

Departmental Disclosure Statement

Regulatory Systems (Workforce) Amendment Bill (No 2)
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Business, Innovation and Employment.

The Ministry of Business, Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

September 2018

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Part One: General Policy Statement

The Regulatory Systems (Workforce) Amendment Bill (No 2) is an omnibus bill that contains amendments to legislation administered by the Ministry of Business, Innovation and Employment (MBIE). The policy objective of the Bill is to maintain the effectiveness and efficiency of the regulatory systems established by the Principal Acts amended by the Bills and so reduces the chance of regulatory failure. The amendments will achieve this objective by:

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

The Bill is introduced under Standing Order 269 and 263 which provides that the Parliamentary Business Committee may determine any two or more bills are cognate bills and that the bills are omnibus bills. On 9 May 2018 the Parliamentary Business Committee agreed that the Regulatory Systems Amendment Bills be approved as omnibus bills and be considered as cognate bills.

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

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

The Bill is a vehicle for regulatory fixes to be progressed in a timely and cost effective manner in order to deliver the flow-on benefits to business and the wider economy. This Bill the Regulatory Systems (Workforce) Amendment Bill is a vehicle for these smaller regulatory fixes to the Holidays Act 2003, Employment Relations Act 2000 and Parental Leave and Employment Protection Act 1987 to be progressed in a timely and cost effective fashion in order to deliver the flow-on benefits to business and the wider economy. It includes the following amendments:

Holidays Act 2003

The amendment to the Holidays Act 2003 clarifies that the maximum penalty for a person involved in a breach depends on whether the person is an individual or a body corporate, rather than depending on whether the employer is an individual or a body corporate.

Employment Relations Act 2000

The purpose of the change with respect to the Remuneration Authority is to allow for the Remuneration Authority to set the remuneration of Employment Relations Authority members who are delegated to take over the responsibilities of the Chief of the Authority. An amendment to the Remuneration Authority Act 1977 is also required to effect this change.

The amendment clarifying the powers of Labour Inspectors will allow for more effective proactive enforcement of employment standards. Clarifying that Labour Inspectors may use their investigative powers to ascertain whether workers are employees will ensure that Labour Inspectors can access sufficient information to form a view on workers' employment status (this being a necessary precursor to the enforcement of employment standards).

Remuneration Authority Act 1977

This change is in line with the related change to the Employment Relations Act 2000 (allowing for the Remuneration Authority to set the remuneration of Employment Relations Authority members who are delegated to take over the responsibilities of the Chief of the Authority).

Parental Leave and Employment Protection Act 1987

The amendments to the Parental Leave and Employment Protection Act 1987 clarify that the spouse or partner of a biological mother can become the primary carer of a child in cases where:

- the spouse or partner is not a transferee of, or successor to, any entitlement of the mother to a parental leave payment; and
- the spouse of parent takes permanent primary responsibility (to the exclusion of the mother) for the child's welfare for any reason, for example, if the biological mother dies; and
- at the time the spouse or partner takes that permanent primary responsibility, the biological mother either has not applied for, or does not qualify to apply for, a parental leave payment.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
Regulatory institutions and practices, New Zealand Productivity Commission, 30 June 2014 (accessible at http://www.productivity.govt.nz/inquiry-content/1788?stage=4).	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>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. It can be accessed at: http://www.mbie.govt.nz/about/our-work/roles-and-responsibilities/regulatory-systems-programme/regulatory-systems-bills/documents-image-library/ris-clarifying-inspectors-ability-to-investigate-whether-workers-are-employees.pdf.</p> <p>A RIS was not completed for the remaining proposal in the Employment Relations Act 2000 relating to the Remuneration Authority to set the salaries and principal allowances of the Deputy Chief Coroners as it is of a minor and/or technical nature</p> <p>A RIS was not completed for the Holidays Act 2003 proposal as it is a technical revision.</p> <p>A RIS was not completed for the Parental Leave and Employment Protection Act (PLEPA) 1987 proposal as impacts, if any, would be of a minor nature.</p> <p>Once the Bill has been introduced, the RIS can also be downloaded at: http://www.treasury.govt.nz/publications/informationreleases/ris.</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
No, the RIS did not meet the threshold for RIA Team assessment.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
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. It can be accessed at: http://www.mbie.govt.nz/about/our-work/roles-and-responsibilities/regulatory-systems-programme/regulatory-systems-bills/documents-image-library/ris-clarifying-inspectors-ability-to-investigate-whether-workers-are-employees.pdf	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
These responses only apply to the provisions relating to labour inspector powers. Clarifying that labour inspectors may proactively investigate whether particular workers are employees has the potential to be of overall benefit to businesses, because it could reduce the ability for some businesses to gain an unfair competitive advantage by deeming employee-like workers to be self-employed contractors. The success of the option in this regard will depend on the resourcing and capability of the regulator (including its ability to successfully target non-compliance).	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

New Zealand's international obligations do not impact on the policies of the Bills.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The principles of the Treaty of Waitangi do not impact on the policies of the Bills.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is available on the Ministry of Justice's website upon the introduction of a Bill at: <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/>.

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

YES

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

Holidays Act 2003 – the Bill amends s75(1) to clarify that the maximum penalty for a person involved in a breach depends on whether they themselves are an individual or body corporate, rather than depending on whether the employer is an individual or body corporate. This is a minor amendment arising from a drafting error in the legislation.

3.4.1. Was the Ministry of Justice consulted about these provisions?

YES

They were consulted on the labour inspector powers and were satisfied with the amendments proposed.

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?

YES

The amendment clarifying labour inspectors' ability to investigate whether workers are employees under the Employment Relations Act 2000 amends provisions relating to labour inspectors' ability to access relevant records or documents.

3.5.1. Was the Privacy Commissioner consulted about these provisions?

YES

A copy of the draft Bill was sent to the Privacy Commissioner for consultation and they were satisfied with the proposed amendments.

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?

YES

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. However, stakeholders have not been consulted on a draft of the Bill.

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?

YES

The proposal to clarify parental leave and parental leave payment eligibility in PLEPA 1987 for a spouse or partner who takes permanent primary responsibility of a child, to the exclusion of the biological mother, was tested with the Internal Revenue Department to ensure the proposal is workable within the existing administrative practices.

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO

4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO