for either no less than 1 hour in every week during that period or no less than 40 hours in every month during that period will meet the leave eligibility rules in the Act. Employees will not be disadvantaged by periods of absence from work—

- on pay; or
- on leave without pay (other than parental leave) with the employer's agreement; or
- while entitled to a payment of weekly compensation while incapacitated; or
- on protected voluntary service or training.

Clause 19 replaces—

- references to male employees in some places, to take account of the extension of the Act to same sex couples; and
- references to “paternity leave” with references to “partner's/paternity leave”.

Clause 20 replaces references to contracts of employment with references to employment agreements, to take account of the terminology in the Employment Relations Act 2000.

Regulatory impact and compliance cost statement

Statement of nature and magnitude of problem and need for Government action

Currently, there is no statutory entitlement to paid parental leave (PPL). Unpaid entitlements to leave already exist under the Parental Leave and Employment Protection Act 1987 (“the principal Act”). However, an unpaid entitlement does little to reduce the disadvantage experienced by women who require a temporary absence from employment when they have a baby.

Some employees have employment agreements that provide for PPL but these entitlements are unlikely to benefit low-income working

families that the policy is most concerned with assisting, because these families are least likely to be able to negotiate entitlements to PPL under their employment agreements. A statutory entitlement is therefore required to ensure wider access to PPL.

New Zealand currently has reservations, in relation to obligations to provide paid maternity leave, against the United Nations Convention on the Elimination of Discrimination Against Women (CEDAW) and the United Nations International Convention on Economic, Social and Cultural Rights (ICESCR).

The principal Act is currently inconsistent with the New Zealand Bill of Rights Act 1990 in a number of ways relating to discrimination on the grounds of sex, marital status, race, and ethnic or national origins.

The Labour Inspectorate do not currently have any powers of enforcement in relation to the principal Act, which may limit some employees' ability to access their entitlements under the principal Act.

Statement of public policy objective(s)

To introduce a statutory entitlement to PPL, and to increase the consistency of the principal Act with the New Zealand Bill of Rights Act 1990, as well as enabling the provisions of the principal Act to be enforced by Labour Inspectors. A statutory entitlement to PPL will also improve compliance with New Zealand's international obligations, and may enable the removal of the reservations, noted above, against the CEDAW and ICESCR.

*Statement of feasible options (regulatory and/or non-regulatory)
that may constitute viable means for achieving
desired objective(s)*

The status quo is not considered to be an option, as the current voluntary regime whereby employees are able to negotiate entitlements to PPL under their employment agreements has not resulted in sufficiently wide access to PPL. A statutory entitlement is therefore required.

There are no non-regulatory options available to ensure that sufficiently wide access to PPL occurs.

Proposed option

The proposed option is for full tax funding of the statutory entitlement to PPL.

The eligibility criteria of the proposed option are aimed at providing a statutory entitlement to PPL with the following features:

- PPL should be provided primarily to mothers who meet the current eligibility requirements under the principal Act, which requires that a parent must have been in paid employment with a single employer for more than 10 hours per week (on average) for the full year before the due date for the birth of the child (or the expected adoption date):
- any adoptive parent (whether male or female) of newly adopted children up to the age of 5 years will be eligible for PPL payments:
- entitlements to PPL payments may be transferred from eligible mothers (or adoptive parents) to their eligible partner:
- the definition of partner explicitly includes same sex partners:
- it is proposed that payment is based on the replacement of 100% of a person's recent earnings with a maximum payment rate of \$325 gross per week:
- the duration of payment for PPL is up to 12 weeks.

It is proposed that the parental tax credit (PTC) be retained but that it be available only to those who are not receiving PPL payments. This will enable people to select the scheme (PTC or PPL) that is most beneficial to them, without allowing them access to 2 forms of assistance from the State for the same child.

The Department of Labour is to undertake a comprehensive evaluation of future options for enhanced eligibility and payment, and of the interface of PPL with the PTC. The Department will also undertake research to consider whether PPL should be extended to eligible employees who informally adopt children (common in Māori, Pacific Island, and other cultures), as well as groups that may be disadvantaged because they do not have a partner to whom entitlements may be transferred.

Statement of net benefit of this proposal, including total regulatory costs (administrative, compliance, and economic costs) and benefits (including non-quantifiable benefits) of proposal, and other feasible options

The introduction of PPL will provide payments to eligible parents.

The payment system ensures a high proportion of the total funds will go to lower-income mothers and result in lower-income mothers having a higher proportion of their previous income replaced than higher-income mothers. This will occur as a result of the capping arrangement contained in the calculation of payment, which provides that an eligible parent is entitled to the lower of 100% of previous earnings or \$325.00 gross per week. Lower-income mothers will, therefore, generally have 100% of their income replaced, while higher-income mothers affected by the maximum payment will have a lower proportion of previous earnings replaced.

PPL will assist in compensating working families for the loss of income associated with taking leave from work at the time of arrival of new babies or adopted children.

PPL is intended to be associated with higher overall employment levels for both men and women, and also an increase in employment-to-population ratios of women.

PPL is designed to have positive social outcomes in assisting in providing a better start for families with new babies, reducing financial stress, and enhancing positive health and well-being outcomes.

The introduction of paid parental leave may result in an increasing take-up of parental leave entitlements by eligible parents because it is likely to increase awareness of those entitlements and the incentives to take-up those entitlements, with corresponding impacts on the costs for employers to replace employees on parental leave. These costs will primarily relate to the costs of employing short-term replacement staff, advertising to fill temporary positions, and interviewing for those replacement staff.

Any increase in these costs for employers may, however, be offset by an increased workplace attachment of women that will result in reduced recruitment costs in the longer-term.

The costs to Government associated with PPL are \$40.8 million per annum, which include ongoing administrative costs of \$1.9 million

and payments direct to parents of \$42.9 million (offset by savings of \$4 million per annum against the parental tax credit).

