

In Confidence

Office of the Minister for Economic Development

Chair, Cabinet Legislation Committee

Regulatory Systems (Economic Development) Amendment Bill, the Regulatory Systems (Housing) Amendment Bill, and the Regulatory Systems (Workforce) Amendment Bill: Approval for Introduction and new amendment to Parental Leave and Employment Protection Act 1987

Proposal

- 1 This paper seeks Cabinet's approval to introduce three Regulatory Systems Bills, the Regulatory Systems (Economic Development) Amendment Bill, Regulatory Systems (Housing) Amendment Bill, Regulatory Systems (Workforce) Amendment Bill, ('the Bills') into the House of Representatives.
- 2 I am proposing that the Bills be introduced under Standing Order 269, which provides that the Business Committee may determine any two or more bills are cognate bills which was agreed to by the committee on 9 May 2018.
- 3 I also propose Cabinet approves amending the *Parental Leave and Employment Protection Act 1987* (PLEPA) through the Regulatory Systems (Workforce) Amendment Bill to clarify that the spouse or partner can become the primary carer of a child in cases where:
 - 3.1 the spouse or partner takes primary for responsibility for the care, development, and upbringing of the child, after the biological mother ceases to have a role in the care of the child for any reason¹, such as if she dies; and
 - 3.2 the biological mother does not have an entitlement to parental leave payments or does not take up that entitlement by giving notice to her employer.

Policy

- 4 The three Regulatory Systems Amendment Bills are omnibus bills that contain amendments to legislation to improve regulatory systems that the Ministry of Business, Innovation and Employment ('MBIE') is responsible for. The Bills will make technical amendments in the Social Housing, Housing, Commerce and Consumer Affairs, Energy and Resources and Workplace Relations and Safety portfolios at the same time.
- 5 The policy objective of the RSB2 is to maintain the effectiveness and efficiency of the regulatory systems administered by MBIE. Keeping these systems up to date reduces the chance of regulatory failure. The amendments will achieve this by:

¹ PLEPA describes situations where the biological mother ceases to have a role in the care of the child as "to the exclusion of the employee (mother)". To reflect the PLEPA description, the *Regulatory Systems (Workforce) Amendment Bill* also uses "to the exclusion of the employee (mother)" for these situations.

- 5.1 clarifying and updating statutory provisions in each Act amended, to give effect to the purpose of that Act and its provisions;
 - 5.2 addressing regulatory duplication, gaps, errors, and inconsistencies within and between different pieces of legislation; and
 - 5.3 removing unnecessary compliance costs.
- 6 The proposed changes to the individual statutes are uncontroversial and do not warrant stand-alone bills. However, the benefits of the changes across all portfolios taken together are sufficient to justify the Bills. Together, the amendments will make a significant improvement to the effectiveness and efficiency of the regulatory systems affected.
- 7 The previous Cabinet approved the majority of the policy decisions in December 2016 and April 2017 [EGI-16-MIN-0357 and EGI-17-MIN-0071 refer].
- 8 This Cabinet agreed to the previous decisions as well as and including in the Bills amendments to the Geographical Indications (Wine and Spirits) Registration Act 2006, Insolvency Act 2006 and the Companies Act 1993 in April 2018.
- 9 This Cabinet also agreed to rescind the previous government's decision to amend section 360 and Schedule 4 of the Companies Act 1993 [CAB-18-MIN-0143.01].
- 10 The Bills have a proposed category 3 priority on the 2018 Legislation Programme (to be passed if possible in the year).

The Parental Leave and Employment Protection Act 1987

Current legislation does not reflect the aim of the parental leave payment scheme

- 11 The aim of the parental leave payment scheme is to enable the primary carer of a young child to access parental leave payments (if otherwise eligible) that contribute to income stability, so they can support the health of the child (e.g. bonding and development) while also maintaining connection to the workforce.
- 12 A recent case highlighted that even when the spouse or partner is acting as the primary carer of a child and meets all other eligibility criteria², they may not always be able to receive parental leave payments.
- 13 Under the current legislation, the spouse or partner is not defined as the 'primary carer' of a child in cases where:
- 13.1 the spouse or partner takes primary responsibility for the care, development, and upbringing of the child, after the biological mother ceases to have a role in the care of the child for any reason; and
 - 13.2 the biological mother does not have an entitlement to parental leave payments or does not take up that entitlement by giving notice to her employer.

² The applicant must have worked an average of at least 10 hours a week for any 26 out of the 52 weeks immediately before the due date or the date the child came into their care, and applied for/taken leave or stopped working to care for the child now in their care.

- 14 People other than the biological mother and spouse or partner (e.g. adoptive parent, whāngai or Home for Life parents) can already become a primary carer under PLEPA regardless of the mother's entitlement status.
- 15 A gap exists between the intent of the parental leave payment scheme and the legislation, as demonstrated by the unequal treatment of spouses or partners in comparison to other types of primary carers.
- 16 MBIE explored several ways to address this inconsistency, including legislative change after a review of the PLEPA or through the Regulatory Systems Bills. Amendment of the PLEPA through the Regulatory Systems (Workforce) Amendment Bill provides the greatest certainty, timeliness and ability to mitigate risks over the short and longer-term.

