

# **Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Bill**

Government Bill

As reported from the Transport and Industrial Relations  
Committee

## **Commentary**

### **Recommendation**

The Transport and Industrial Relations Committee has examined the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Bill and recommends that it be passed with the amendments shown.

### **Introduction**

This bill would extend the paid parental leave scheme to self-employed persons, who are currently not covered by the Parental Leave and Employment Protection Act 1987. The bill provides for parental leave payments to self-employed persons on a basis consistent with that on which they are currently provided for employees.

### **Concurrent employment and self-employment**

We recommend an amendment to clause 8 to provide that an election of employment status must be made in relation to both parental leave and parental leave payments under the Act, rather than just parental leave *payments*.

As the bill is drafted, a person who is both an employee and a self-employed person only has to make an election about their employment status in respect of parental leave *payments*. This may imply

that a self-employed person is also eligible for parental leave benefits due to their employed status.

The Government is looking at making a necessary amendment to the clause to ensure persons who are both self-employed and employees are not disadvantaged relative to employees who are multiple job holders. We would support this amendment.

### **Self-employed person's average weekly earnings**

We recommend the amendment of clause 20(1) by inserting new subparagraph (b)(ia) into the definition of "self-employed person's average weekly earnings" to clarify that parental leave taken by a self-employed person before a baby's due date is not included when calculating the self-employed person's earnings.

We consider it is important that women who start parental leave before the birth of a child are not financially disadvantaged. Where a woman goes on parental leave before her expected date of delivery, the calculation of average weekly earnings will reflect only those weeks during which she is working, so her lack of earnings while on parental leave will not affect the final rate of parental leave payment.

This amendment is consistent with the calculation methods applied to employees and self-employed persons who take parental leave before the due delivery date of the child.

### **Discretion to approve irregular applications**

We recommend the amendment of clause 29 to include guidance similar to that set out in section 68 of the Act, to help the Department of Labour exercise its discretion in this regard.

Under the bill the department is allowed to approve irregular applications but the bill does not provide any guidance on how to exercise this discretion.

The amendment would allow the department to have regard to the extent of the irregularity, considering whether it was reasonable in the circumstances, and whether the person was acting in good faith, when deciding a parental leave application.

## **End of parental leave payment for self-employed persons**

We recommend the amendment of clause 33 to clarify that a person's entitlement to a parental leave payment will end if the entitlement is transferred to the person's spouse or partner.

As introduced, the bill does not make this clear, and we feel it is important to clarify that an entitlement applies to only one eligible person.

## **Offence to mislead**

We recommend the insertion of new clause 39A to amend section 71Z of the Act. The amendment made by clause 39A(1) will clarify that it is an offence for a person to fail to supply information requested under section 71W with the intent of misleading the department.

As drafted the bill does not make it clear that to mislead the department by omitting to supply information is an offence. We feel clarification is important.

## **Ability to bring criminal proceedings**

Our recommended amendment in new clause 39A(2) will enable a prosecution to be taken within six months after which ever date is earlier of:

- the date when the alleged offence first becomes known to the department
- the date when the alleged offence should reasonably have become known to the department.

As introduced the bill limits the department's ability to undertake criminal proceedings, because there is no time frame specified in the Act for commencing such a proceeding. In consequence, section 14 of the Summary Proceedings Act 1957 applies, under which the department has six months to commence criminal proceedings from the time when the matter to which the proceeding relates first arose.

Regarding self-employed persons, in some instances the evidence of possible offending may not come to the attention of either the department or the Inland Revenue Department for up to two years after an application for paid parental leave has been approved. This is because certain classes of self-employed persons may have up to

18 months to file a tax return for the financial year in which paid parental leave was received.

We feel it is important that this amendment be made to address the situation where an alleged offence has occurred, but this is not known until much later, for example, when the offender's tax return is filed.