Business compliance cost statement

Sources of compliance costs

PPL will be implemented by way of amendment to the principal Act, where the main compliance costs currently incurred result from the requirement to provide leave per se. These current compliance costs are derived from the requirements under the principal Act to provide information about rights and obligations related to parental leave to employees, and to provide responses to applications for leave.

The additional ongoing compliance costs associated with PPL that will fall on employers are that—

- employers will be required to provide information on the employee's earnings and tenure in order to substantiate the employee's application (primarily this information will be provided to the employee to include in, or attach to, their application for PPL, and the employee will be responsible for obtaining the application forms and getting their employer to verify information); and
- employers will be required to inform employees of their entitlements to PPL. This will occur in addition to the existing requirement to inform employees of their entitlements to leave generally, to return to work, and to utilise the disputes procedures for parental leave complaints.

In addition, there may be some one-off and ongoing compliance costs associated with employers seeking advice on identifying and understanding their obligations to provide parental leave entitlements and to facilitate employees in claiming PPL entitlements.

As noted under the statement of the net benefit of the proposal above, there may be other additional regulatory costs for employers associated with the PPL scheme.

Parties likely to be affected

The parties that will be affected by compliance costs associated with the introduction of PPL will primarily be employers whose employees take parental leave and claim PPL. Other employers may also be

affected by the costs related to identifying and understanding their obligations in relation to PPL.

It is estimated that 20 000 employees per annum will take PPL, with approximately the same number of employers being required to provide parental leave entitlements. Information on the use of unpaid parental leave found that the majority of employees who took parental leave were in the following industries:

- government or local government (51%):
- business and financial services (18%):
- other community, social, and personal services (9%):
- wholesale and retail trade, restaurants, and hotels (8%):
- transport, storage, and communication (6%):
- manufacturing (5%).

Source: question 13 of “Survey of the Extent of Knowledge and Use of the Parental Leave and Employment Protection Act 1987”— Report prepared for the Department of Labour, November 1996.

Estimated compliance costs of proposal

The compliance costs associated with PPL are expected to differ only marginally from the overall compliance costs associated with the existing requirement to grant unpaid leave. The costs of providing information on tenure and earnings will be low as employers are already required to maintain this information in wages and time records. The costs of this process will also be minimised by it occurring within the existing process of employers approving employees’ applications for leave.

Similarly, the costs of employers informing employees of their rights to PPL are expected to be low, as this will occur within the existing process of employers informing employees of their rights to parental leave generally. In addition, the prescribed form that this information is set out in will be updated to include the information that employers must provide on PPL, and this form will be included in the information available free of charge from the Department of Labour.

It is estimated that 20 000 employees per annum will qualify for PPL. The additional compliance costs of PPL will reflect any additional compliance activities that have to be undertaken by employers

of these employees. For the reasons set out previously, the marginal costs in relation to these employees are likely to be small due to the close connection with existing obligations.

It is estimated that these compliance requirements would involve an additional 10–15 minutes of an employer's time per application.

Longer-term implications of the compliance costs

The ongoing compliance costs discussed above will continue, as it is expected that the number of employees eligible will remain at approximately 20 000 per annum on a long-term basis. These are expected to reduce marginally over time as employers become more familiar with their obligations. However, this effect is low due to the close connection with the existing obligations.

The one-off compliance costs discussed above are likely to occur when an employer first has to consider parental leave or PPL applications. These should be minimised through the availability from the Department of Labour of information on rights and obligations related to both parental leave and PPL.

Level of confidence of compliance cost estimates

The uncertainty over the estimated compliance costs derives from the close connection between the costs associated with PPL and the costs of employers complying with their existing obligations. The marginal costs of the additional activities required should be limited, as the processes that employers have to comply with in relation to PPL have been designed to complement existing processes.

There is an additional element of uncertainty related to the level of current compliance by employers with their existing obligations in relation to parental leave. It is possible that there will be an employer perception that the additional requirements involve more significant compliance costs than is the case for employers who do not currently comply with their statutory requirements in relation to the granting of parental leave.

There may also be differences in compliance costs between employers with manual and electronic payroll systems. These are not able to be estimated.

Key compliance cost issues identified in consultation

No other additional compliance cost issues have been identified in consultation.

Overlapping compliance requirements

The PPL scheme has been designed to complement existing procedures and requirements, with the effect that additional compliance requirements have been minimised. For example, information that is required to be collected for wage and time records is able to be provided to establish eligibility for PPL.

Steps taken to minimise compliance costs

A comprehensive range of information on rights and obligations related to both parental leave and PPL will be available from the Department of Labour. It is intended that the information that employers are required to provide to eligible employees will be available electronically from the Department of Labour. It is also intended that application forms for PPL will be designed in a manner that builds on providing copies of existing information, and to complement existing processes and requirements, rather than imposing additional obligations on employers.

The application process has also been designed so that the primary contact with the delivery agency will be with employees who are applying for PPL. Employers' involvement in the application process will primarily involve providing information to employees who intend to apply for PPL. Employers will only have direct contact with the delivery agency in limited circumstances where verification of that information is sought.

Consultation

Government agencies:

Ministry of Women's Affairs

The Treasury

State Services Commission

Ministry of Social Development

Accident Compensation Corporation

Inland Revenue

Department of Prime Minister and Cabinet

Ministry of Justice

Te Puni Kokiri

Ministry of Pacific Island Affairs

Ministry of Economic Development

Business Compliance Cost Unit (Ministry of Economic
Development)

The proposed PPL scheme has taken into account views of the above
agencies.

Officials have not undertaken any consultation with industry groups
on the proposed PPL scheme.

Hon Laila Harré

Parental Leave and Employment Protection (Paid Parental Leave) Amendment Bill

Government Bill

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**Parental Leave and Employment
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cl 1

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act **2001**.
- (2) In this Act, the Parental Leave and Employment Protection Act 1987¹ is called "the principal Act".

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¹ 1987 No 129

2 Commencement

- (1) **Section 5** comes into force on the day after the date on which this Act receives the Royal assent.
- (2) The rest of this Act comes into force on **1 July 2002**.