Proposal to amend the legislation to better align it with the aim of the parental leave payment scheme

- 17 I propose amending PLEPA through the Regulatory Systems (Workforce) Amendment Bill to clarify that the spouse or partner becomes the primary carer of a child in specific cases.
- 18 This would apply within the first 12 months of the child's life, in cases if:
 - 18.1 the spouse or partner takes primary for responsibility for the care, development, and upbringing of the child, after the biological mother ceases to have a role in the care of the child for any reason; and
 - 18.2 the biological mother does not have an entitlement to parental leave payments or does not take up that entitlement by giving notice to her employer.
- 19 I seek agreement:
 - 19.1 to the legislative changes contained in the Regulatory Systems (Workforce) Amendment Bill to give legal effect to this proposal; and
 - 19.2 for the Minister for Workplace Relations and Safety to be able to make the technical, policy and administrative changes necessary to implement this proposal.

MBIE considers that the risks associated with the proposed amendment are negligible

- 20 The vast majority of these infrequent cases will be addressed through this amendment. However, the legislation has become increasingly strained since its introduction in 1987 as parental leave policy has outgrown the fundamental principles underlying PLEPA. Consequently, it is possible that spouses or partners acting as the primary carer in some cases are still not able to receive parental leave payments after the proposed amendment, but this is likely to be rare. MBIE plans to address this risk through advice to the Minister for Workplace Relations and Safety on a wider review of parental leave.
- 21 This amendment is unlikely to make the parental leave payment scheme vulnerable to 'gaming' of the system, since the parental leave payment is a relatively low level payment, spouses or partners must stop work during the time period they receive the payment, and there is a \$15,000 penalty for false declarations.

Impact analysis

- 22 A Regulatory impact statement (RIS) was completed for the amendment to clarify inspectors' ability to investigate whether workers are employees under the Employment Relations Act 2000 in April 2017 [EGI-17-MIN-0071].
- 23 A RIS was not prepared for the majority of proposals as they were exempt, being of a minor and/or technical nature.
- 24 The Regulatory Quality Team at the Treasury has determined that the regulatory decisions sought in this paper are exempt from the requirement to provide a Regulatory Impact Assessment as they are likely to have minor impacts.

Compliance

- 25 The Bills comply with:
 - 25.1 the principles of the Treaty of Waitangi;
 - 25.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 25.3 the disclosure statement requirements (attached to this paper);
 - 25.4 the principles and guidelines set out in the Privacy Act 1993;
 - 25.5 relevant international standards and obligations;
 - 25.6 the *LAC Guidelines on the Process and Content of Legislation* (2014 edition).
- 26 The Ministry of Justice's advice to the Attorney-General on the Bills' consistency with the Bill of Rights Act will include an assessment of the PLEPA amendment.

Consultation

- 27 Amendments in the Regulatory Systems (Economic Development) Amendment Bill: The Treasury, Inland Revenue, Intellectual Property Office of New Zealand, Insolvency and Trustee Service, External Reporting Board, Companies Office, Business NZ, Takeovers Panels, Te Pūni Kōkiri, ACC, the Ministries of/for Justice, Women, Pacific Peoples, Social Development, Health, and Education were consulted.
- 28 Amendments in the Regulatory Systems (Housing) Amendment Bill consultation took place with Community Housing Aotearoa and the Commission for Financial Capability.
- 29 Amendments in the Regulatory Systems (Workforce) Amendment Bill consultation took place with the New Zealand Council of Trade Unions and Business NZ were consulted on the policy intent of the amendment clarifying labour inspectors' ability to investigate whether workers are employees. Consultation on the *Parental Leave and Employment Protection Act 1987* took place with Inland Revenue, the Treasury, Ministry of Social Development, Ministry for Children (Oranga Tamariki), Ministry of Health, Ministry of Justice, Ministry for Women, Te Puni Kōkiri, Ministry for Pacific Peoples, State Services Commission and the Department of Prime Minister and Cabinet.

Financial Implications

- 30 Financial implications associated with this paper are very unlikely.
- 31 The amendment to PLEPA is likely to have minimal impact on the uptake of parental leave payments, and the fiscal impact of this can be absorbed within the margin of error in the forecast for the Paid Parental Leave Payments appropriation. The evidence suggests that cases where spouses or partners apply for parental leave payments as primary carers due to death or after the biological mother ceases to have a role in the care of the child for any reason are extremely rare, and following reforms in 2015, most cases of this type were assumed to be covered by the entitlement and are therefore already built into forecasts.

Binding on the Crown

- 32 The provisions in the Bills will bind the Crown to the extent that the principal Acts bind the Crown.