### **Other matters**

We also considered submissions seeking the recognition of whāngai and other customary adoptions and seasonal and casual employment for the purposes of eligibility for paid parental leave. However these matters are outside the scope of this bill. We note that whāngai and customary adoptions are recognised in immigration and welfare policy, and we understand the department is looking into this matter. We would support consideration of any further legislation to extend paid parental leave to parents in these groups.

The National Party recognises the submissions and concerns of Business New Zealand that in some cases a permanent employee on parental leave may be replaced by an employee on a fixed term agreement who is pregnant and will be eligible for parental leave during the term of the agreement.

New Zealand First shares the concern of the Retailers Association who noted the ability for an employee to take employment during their period of leave and not inform their original employer that they do not intend to return. New Zealand First believes legislation should be enacted to address this situation.

## **Appendix**

### **Committee process**

The Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Bill was referred to the committee on 6 December 2005. The closing date for submissions was 17 February 2006. We received and considered 19 submissions from interested groups and individual's and heard 5 submissions orally. Consideration took 3 hours and 12 minutes.

We received advice from the Department of Labour.

### **Committee membership**

Hon Mark Gosche, Chairperson

Hon Maurice Williamson, Deputy Chairperson

David Bennett

Peter Brown

Bob Clarkson

Darien Fenton

Taito Phillip Field

Dr Wayne Mapp

Sue Moroney

Hon Judith Tizard

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Parental Leave and Employment  
Protection (Paid Parental Leave for Self-  
Employed Persons) Amendment

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

**New (unanimous)**

Subject to this Act,

Text inserted unanimously

~~(Subject to this Act,)~~

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

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*Hon Ruth Dyson*

# **Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Bill**

Government Bill

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Employed Persons) Amendment**

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cl 2A

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

**1 Title**

This Act is the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act **2005**.

**2 Commencement**

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- (1) **Sections 4, 35, and 42(2)** come 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 2006**.

**2A Principal Act amended**

This Act amends the Parental Leave and Employment Protection Act 1987.

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## Part 1 Preliminary provisions

### 3 Purpose

- (1) The main purpose of this Act is to entitle certain self-employed persons to parental leave payments and provide for the administration of those payments. 5
- (2) This Act also makes other amendments including—
- (a) reducing, from 12 months to 6 months, the minimum period before an employee is entitled to a subsequent period of parental leave and a parental leave payment; and 10
  - (b) adding a power for the department to accept an application for parental leave payments despite an irregularity in the application; and
  - (c) allowing a right of review by the Employment Relations Authority in respect of entitlement to a parental leave payment. 15

### 4 Application of this Act

- (1) This Act applies to an employee or a self-employed person who takes parental leave in respect of a child if— 20
- (a) the expected date of delivery of the child is on or after 1 July 2006; or
  - (b) the child is born on or after 1 July 2006; or
  - (c) in the case of adoption, the date on which the person or the person's spouse or partner, with a view to adoption, assumes the care of the child is on or after 1 July 2006. 25
- (2) An employee or a self-employed person to whom this Act applies may, before 1 July 2006, apply for a parental leave payment under Part 7A of the Parental Leave and Employment Protection Act 1987 or apply to have an entitlement to a payment transferred to him or her, as if this Act were already in force. 30

## Part 2 Amendments to principal Act

- 5 **Title repealed** 35  
The Title is repealed.

**6 New section 1A inserted**

The following section is inserted after section 1:

**“1A Purpose**

The purpose of this Act is to—

- “(a) set minimum entitlements with respect to parental leave 5  
for male and female employees; and
- “(b) protect the rights of employees during pregnancy and  
parental leave; and
- “(c) entitle certain employees and self-employed persons to  
up to 14 weeks of paid parental leave.” 10

**7 Interpretation**

- (1) The definition of **parental leave** in section 2(1) is amended by  
repealing paragraph (a) and substituting the following  
paragraphs:

- “(a) means, for an employee,— 15
  - “(i) maternity leave to which the employee is entitled  
in accordance with this Act:
  - “(ii) partner’s/paternity leave to which the employee  
is entitled in accordance with this Act:
  - “(iii) extended leave to which the employee is entitled 20  
in accordance with this Act:
- “(ab) means, for a self-employed person, a period during  
which the self-employed person temporarily does not  
work because of the birth of a child or the assumption of  
care of a child by the person or the person’s spouse or 25  
partner (subject to **section 71CD)**.”:

- (2) Section 2(1) is amended by inserting the following definitions  
in their appropriate alphabetical order:

“**self-employed** means working in 1 or more of the following  
(*types of work*), other than as an employee: 30

- “(a) providing goods or services for hire or reward under a  
contract for services:
- “(b) carrying on a business (including a profession, trade,  
manufacture, or undertaking carried on for pecuniary  
profit), including in partnership with another person: 35
- “(c) working for a trust in a business (as defined in para-  
graph (b)) carried on by the trust

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Employed Persons) Amendment**

Part 2 cl 7

“self-employed person means a person who is self-employed”.

**8 New section 2AD inserted**

The following section is inserted after section 2AC:

**“2AD Concurrent employment and self-employment**

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A person who is an employee and a self-employed person may have his or her rights and benefits in respect of parental leave and parental leave payments determined on the basis of his or her work as an employee or as a self-employed person but not both.”

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**9 Interpretation: multiple births or adoptions**

(1) The heading to section 2B is amended by omitting “**Interpretation:**”.

(2) Section 2B(1)(b) is amended by inserting “and self-employed persons” after “employees”.

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**10 Restriction on taking of parental leave within 12 months of end of previous period of parental leave in respect of another child**

(1) The heading to section 6 is amended by omitting “**12 months**” and substituting “**6 months**”.

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(2) Section 6(b) is amended by omitting “12 months” and substituting “6 months”.

**11 New section 6A inserted**

The following section is inserted after section 6:

**“6A Treatment of employment with same employer for purposes of determining subsequent parental leave entitlements**

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“(1) This section applies if an employee resumes service with the same employer—

“(a) at the end of a period of parental leave; or

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“(b) while the employee is entitled, following parental leave, to preference in obtaining employment with the employee’s employer.

“(2) For the purposes of determining subsequent entitlements to parental leave under this Act, the employee’s period of

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employment with the employer must be treated as beginning on the day that the employee resumes service with the employer.

“(3) This section overrides section 43.”

**12 New section 19AB inserted**

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The following section is inserted after section 19A:

**“19AB Extension of partner’s/paternity leave entitlements for spouses or partners of self-employed persons in certain circumstances**

“(1) This section applies if—

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“(a) a self-employed person is entitled to a parental leave payment under **section 71DA**; and

“(b) the self-employed person’s spouse or partner is entitled to partner’s/paternity leave under section 17(c)(ii) or section 18(1)(b)(ii); and

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“(c) the self-employed person transfers all or part of his or her entitlement to parental leave payments to the spouse or partner under **section 71E**.”

“(2) The spouse’s or partner’s entitlement to partner’s/paternity leave is extended so that it is the same as the period of parental leave payments transferred to him or her.”

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**13 Duration of extended leave**

Section 26(2) is amended by omitting “who is entitled to both maternity leave and extended leave in accordance with this Act,”.

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**14 Extended leave may be taken consecutively or concurrently with any leave taken by other parent**

(1) Section 28 is amended by omitting the heading and substituting the heading “**Extended leave may be taken consecutively or concurrently with other parent’s leave or parental leave payments**”.

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(2) Section 28 is amended by inserting “or any period for which the employee’s spouse or partner receives a parental leave payment,” after “partner”.

**15 Section 39A repealed**

Section 39A is repealed.

**16 Non-compliance with formal requirements**

(1) Section 68 is amended by repealing subsection (3) and substituting the following subsection: 5

“(3) An employee, employer, or self-employed person, or a person acting on behalf of an employee, employer, or self-employed person, may apply to the Employment Relations Authority or the Court for relief in respect of an irregularity.”