3 Application

- (1) This Act applies to an employee who takes parental leave from his or her employment in respect of a child if—
 - (a) the expected date of delivery of the child is on or after **1 July 2002**; or

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- (b) the child is born on or after **1 July 2002**; or
 - (c) in the case of an adoption, the date on which the employee, with a view to adoption, first assumes the care of the child is on or after **1 July 2002**.
- (2) An employee to whom this Act applies may, before **1 July 2002**,— 5
- (a) give notice of a wish to take parental leave, in which case the employee may begin his or her parental leave before **1 July 2002** as if this Act were already in force; and
 - (b) apply for a parental leave payment under **Part 7A**, in which case **section 71S** applies to the first payment of parental leave payment after **1 July 2002**. 10

Part 1

Paid parental leave

- 4 New paid parental leave provisions inserted in principal Act** 15
- (1) The long Title of the principal Act is amended by inserting, after the words “**pregnancy and parental leave**”, the words “**and to entitle certain employees to up to 12 weeks of paid parental leave**”. 20
 - (2) The principal Act is amended by inserting, after section 71, the following Part:

“Part 7A

“Payment for parental leave

“Preliminary provisions 25

“71A Purpose

The purpose of this Part is to entitle certain employees to up to 12 weeks of parental leave payments out of public money when they take parental leave from their employment in respect of a child. 30

“71B Overview

- “(1) Sections 71A to 71C** are preliminary provisions relating to the parental leave payment scheme.
- “(2) Section 71D** confers entitlements to parental leave payments, primarily on female employees. 35

**Parental Leave and Employment
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Leave) Amendment**

Part 1 cl 4

- “(3) **Section 71E** enables those employees to transfer their entitlements to their spouses in certain circumstances.
- “(4) **Sections 71F to 71I** contain restrictions on entitlements to parental leave payments.
- “(5) **Sections 71J to 71P** relate to the duration and amount of parental leave payments. 5
- “(6) **Section 71Q to 71ZA** relate to the administration of the parental leave payment scheme.
- “(7) This section is intended only as a guide to the general scheme and effect of this Part. 10
- “**71C Interpretation of this Part**
In this Part, unless the context otherwise requires,—
“**eligible employee** has the meaning given in **section 71D(2)**
“**non-statutory parental leave** means any rights and benefits in the nature of parental leave for which provision is made otherwise than by this Act 15
“**parental leave** includes non-statutory parental leave.
- “Entitlement to parental leave payment*
- “**71D Entitlement to parental leave payment** 20
- “(1) An employee is entitled to a parental leave payment under this Part if the employee— 20
- “(a) has given written notice to his or her employer of his or her wish to take parental leave (either in accordance with this Act or with the alternative provision under which the leave is taken); and 25
- “(b) takes parental leave from his or her employment in respect of a child; and
- “(c) is an eligible employee.
- “(2) An **eligible employee** is— 30
- “(a) a female employee who meets the criteria for maternity leave for the child under section 7; or
- “(b) an employee who meets the criteria for parental leave for the adopted child under section 8 or section 18 or section 24; or

- “(c) an employee to whom all or part of an entitlement to a parental leave payment is transferred under **section 71E**; or
- “(d) an employee who succeeds to all or part of an entitlement to a parental leave payment under **section 39A**. 5
- “(3) Rights and benefits to non-statutory parental leave (and section 4) are ignored when considering whether a person is an eligible employee under this section.
- “(4) This section is subject to **sections 71F to 71I** (restrictions on parental leave payments). 10

“Transfer of entitlement to spouse

“71E Entitlement may be transferred to spouse

- “(1) An eligible employee (within the meaning of **section 71D(2)(a) or (b)**) may transfer all or part of his or her entitlement to a parental leave payment in respect of a child to his or her spouse if the spouse— 15
- “(a) has given written notice to his or her employer of his or her wish to take parental leave (either in accordance with this Act or with the alternative provision under which the leave is taken); and 20
- “(b) takes parental leave from his or her employment in respect of the child; and
- “(c) meets the criteria for parental leave under any of sections 7(b), 8(1)(b), 17(c), 18(1)(b), 23(b), or 24(1)(b).
- “(2) Rights and benefits to non-statutory parental leave (and section 4) are ignored when considering whether the spouse meets the criteria for parental leave for the purpose of this section. 25
- “(3) To the extent that an employee transfers all or part of his or her entitlement to a parental leave payment to his or her spouse under this section,— 30
- “(a) references in this Part to the employee’s entitlement to a parental leave payment are references to the spouse’s entitlement to a parental leave payment; and
- “(b) references in this Part to the period of parental leave are references to the period of parental leave taken by the spouse; and 35

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Part 1 cl 4

- “(c) the amount of the parental leave payment is calculated according to the earnings of the spouse; and
- “(d) the entitlement that is transferred is deducted from the transferring employee’s entitlement to a parental leave payment. 5
- “(4) This section is subject to **sections 71F to 71I** (restrictions on parental leave payments).
- “Restrictions on parental leave payments*
- “71F **Subsequent parental leave payments**
- An employee is not entitled to a parental leave payment if— 10
- “(a) section 6 applies (restriction on taking of parental leave within 12 months of end of previous period of parental leave for another child); or
- “(b) any of sections 8(2), 18(2), or 24(2) applies (restriction on adoptive parent taking parental leave if they have previously taken parental leave for the same child as a birth parent). 15
- “71G **Parental tax credit**
- “(1) The purpose of this section is to ensure that employees do not receive both a parental leave payment under this Part and a parental tax credit (within the meaning of the Income Tax Act 1994) in respect of the same child. 20
- “(2) An employee loses his or her entitlement to a parental leave payment under this Part if either or both of the employee or his or her spouse has applied for, or received, any payment of parental tax credit in respect of the child. 25
- “(3) However, the employee may regain his or her entitlement to a parental leave payment under this Part by agreeing to offset the full amount of any parental tax credit applied for, or received, against the entitlement to parental leave payment. 30
- “(4) An agreement to offset binds the employee and any other person who has applied for, or received, the parental tax credit, without the need for that other person to have consented to the offset.