Allocation of decision making powers

- 33 In the Regulatory Systems (Economic Development) Amendment Bill, the Bill proposes to provide the Court with the power to reverse the cancellation of a debtor's debts that occurs upon their discharge from the No Asset Procedure (NAP), which is the formal insolvency procedure set out in the Insolvency Act for dealing with a debtor who has no realisable assets. The power will be able to be exercised at any time within 2 years of the bankrupt's discharge. The effect of the reversal is that the cancelled debts become again enforceable (along with any penalties and interest that may have accrued on those debts).
- 34 The exercise of this power may have a significant impact on the debtor's obligations to the creditors whose debts are covered by the NAP and in respect of which the debtor has received a discharge. However, the Court will only have grounds to reverse the cancellation if the debtor was wrongly admitted to the NAP, for example, because the debtor concealed assets or misled the Official Assignee who is responsible for the administration of the NAP.

Associated regulations

- 35 Regulations will not be required to bring the Bills into operation.

Other instruments

- 36 The Bills do not include any provision empowering the making of other instruments that are deemed to be legislative instruments or disallowable instruments, or both.

Definition of Minister/department

- 37 There are no definitions in the Bills that require clearance from the Cabinet Office.

Commencement of legislation

- 38 The Regulatory Systems (Economic Development) Amendment Bill will come into force two months after Royal Assent.
- 39 The Regulatory Systems (Housing) Amendment Bill and Regulatory Systems (Workforce) Amendment Bill will come into force on the day after Royal assent.

Parliamentary stages

- 40 I propose that the Bills be introduced to the House of Representatives in August 2018.
- 41 I propose that the three bills be referred to the relevant select committees as follows for consideration:
 - 41.1 The Regulatory Systems (Economic Development) Amendment Bill is referred to the Economic Development, Science and Innovation committee,
 - 41.2 Regulatory Systems (Housing) Amendment Bill is referred to the Social Services and Community committee, and the
 - 41.3 Regulatory Systems (Workforce) Amendment Bill is referred to the Education and Workforce committee.
- 42 On 9 May 2018, the House Business Committee agreed that the proposed Bills be introduced as omnibus bill (SO 263(c)) and that the Bills be considered as cognate bills for their first, second, and third readings (SO 269(1)). This means as a cognate bill, the Bills can proceed through the Parliamentary process as one Bill.

Recommendations

The Minister for Economic Development recommends that the Committee:

- 1 note that the Regulatory Systems (Economic Development) Amendment Bill, Regulatory Systems (Housing) Amendment Bill, Regulatory Systems (Workforce) Amendment Bill holds a proposed category 3 priority on the 2018 legislation Programme (to be passed if possible in the year).
- 2 note that the House Business Committee agreed that the three proposed Regulatory System Amendment Bills be approved as omnibus bills and be considered as cognate bills under Standing Order 263(c) and Standing Order 269(1);
- 3 note that as a cognate bill the Regulatory Systems Amendment Bills can proceed through the Parliamentary process as one Bill;
- 4 note that the policy objective of the Regulatory Systems Amendment Bills is to maintain the effectiveness and efficiency of the regulatory systems administered by the Ministry of Business, Innovation and Employment;
- 5 agree to clarify in the *Parental Leave and Employment Protection Act 1987* that a spouse or partner becomes a primary carer within the first 12 months of the child's birth only in circumstances where: the biological mother dies or for any other reasons the spouse or partner becomes the person who has permanent primary responsibility, to the exclusion of the mother, for the care, development, and upbringing of the child; and the biological mother does not have an entitlement to parental leave payments or does not take up that entitlement by giving notice to her employer; and;
- 6 agree to the legislative changes contained in the Regulatory Systems (Workforce) Amendment Bill to give legal effect to the proposal to clarify the *Parental Leave and Employment Protection Act 1987*;
- 7 authorise the Minister for Workplace Relations and Safety, in consultation with the Minister for Economic Development, to make the technical, policy and administrative changes necessary to implement this proposal to clarify the *Parental Leave and Employment Protection Act 1987*;
- 8 approve the Regulatory Systems (Economic Development) Amendment Bill, Regulatory Systems (Housing) Amendment Bill, Regulatory Systems (Workforce) Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 9 agree that the Regulatory Systems Bills be introduced in August 2018;
- 10 agree that the government propose that the:
 - 10.1 Regulatory Systems (Economic Development) Amendment Bill is referred to the Economic Development, Science and Innovation committee for consideration;
 - 10.2 Regulatory Systems (Housing) Amendment Bill is referred to the Social Services and Community committee for consideration;
 - 10.3 Regulatory Systems (Workforce) Amendment Bill is referred to the Education and Workforce committee for consideration; and

- 10.4 Regulatory Systems (Economic Development) Amendment Bill, Regulatory Systems (Housing) Amendment Bill, Regulatory Systems (Workforce) Amendment Bill be enacted by February 2019.

Publicity

- 11 authorise the Ministry of Business, Innovation and Employment to place this paper, the Disclosure Statements and the Regulatory System Bills on its website subject to any appropriate redactions.

Authorised for lodgement

Hon David Parker

Minister for Economic Development