(2) Section 68 is amended by repealing subsection (6) and substituting the following subsection: 10

“(6) The Employment Relations Authority or the Court may grant relief—

“(a) by amending or waiving the irregularity, extending the time within which anything is to be or may be done, confirming the right of an employee or self-employed person to exercise rights in respect of parental leave or a parental leave payment (as applicable), or granting other relief as is reasonable: 15

“(b) subject to terms, if any, that the Authority or the Court, in the circumstances of each case, thinks fit.” 20

**17 Role of Labour Inspectors**

(1) Section 70A is amended by omitting the heading and substituting the heading “**Labour Inspectors may make determinations in respect of employees**”. 25

(2) Section 70A(1)(b) is amended by omitting “71M”, and substituting “71M(1)”.

**18 New heading and section 70G inserted**

The following heading and section are inserted after section 70F: 30

*“Role of Labour Inspectors in relation to self-  
employed persons*

- “70G Labour Inspectors may make determinations in respect  
of self-employed persons**
- “(1) A Labour Inspector may, if requested by the department,— 5  
    “(a) determine whether a self-employed person will have  
        been self-employed for at least an average of 10 hours a  
        week during a 6-month or 12-month period for the  
        purpose of eligibility for a parental leave payment; and  
    “(b) determine a self-employed person’s average weekly 10  
        earnings for the purpose of **section 71M(1A)**.
- “(2) The department may, for the purposes of obtaining a determi-  
nation under this section, supply to the Labour Inspector any  
information provided by the self-employed person.
- “(3) The Labour Inspector may, for the purposes of carrying out 15  
the Inspector’s functions under this section, request the self-  
employed person to provide any further information relevant  
to the matter being determined by the Labour Inspector.
- “(4) A Labour Inspector must, as soon as practicable after making  
a determination, serve a copy on the self-employed person and 20  
the department.
- “(5) The consequence(s) of a determination (*are*) is that it is prima  
facie evidence of the matter determined.”
- 19 New sections 71A and 71B substituted** 25  
Sections 71A and 71B are repealed and the following sections  
substituted:
- “71A Purpose**  
The purpose of this Part is to entitle certain employees and  
self-employed persons to up to 14 weeks of parental leave  
payments out of public money when they take parental leave. 30
- “71B Overview**  
“(1) Section 71A and this section are preliminary provisions relat-  
ing to the parental leave scheme.

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Employed Persons) Amendment**

Part 2 cl 19

- “(2) Sections 71C to **71CD** are interpretation provisions for this Part.
- “(3) Sections 71D and **71DA** confer entitlements to parental leave payments, primarily on female employees and self-employed persons respectively.
- “(4) **Sections 71E and 71EA** enable(s) employees and self-employed persons to transfer their entitlements under sections 71D and **71DA**, in certain circumstances, to their spouse or partner. 5
- “(5) Sections 71F to 7H contain restrictions on entitlements to parental leave payments.
- “(6) Sections 71I and **71IA** cover the making of an application for payment and provide the department with a discretion to approve irregular applications. 10
- “(7) Sections 71J to 71P relate to the duration and amount of parental leave payments.
- “(8) Sections 71Q to **71ZB** relate to the administration of the parental leave payment scheme. 15
- “(9) This section is intended only as a guide to the general scheme and effect of this Part.”

**20 Interpretation of this Part**

- (1) Section 71C is amended by inserting the following definitions in their appropriate alphabetical order: 20
- “**eligible self-employed person** has the meaning given in **section 71CB**
- “**employee’s average weekly earnings** means the total of the amounts in respect of all the employments from which the employee takes parental leave as an eligible employee and is determined as follows: 25
- “(a) for an employee to whom—
- “(i) section 7(b)(i), 8(1)(b)(i), 17(c)(i), or 18(1)(b)(i) applies, it means one fifty-second of the employee’s gross earnings during the year ending with the expected date of delivery (or, in the case of adoption, the date on which the employee assumes the care of the child with a view to adoption); or 30
- “(ii) section 7(b)(ii), 8(1)(b)(ii), 17(c)(ii), or 18(1)(b)(ii) applies, it means one twenty-sixth of 35