“71H Joint adoptions

“(1) If 2 spouses assume the care of a child with a view to adoption by them both jointly,—

“(a) the spouses must jointly nominate which 1 of them is to be primarily entitled to the parental leave payment; and 5

“(b) only the nominated spouse is the eligible employee for the purpose of **section 71D(2)(b)**.

“(2) However, **subsection (1)** does not limit **section 71E** (transfers of entitlement).

“71I Applications for payment

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“(1) An employee is not entitled to a parental leave payment unless the employee makes an application for payment in accordance with this section.

“(2) The application must—

“(a) be made before the date on which the employee returns to work or the parental leave otherwise ends; and 15

“(b) be made in the manner prescribed in regulations; and

“(c) specify the matters, and be accompanied by the documents, prescribed in regulations; and

“(d) state whether or not the employee wishes to transfer all or part of the entitlement under **section 71E**. 20

“Duration of parental leave payment

“71J Duration of parental leave payment

A parental leave payment is payable—

“(a) for 1 continuous period not exceeding 12 weeks; or 25

“(b) if part of the entitlement is transferred under **section 71E**, for 1 continuous period per employee, so long as the 2 continuous periods do not together exceed 12 weeks.

“71K Start of parental leave payment

A parental leave payment is payable to an employee for a period that begins on the date of commencement of his or her parental leave. 30

“71L End of parental leave payment

“(1) A parental leave payment is payable to an employee for a period that ends on the earlier of— 35

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- “(a) 12 weeks after the date of commencement of his or her parental leave; or
“(b) the date on which he or she returns to work.
- “(2) **Subsection (1)** applies despite the fact that the employee’s parental leave may end before that date if— 5
“(a) the employee’s employment is terminated due to redundancy or dismissal for cause:
“(b) the employee has a miscarriage or ceases to have the care of the child:
“(c) the employee or the child dies. 10
- “(3) However, the period for which a parental leave payment is payable to an employee terminates earlier than the date referred to in **subsection (1)**—
“(a) if the employee takes parental leave only from fixed term employment (within the meaning of section 66 of the Employment Relations Act 2000), in which case the payment stops on the date on which fixed term employment ends; or 15
“(b) if the employee’s spouse succeeds to the parental leave payment entitlement under **section 39A**, in which case the payment to the employee stops on the date of succession. 20
- “(4) This section is subject to **section 71E(3)** (effect of transfers of entitlement).
- “Amount of parental leave payment”* 25
- “71M Amount of parental leave payment**
- “(1) The rate of parental leave payment payable to any employee is the lesser of—
“(a) \$325 per week (or any adjusted amount set under **section 71N** or any other amount set under **section 710**); or 30
“(b) the greater of—
“(i) 100% of the employee’s ordinary pay before the commencement of the parental leave; or
“(ii) 100% of the employee’s average weekly earnings. 35
- “(2) In this Part, unless the context otherwise requires, **average weekly earnings** and **ordinary pay**—

- “(a) have the meanings given to them in the Holidays Act 1981; and
- “(b) mean the total of those amounts in respect of all the employments from which the employee takes parental leave as an eligible employee.

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“71N Annual adjustment of standard rates of parental leave payment

“(1) The rate of parental leave payment that applies under **section 71M(1)(a)** must be adjusted, by Order in Council, as at 1 July each year by any percentage movement upwards in the average ordinary time weekly earnings.

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“(2) In this section, **average ordinary time weekly earnings** means the average ordinary time weekly earnings (males and females combined) as determined by the Quarterly Employment Survey of wages published by Statistics New Zealand (after the deduction of standard tax and the earner levy payable on those earnings).

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“(3) The Order in Council must not reduce the amount.

“(4) The Order in Council comes into force, or is considered to come into force, on 1 July of the calendar year in which it is made, and applies to parental leave payment payable on and after that date.

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“71O Discretionary increases in payment amount by Order in Council

“(1) The Governor-General may, at any time, by Order in Council made on the recommendation of the Minister, increase the rate of parental leave payment that applies under **section 71M(1)(a)**.

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“(2) The Minister, in making the recommendation, may base his or her decision on any factors that he or she thinks fit.

“71P Amount of payment not affected by other non-statutory entitlements

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“(1) An entitlement to a parental leave payment under this Part is not affected or reduced by any other entitlement that the employee may have under the terms of any employment agreement.

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**Parental Leave and Employment
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Part 1 cl 4

- “(2) An employer must not, without the agreement of the employee, reduce any other entitlement that the employee may have under the terms of any employment agreement because of the employee’s entitlement to a payment under this Part. 5
- “(3) An employer who fails to comply with this section is liable to a penalty imposed by the Employment Relations Authority under the Employment Relations Act 2000 in respect of each employee to whom the purported reduction applies.
- “(4) Sections 133 to 136 of the Employment Relations Act 2000 10 apply with necessary modifications.

“Administration

“71Q Payments must come out of public money

There must, from time to time, be paid out of the Crown Bank Account, from money appropriated by Parliament for the purpose, all money required to be expended in providing parental leave payments under, and making other payments in connection with, this Part. 15

Compare: 1964 No 136 s 124

“71R Method of payment 20

- “(1) A parental leave payment is payable in arrears on the days or dates in the month that the chief executive from time to time determines.
- “(2) Every instalment of the payment must be paid into the bank account specified by the applicant for the purpose unless the chief executive in any particular case otherwise determines. 25
- “(3) For the purpose of the PAYE rules under the Income Tax Act 1994, a pay period, in respect of an instalment of the payment, is the period for which the payment is made.

“71S Backdating of payments 30

The first payment of a parental leave payment includes an amount in respect of the period from the start of the parental leave if the application is received on or after the date of commencement of the parental leave.

- “71T Obligation of employer to notify employee of payment entitlements**
- Every employer who receives a notice of an employee’s wish to take parental leave must, within 21 days after the receipt of the notice, inform the employee of the substance of this Part by giving the employee a notice in a form prescribed by the department. 5
- “71U Obligation to notify early return to work, etc**
- “(1) An employee must give notice if, during the period for which the employee is receiving a parental leave payment under this Part,—** 10
- “(a) the employee returns to work; or
- “(b) the employee’s fixed term employment ends.
- “(2) The notification must be made in the manner prescribed in regulations and specify the matters, and be accompanied by the documents, prescribed in regulations.** 15
- “71V Non-return to work does not affect payment**
- “(1) An employee is not required to refund any parental leave payment under this Part because the employee—**
- “(a) does not return to work at the end of his or her parental leave; or 20
- “(b) does not accept employment offered by the employer during the period of preference in obtaining employment.
- “(2) Sections 46 and 47 do not apply for the purpose of this Part.** 25
- “71W Obligation to supply information**
- “(1) The department may, by written notice, request an employee who has applied for a parental leave payment, and any employer of that employee, to supply to the department any information in the employee’s or the employer’s (as the case may be) possession relating to the employee’s entitlement or continued entitlement to payment under this Part.** 30
- “(2) The employee or the employer must comply with a request under this section within a reasonable period to be set by the department.** 35

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Leave) Amendment**

Part 1 cl 4

“71X Recovery of debts by department

“(1) A sum (an **overpayment**) paid under this Part is a debt due to the department if the sum was—

“(a) paid to a person in excess of the amount to which the person is entitled under this Part; or

“(b) paid to a person who has no entitlement to it under this Part.

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“(2) The department may—

“(a) recover the debt by way of proceedings; or

“(b) deduct all or part of the debt from any amount payable to that person under this Part.

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“(3) This section is subject to **section 71Y** (recovery of payments).

Compare: 2001 No 49 s 248

“71Y Recovery of payments

The department may not recover any payment or part of a payment under this Part that was paid as a result of an error not intentionally contributed to by the recipient if the recipient—

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“(a) received the payment in good faith; and

“(b) has so altered his or her position in reliance on the validity of the payment that it would be inequitable to require repayment.

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Compare: 2001 No 49 s 251

“71Z Offence to mislead department

“(1) A person commits an offence who, for the purpose described in **subsection (2)**,—

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“(a) makes any statement knowing it to be false in any material particular; or

“(b) does or says anything, or omits to do or say anything, with the intention of misleading or attempting to mislead the department or any other person concerned in the administration of this Act.

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“(2) The purpose is for that person or another person to receive or to continue to receive any payment or entitlement under this Part.

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“(3) A person who commits an offence against this section is liable on summary conviction to a fine not exceeding \$5,000.

Compare: 2001 No 49 s 308

“71ZA **Chief executive may delegate**

- “(1) The chief executive may delegate the administration of all or any part of this Part to 1 or more persons. 5
- “(2) The delegation must be in writing.
- “(3) Section 41 of the State Sector Act 1988 applies if the delegation is to a chief executive or to a member of the senior executive service or to an employee (as those terms are defined in that Act). 10
- “(4) If the delegation is to another person,—
- “(a) the delegation may not include the power to delegate under this section; and
- “(b) subject to any general or special directions given or conditions imposed by the chief executive, the person to whom the delegation is made may administer this Part in the same manner and with the same effect as if this Act (and not the delegation) so provided; and 15
- “(c) every person purporting to act under the delegation is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.” 20

5 Regulations

- (1) Section 73 of the principal Act is amended by inserting, after paragraph (a), the following paragraphs: 25
- “(aa) prescribing the manner in which an application for, or other notices relating to, a parental leave payment must be made:
- “(ab) prescribing the information that employees and employers must give in, or the documents that employees or employers must attach to, an application for, or other notice relating to, a parental leave payment: 30
- “(ac) prescribing the way in which adjustments must be made under **section 71N** and making the adjustments required under that section: 35
- “(ad) increasing the amount under **section 71O**:

**Parental Leave and Employment
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Leave) Amendment**

Part 1 cl 5

- “(ae) extending the class or classes of person entitled to a parental leave payment under **Part 7A**.”
- (2) Section 73 of the principal Act is amended by adding the following subsections:
- “(2) No regulations may be made under this section about parental leave payments unless they are made in accordance with a recommendation of the Minister. 5
- “(3) The Minister must not make that recommendation without first consulting with any persons or organisations that the Minister considers appropriate, having regard to the subject matter of the proposed regulations. 10
- “(4) Regulations made under **subsection (1)(ad) or (ae)**,—
- “(a) if made on or before 30 June in any year, expire on the close of December of that year except in so far as they are expressly confirmed by Act of Parliament passed during that year; and 15
- “(b) if made on or after 1 July in any year, expire on the close of 31 December in the following year except in so far as they are expressly confirmed by Act of Parliament passed before the end of that following year. 20
- “(5) The expiry of regulations under **subsection (4)** does not affect the validity of any act done pursuant to, or in accordance with, the regulations before the date on which the regulations expire.”
- 6 Amendments to other Acts relating to parental leave payments 25**
The Acts specified in **Schedule 1** are amended as shown in that schedule.