- the employee's gross earnings during the 6 months ending with the expected date of delivery (or, in the case of adoption, the date on which the employee assumes the care of the child with a view to adoption); but 5
- “(b) if section 72A also applies to the employee, the divisor of 52 or 26 must be reduced by the number of complete weeks during which the employee was absent from work on leave without pay in a circumstance described in subsection (2) of that section 10
- “**net income** has the same meaning as in section OB1 of the Income Tax Act 2004
- “**ordinary weekly pay** means the total of the amounts of ordinary weekly pay in respect of all the employments from which the employee takes parental leave as an eligible employee and is determined on the basis of section 8 of the Holidays Act 2003 15
- “**self-employed person's average weekly earnings** means the total of the net income in respect of all the work from which the self-employed person takes parental leave as an eligible self-employed person and is determined as follows: 20
- “(a) for a self-employed person who has been self-employed for at least an average of 10 hours a week over—
- “(i) the 12 months immediately preceding the expected date of delivery (or, in the case of adoption, the date on which the self-employed person assumes the care of the child with a view to adoption), it means one fifty-second of the self-employed person's net income during that period; or 25
- “(ii) the 6 months immediately preceding the expected date of delivery (or, in the case of adoption, the date on which the self-employed person assumes the care of the child with a view to adoption), it means one twenty-sixth of the self-employed person's net income during that period; but 30
- “(b) the divisor of 52 or 26 must be reduced by the number of complete weeks during which the self-employed person is— 35

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Part 2 cl 20

“(i) entitled to a payment of weekly compensation under the Injury Prevention, Rehabilitation, and Compensation Act 2001; or

**New (unanimous)**

“(ia) on parental leave before the expected date of delivery of the child; or

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“(ii) unable to work because of any other circumstances that are considered by a Labour Inspector not to disrupt the normal pattern of the person’s self-employment.”

(2) Section 71C is amended by repealing the definitions of **eligible employee** and **parental leave** and substituting the following definitions:

“**eligible employee** has the meaning given in **section 71CA**

“**parental leave**, in relation to an employee, includes non-statutory parental leave.”

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**21 New sections 71CA to 71CD inserted**

The following sections are inserted after section 71C:

**“71CA Definition of eligible employee**

“(1) In this Part, **eligible employee** means—

“(a) a female employee who meets the criteria for maternity leave for the child under section 7; or

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“(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

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“(d) an employee who succeeds to all or part of an entitlement to a parental leave payment under **section 72B**.

“(2) 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.

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**“71CB Definition of eligible self-employed person**

- “(1) In this Part, **eligible self-employed person** means—
- “(a) a female self-employed person who—
    - “(i) becomes pregnant; and
    - “(ii) at the expected date of delivery, will have been self-employed for at least an average of 10 hours a week over the immediately preceding 6 months or the immediately preceding 12 months; and
    - “(iii) takes parental leave from self-employment in respect of the child; or
  - “(b) a self-employed person who—
    - “(i) assumes (with a view to adoption by that self-employed person or by that person and that person’s spouse or partner jointly) the care of a child who is not more than 5 years of age; and
    - “(ii) at the date on which he or she, with a view to adoption, first assumes the care of the child, will have been self-employed for at least an average of 10 hours a week over the immediately preceding 6 months or the immediately preceding 12 months; and
    - “(iii) takes parental leave from self-employment in respect of the child.
- “(2) However, by virtue of **subsection (1)(b)**, a self-employed person is not entitled to parental leave payments in respect of a child if he or she has previously received parental leave payments in respect of that child.