Part 2

Other miscellaneous amendments to principal Act 30

- 7 Interpretation**
- (1) Section 2(1) of the principal Act is amended by repealing the definition of **employee**, and substituting the following definition:
- “**employee** has the meaning given in section 5 of the Employment Relations Act 2000”. 35

- (2) Section 2(1) of the principal Act is amended by repealing the definition of **spouse**, and substituting the following definition:
“**spouse** means either partner to—
“(a) a legal marriage; or
“(b) a de facto relationship within the meaning of section 2D of the Property (Relationships) Act 1976”.
- (3) Section 2(1) of the principal Act is amended by repealing the definition of **union**, and substituting the following definition:
“**union** means a union registered under the Employment Relations Act 2000.”
- (4) Section 2(1) of the principal Act is amended by inserting the following definitions, in their appropriate alphabetical order:
“**chief executive** means the chief executive of the department
“**department** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Part
“**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act”.
- (5) Section 2 of the principal Act is amended by adding the following subsection:
“(3) **Section 72A** applies if it is necessary, for the purpose of applying any of the provisions of sections 7(b), 8(1)(b), 17(c), 18(1)(b), 23(b), and 24(1)(b), to ascertain whether an employee has worked at least an average of 10 hours a week during a 12-month period.”
- 8 New section 4 substituted**
The principal Act is amended by repealing section 4, and substituting the following section:
“**4 Application of this Act to employees who have non-statutory rights to parental leave**
“(1) Parts I to V apply to all employees except employees who have rights and benefits in the nature of parental leave that are,—

**Parental Leave and Employment
Protection (Paid Parental
Leave) Amendment**

Part 2 cl 8

- “(a) in their overall effect, as favourable to that employee as, or more favourable to that employee than, the rights and benefits provided for in Parts I to V; and
- “(b) provided under a comprehensive employment agreement or other arrangement (other than this Act). 5
- “(2) An employment agreement or other arrangement is **comprehensive** if it effectively addresses all of the following matters:
- “(a) the conditions of eligibility for any parental leave:
- “(b) the duration of parental leave:
- “(c) the degree of protection provided for the employee’s position in the employment of the employer during, and subsequent to, any absence on parental leave: 10
- “(d) the employer’s obligation or lack of an obligation to pay remuneration during the parental leave:
- “(e) the procedural requirements relating to parental leave. 15
- “(3) The provisions of an employment agreement or other arrangement that is not comprehensive are of no effect in so far as the provisions relate to parental leave.
- “(4) **Part 7A** applies to all employees.”
- 9 Role of midwives 20**
- The principal Act is amended as shown in **Schedule 2**.
- 10 Adjustments to eligibility criteria based on average hours of work and allowing for periods of authorised leave**
- The principal Act is amended by omitting from sections 7(b), 8(1)(b), 17(c), 18(1)(b), 23(b), and 24(1)(b) the words “for at least 10 hours in each week”, and substituting in each case the words “for at least an average of 10 hours a week during that period”. 25
- 11 New section 39A inserted 30**
- The principal Act is amended by inserting, after section 39, the following section:
- “39A Succession to employee’s entitlements**
- “(1) A spouse of an employee may succeed to the employee’s rights to parental leave under this Act if, at any time after the 35

- employee gives notice to his or her employer of a wish to take parental leave,—
- “(a) the employee dies; or
 - “(b) the spouse becomes the sole guardian of the child, to the exclusion of the employee. 5
- “(2) However, the spouse may succeed only if—
- “(a) the spouse meets the criteria for parental leave under any of sections 7(b), 8(1)(b), 17(c), 18(1)(b), 23(b), or 24(1)(b); and
 - “(b) the spouse gives reasonable notice to his or her employer, and to the department (if the employee had applied for a parental leave payment under **Part 7A**), of his or her wish to succeed under this section. 10
- “(3) The spouse succeeds under this section on the later of—
- “(a) the date of the employee’s death or the date when the spouse becomes sole guardian, as the case may be; or 15
 - “(b) the date on which the employee’s bereavement leave expires (if any).
- “(4) The first payment of parental leave payment to the spouse includes an amount for the period from the date of succession if the notice to the department is received on or after that date. 20
- “(5) A succession under this section is treated, for the purpose of **Part 7A**, as if it were a transfer under **section 71E**, and that Part applies with necessary modifications.”
- 12 Employer’s obligations in respect of remuneration and holiday pay 25**
- Section 42(3) of the principal Act is amended by omitting the words “section 24(1) of the Holidays Act 1981”, and substituting the words “section 7A(2) of the Holidays Act 1981”.
- 13 State employees 30**
- (1) Section 55(1) of the principal Act is amended by omitting the words “(not being a State employee)”.
 - (2) Section 56(1) of the principal Act is amended by omitting the words “(not being a State employee)”.
 - (3) Section 2(1) of the principal Act is consequentially amended by repealing the definitions of the terms **State employee** and **State services**. 35

14 Remedies

Section 65 of the principal Act is amended by omitting the words “any decision made under section 60 or section 61(3) or section 63(3) of this Act”, and substituting the words “any decision made for the purposes of this Act”.

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15 Non-compliance with formal requirements

Section 68 of the principal Act is amended by adding the following subsections:

“(3) **Subsection (4)** applies if—

“(a) an employee fails to comply with all or any of the notice requirements of Part IV; and

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“(b) the employee or any person acting on behalf of an employee applies to the Employment Relations Authority or the Court for relief.

“(4) The Authority or the Court must waive the failure, and in appropriate cases confirm the right of the employee to take parental leave, if satisfied that—

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“(a) the employee’s failure to comply with the notice requirements was in good faith; and

“(b) the extent to which the employee did or did not comply with the notice requirements was reasonable in all the circumstances of the case.

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“(5) **Subsection (4)** does not limit the generality of subsections (1) and (2).”

16 New section 70A inserted

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The principal Act is amended by inserting, after section 70, the following section:

“**70A Role of Labour Inspectors**

A Labour Inspector may, on behalf of an employee,—

“(a) make a parental leave complaint under section 56; or

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“(b) apply to the Employment Relations Authority or the Court under section 68; or

“(c) otherwise assist an employee to enforce his or her rights under this Act.”

- 17 New section 72 substituted**
- (1) The principal Act is amended by repealing section 72, and substituting the following section:
- “72 Contracting out: holiday pay while on parental leave**
- “(1) Any employment agreement may, in addressing the matter of holiday pay for an employee who takes any period of parental leave otherwise than in accordance with this Act, provide that the employee is entitled to holiday pay,—
- “(a) in respect of annual holidays, at the same rate as, or at a higher rate than, the rate referred to in section 42(2):
- “(b) in respect of public holidays, of the same amount as, or of a greater amount than, the amount referred to in section 42(3).
- “(2) This section applies despite section 33 of the Holidays Act 1981.”
- (2) Section 33 of the Holidays Act 1981 is consequentially amended by omitting the expression “section 72(4)”, and substituting the expression “section 72(1)”.
- 18 New section 72A inserted**
- The principal Act is amended by inserting, after section 72, the following section:
- “72A Eligibility criteria based on average hours of work and allowing for periods of authorised leave**
- “(1) An employee is treated as having worked in the employment of the same employer for at least an average of 10 hours a week during a 12-month period if the employee has worked, in the employment of that employer,—
- “(a) no less than an average of 10 hours a week during that period; and
- “(b) either no less than 1 hour in every week during that period or no less than 40 hours in every month during that period.
- “(2) An employee is treated as having worked in the employment of an employer for an hour, despite having been absent from work, if the employee would normally have been at work for that employer for that hour but was either—
- “(a) absent on leave with pay for that hour; or

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- “(b) on leave without pay (other than parental leave) with the employer’s agreement for that hour; or
 - “(c) entitled to a payment of weekly compensation under the Injury Prevention, Rehabilitation, and Compensation Act 2001 for that hour; or 5
 - “(d) on protected voluntary service or training (within the meaning of the Volunteers Employment Protection Act 1973) for that hour.
- “(3) The hours that the employee would normally have been at work must be calculated— 10
- “(a) in accordance with the terms of the employee’s employment; or
 - “(b) by reference to the employee’s hours of work before any period of leave without pay began, in the case of a period of leave without pay that started longer than 12 months ago. 15
- “(4) **Week** means the employee’s ordinary working week.”

19 Gender-neutral language

The principal Act is amended as set out in **Schedule 3**.

20 Terminology updates

The principal Act is amended as set out in **Schedule 4**.

Schedule 1
**Amendments to other Acts relating to paid
parental leave**

s 6

Employment Relations Act 2000 (2000 No 24)	
Add to the definition of homeworker in section 5:	5
“and, for the purposes of this definition, the definition of dwellinghouse does not apply”.	
Insert in section 223(1), after paragraph (d):	
“(da) the Parental Leave and Employment Protection Act 1987; and”.	10
Income Tax Act 1994 (1994 No 164)	
Insert, after section CC 1(1)(c):	
“(ca) all parental leave payments paid under Part 7A of the Parental Leave and Employment Protection Act 1987:”.	
Insert in the definition of full-time earner in section KC 3(3), before paragraph (b):	15
“(ac) that person being on parental leave during a week in respect of which a parental leave payment is payable under Part 7A of the Parental Leave and Employment Protection Act 1987:”.	20
Repeal section KD 2AB(1) and substitute:	
“(1) The qualifying person for a dependent child that is born on or after 1 October 1999 is allowed a credit of tax, called the parental tax credit, for up to the first 56 days after the date of the dependent child’s birth if—	25
“(a) neither the person nor his or her spouse receive a specified payment or have a suspended entitlement to an income-tested benefit at any time during that period (in this subpart called the entitlement period):	
“(b) neither the person nor his or her spouse (within the meaning of the Parental Leave and Employment Protection Act 1987) receive a parental leave payment under Part 7A of that Act at any time in respect of the child.”	30
Insert in paragraph (d) of the definition of employee in section OB 1, after the expression “(f),” , the expression “(fa),” .	35
Add to paragraph (a) of the definition of employer in section OB 1:	
“(v) in relation to parental leave payments paid under Part 7A of the Parental Leave and Employment	

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Income Tax Act 1994 (1994 No 164)—continued

Protection Act 1987, the chief executive of the department for the time being responsible for the administration of that Act:”.

Insert in paragraph (b) of the definition of **employer** in section OB 1, after the expression “(f),”, the expression “(fa),”.

5

Insert in the definition of **full-time earner** in section OB 1, after paragraph (a)(v):

“(va) if, in any week, any person of the kind referred to in any of subparagraphs (A) to (D) of subparagraph (v) is unable to be engaged in an employment by reason of being on a period of parental leave under the Parental Leave and Employment Protection Act 1987 in respect of which a parental leave payment under **Part 7A** of that Act is payable, that person is treated as having been engaged (in that week) in that employment for the number of hours in which (but for that leave) the Commissioner is satisfied the person would have been engaged:”.

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Insert in the definition of **salary or wages** in section OB 1, after paragraph (f):

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“(fa) all parental leave payments paid under **Part 7A** of the Parental Leave and Employment Protection Act 1987; and”.

Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49)

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Insert in section 11(1), after paragraph (a):

“(aa) any parental leave payments paid under **Part 7A** of the Parental Leave and Employment Protection Act 1987; or”.

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Add to clause 44 of Schedule 1:

“(6) Parental leave must not be treated as paid leave for the purposes of this clause only because the person may be entitled to a payment in respect of the leave under **Part 7A** of the Parental Leave and Employment Protection Act 1987.”

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Social Security Act 1964 (1964 No 136)

Insert in paragraph (d) of the definition of **income** in section 3, after subparagraph (iv):

“(iva) any parental leave payments paid under **Part 7A** of the Parental Leave and Employment Protection Act 1987:”.

Schedule 2
Amendments to principal Act relating to role
of midwives

Section 2(1)

- Repeal the definition of **expected date of delivery** and substitute: 5
“**expected date of delivery**, in respect of a pregnant woman,
means the date certified in writing by a medical practitioner or
midwife as being the date on which that medical practitioner
or midwife diagnoses that the pregnant woman may give birth
to a child”. 10
- Insert, after the definition of **maternity leave**:
“**midwife** means a person whose name for the time being
appears in that part of the Register of Nurses kept under
section 16 of the Nurses Act 1977 that relates to registered
midwives”. 15

Section 9

Omit from subsection (2)(a) the words “medical practitioner’s”.