**“71CC Multiple self-employment**

- “(1) This section applies for the purposes of determining the rights, in relation to a parental leave payment, of a person who is engaged in more than 1 type of work on a self-employed basis. Those rights include the right of a self-employed person to have a parental leave payment transferred to him or her under **section 71E**.
- “(2) If the self-employed person is engaged in more than 1 type of work—
- “(a) concurrently during a 6-month or 12-month period, the work must be treated as 1 period of self-employment:

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Employed Persons) Amendment**

Part 2 cl 21

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- “(b) consecutively during a 6-month or 12-month period the work must be treated as 1 period of self-employment, if the break between the types of work is no greater than 30 days.
- “71CD Return to work by self-employed person** 5
- In this Part, a self-employed person is not to be treated as having returned to work because he or she—
- “(a) receives income for work done before the period of parental leave; or
- “(b) receives income because of work done by other people during the period of parental leave; or 10
- “(c) carries out work in the nature of oversight or occasional administrative tasks in the business in which the person is self-employed.”
- 22 Entitlement to parental leave payment** 15
- (1) The heading to section 71D is amended by adding “**for employees**”.
- (2) Section 71D is amended by repealing subsections (2) to (4) and substituting the following subsection:
- “(2) This section is subject to sections 71F to **71IA** (restrictions on parental leave payments and making an application for payment).” 20
- 23 New section 71DA inserted**
- The following section is inserted after section 71D:
- “71DA Entitlement to parental leave payment for self-employed persons** 25
- “(1) A self-employed person is entitled to a parental leave payment under this Part if the person is—
- “(a) an eligible self-employed person; or
- “(b) a self-employed person to whom all or part of an entitlement to a parental leave payment is transferred under **section 71E**; or 30
- “(c) a self-employed person who succeeds to all or part of an entitlement to a parental leave payment under **section 72B**. 35

“(2) This section is subject to sections 71F to **71IA** (restrictions on parental leave payments and making an application for payment).”

**24 New sections 71E and 71EA substituted**

Section 71E is repealed and the following sections are substituted: 5

**“71E Entitlement may be transferred to spouse or partner**

“(1) An eligible employee (within the meaning of **section 71CA(1)(a) or (b)**) or an eligible self-employed person 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 or partner if any of **subsections (2) to (4)** applies to the spouse or partner. 10

“(2) The spouse or partner is an employee who—

“(a) has given written notice to his or her employer of his or her wish to take parental leave (in accordance either with this Act or with the alternative provision under which the leave is taken); and 15

“(b) takes parental leave from his or her employment in respect of a 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). 20

“(3) The spouse or partner is a self-employed person who—

“(a) assumes or intends to assume the care of a child to whom the person’s spouse or partner gives birth (in the case of the spouse or partner of either a female employee to whom section 7 applies or a female self-employed person); and 25

“(b) takes parental leave from his or her self-employment; and

“(c) at the expected date of delivery, will have been self-employed for at least an average of 10 hours a week over the immediately preceding 6 months or the immediately preceding 12 months. 30

“(4) The spouse or partner is a self-employed person who—

“(a) assumes (with a view to adoption by the self-employed person’s spouse or partner or the self-employed person’s spouse or partner and the self-employed person jointly) the care of a child who is not more than 5 years 35

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- of age (in the case of the spouse or partner of either a person to whom section 8 or section 18 or section 24 applies or a self-employed person); and
- “(b) takes parental leave from his or her self-employment; and 5
- “(c) at the date on which he or she, with a view to adoption, first assumes the care of the child, will have been self-employed for at least an average of 10 hours a week over the immediately preceding 6 months or the immediately preceding 12 months. 10
- “(5) Rights and benefits to non-statutory parental leave (and section 4) are ignored when considering whether a spouse or partner meets the criteria for parental leave for the purpose of this section.
- “71EA Effect of transfer of entitlement to spouse or partner 15**
- To the extent that an employee or a self-employed person transfers all or part of his or her entitlement to a parental leave payment to his or her spouse or partner under **section 71E**,—
- “(a) references in this Part to the employee’s or self-employed person’s entitlement to a parental leave payment are references to the spouse’s or partner’s entitlement to a parental leave payment; and 20
- “(b) references in this Part to the period of parental leave are references to the period of parental leave taken by the spouse or partner; and 25
- “(c) the amount of the parental leave payment is calculated according to the earnings of the spouse or partner; and
- “(d) the entitlement that is transferred is deducted from the transferring employee’s or self-employed person’s entitlement to a parental leave payment.” 30
- 25 Subsequent parental leave payments**
- (1) Section 71F(a) is amended by omitting “12 months” and substituting “6 months”.
- (2) Section 71F is amended by adding the following subsection as subsection (2): 35
- “(2) A self-employed person is not entitled to a parental leave payment in respect of a child if—