Section 13

Repeal and substitute:

- “13 **Right of medical practitioner or midwife to determine** 20
date of commencement of maternity leave
- “(1) If a registered medical practitioner or midwife considers that
the female employee, being pregnant, should begin her mater-
nity leave before the expected date of delivery, the medical
practitioner or midwife may give to the female employee a 25
certificate specifying the date on which, in the medical practi-
tioner’s or midwife’s opinion, that female employee should
begin her maternity leave.
- “(2) If the female employee gives that certificate to her employer,
her maternity leave, despite section 10 or section 12 or section 30
14, begins on the earlier of—
“(a) the date specified in the certificate; or
“(b) the date of confinement.”

Section 31

Insert in subsection (3), after the words “certificate from a registered 35
medical practitioner” in both places where they appear, the words
“or a midwife”.

Schedule 3
**Amendments to principal Act: gender-
neutral language**

s 19

Section 2(1)

Omit from paragraph (a)(ii) of the definition of **parental leave** the words “paternity leave” and substitute the words “partner’s/paternity leave”. 5

Repeal the definition of **paternity leave** and substitute:

“**partner’s/paternity leave**—

“(a) means partner’s/paternity leave to which an employee is entitled in accordance with this Act; and 10

“(b) includes, for the purposes of Parts VI and VII, rights and benefits in the nature of partner’s leave to which an employee is entitled by virtue of—

“(i) any Act other than this Act; or 15

“(ii) any contract of employment”.

Section 5

Omit the words “paternity leave” and substitute the words “partner’s/paternity leave”.

Part 2

Omit from the heading the words “**Paternity leave**” and substitute the words “**Partner’s/paternity leave**”. 20

Section 17 and heading to section 17

Omit the words “paternity leave” in both places where they occur and substitute in each case the words “partner’s/paternity leave”. 25

Omit the word “male” in both places where it occurs.

Section 18 and heading to section 18

Omit the words “paternity leave” wherever they occur and substitute in each case the words “partner’s/paternity leave”.

Omit the words “**adoptive father**” and substitute the words “**other adoptive parent**”. 30

Omit the word “male” from subsection (1).

Omit the words “by him or by him and his spouse jointly” from subsection (1)(a) and substitute the words “by that employee or by that employee and that employee’s spouse jointly”. 35

Omit the word “male” from subsection (2).

Insert in subsection (2), after the word “he”, the words “or she”.

Section 19 and heading to section 19

Omit the words “paternity leave” in both places where they occur and substitute in each case the words “partner’s/paternity leave”. 40

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Schedule 3

Section 20 and heading to section 20

Omit the words “paternity leave” in both places where they occur and substitute in each case the words “partner’s/paternity leave”.

Omit the words “by him or by him and his spouse jointly” from paragraph (b) and substitute the words “by that employee or by that employee and that employee’s spouse jointly”. 5

Section 21 and heading to section 21

Omit the words “paternity leave” in both places where they occur and substitute in each case the words “partner’s/paternity leave”.

Omit the word “male”. 10

Section 22 and heading to section 22

Omit the words “paternity leave” in both places where they occur and substitute in each case the words “partner’s/paternity leave”.

Omit the words “male employee and his employer” and substitute the words “employee and his or her employer”. 15

Section 25

Omit the word “male” from subsection (2).

Insert in subsection (2), after the word “his”, the words “or her”.

Section 26(4)

Repeal and substitute: 20

“(4) The taking by an employee of any partner’s/paternity leave in accordance with this Act does not reduce the period of extended leave to which that employee or his or her spouse is entitled in accordance with this Act.” 25

Section 28

Omit the words “paternity leave” and substitute the words “partner’s/paternity leave”. 25

Section 29

Omit the words “a male” from paragraph (b) and substitute the word “an”. 30

Omit the words “paternity leave” wherever they occur and substitute in each case the words “partner’s/paternity leave”.

Section 31(3)

Omit the words “a female employee” from paragraph (b) and substitute the words “a pregnant employee”. 35

Omit the words “a male employee” from paragraph (c) and substitute the words “the pregnant woman’s spouse”.

Omit the words “the male employee” in both places where they occur in paragraph (c) and substitute in each case the words “the employee”. 40

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Schedule 3

Section 32(d)(ii)

Omit the words “paternity leave” and substitute the words “partner’s/paternity leave”.

Section 45(4)

Omit the words “paternity leave” wherever they occur and substitute in each case the words “partner’s/paternity leave”. 5

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Schedule 4

Amendments to principal Act: terminology updates

Section 2(1)

Repeal the definition of the term **contract of employment**.

Insert, in its appropriate alphabetical order:

“**employment agreement** has the meaning given to that term in section 5 of the Employment Relations Act 2000 and, for the avoidance of doubt, includes any employment contract that continues in force under section 242 of the Employment Relations Act 2000”.

Omit from paragraph (b)(ii) of the definition of **extended leave** the words “contract of employment” and substitute the words “employment agreement”.

Omit from paragraph (b)(ii) of the definition of **maternity leave** the words “contract of employment” and substitute the words “employment agreement”.

Omit from paragraph (b)(ii) of the definition of **parental leave** the words “contract of employment” and substitute the words “employment agreement”.

Omit from the paragraph (b)(ii) of definition of **paternity leave** the words “contract of employment” and substitute the words “employment agreement”.

Section 5

Omit the words “contract of employment” and substitute the words “employment agreement”.

Section 6(a)(ii)

Omit the words “contract of employment” and substitute the words “employment agreement”.

Section 8(2)(b)

Omit the words “contract of employment” and substitute the words “employment agreement”.

Section 18(2)(b)

Omit the words “contract of employment” and substitute the words “employment agreement”.

Section 24(2)(b)

Omit the words “contract of employment” and substitute the words “employment agreement”.

Section 32(c) and (d)

Omit the words “contract of employment” and substitute in each case the words “employment agreement”.

Section 43(b)(i)

Omit the words “contract of employment” and substitute the words “employment agreement”.

Section 45(4)(c)(ii)

Omit the words “contract of employment” and substitute the words “employment agreement”. 5

Section 53

Omit the words “contract of employment” and substitute the words “employment agreement”.

Schedule

Omit from clause 2 the words “contract of employment” and substitute the words “employment agreement”. 10