- “(a) less than 6 months have elapsed after the end of the period for which the person received a parental leave payment; or
- “(b) **section 71CB(2)** applies (restriction on adoptive parents receiving parental leave payments if they have previously received parental leave payments for the same child as a birth parent).” 5

**26 Parental tax credit**

- (1) Section 71G(1) is amended by omitting “employees do” and substituting “an employee or a self-employed person does”. 10
- (2) Section 71G(2) is repealed and the following subsection substituted:
- “(2) An employee or self-employed person loses his or her entitlement to a parental leave payment under this Part if the employee or self-employed person, or his or her spouse or partner, or both of them, has received any payment of parental tax credit in respect of the child.” 15

**27 Joint adoptions**

Section 71H(1)(b) is amended by omitting “71D(2)(b)” and substituting “**71CA(1)(b)** or the eligible self-employed person for the purpose of section **71CB(1)(b)** (as the case may be)”. 20

**28 Applications for payment**

- (1) Section 71I(1) is amended by inserting “or self-employed person” after “employee” in both places where it appears.
- (2) Section 71I(2)(a) and (d) are amended by inserting “or self-employed person” after “employee” in each case. 25
- (3) Section 71I is amended by adding the following subsection:
- “(4) This section is subject to **section 71IA**.”

**29 New section 71IA inserted**

The following section is inserted after section 71I: 30

**“71IA Discretion to approve irregular applications**

- “(1) The department may approve the making of a parental leave payment to an employee or a self-employed person despite an irregularity in his or her application for the payment.

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**New (unanimous)**

“(1A) In deciding whether to approve the making of a parental leave payment under **subsection (1)**, the department must have regard to—

“(a) the extent of the irregularity (including whether the extent of the irregularity was reasonable in all of the circumstances); and

5

“(b) whether the employee or self-employed person was acting in good faith.

“(2) However, the department may not exercise its discretion under this section if the matter giving rise to the irregularity is disputed between an employee and an employer.

10

**New (unanimous)**

“(2A) The department may, in order to approve the application, amend or waive the irregularity or extend the time within which anything is to be or may be done, subject to terms, if any, that the department thinks fit in the circumstances of the application.

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“(3) In this section, **irregularity** means—

“(a) failing to make the application for payment before the relevant date in section 71I; or

“(b) applying in a manner other than that prescribed in the regulations; or

20

“(c) failing to specify all the matters or include all the documents prescribed in the regulations; or

“(d) failing to state whether the employee wishes to transfer all or part of the entitlement under **section 71E**; or

25

“(e) otherwise applying irregularly in matter of form.”

**30 Duration of parental leave payment**

Section 71J(b) is amended by inserting “or self-employed person” after “employee”.

**31 Start of parental leave payment**

Section 71K is amended by adding the following subsection as subsection (2):

- “(2) A parental leave payment is payable to a self-employed person for a period that begins on the earliest of— 5
- “(a) the date the person commences parental leave; or
  - “(b) the date of confinement; or
  - “(c) in the case of adoption, the date on which the person assumes (with a view to adoption by that person or by that person and that person’s spouse or partner jointly) the care of the child.” 10

**32 End of parental leave payment**

- (1) The heading to section 71L is amended by adding “**for employees**”.
- (2) Section 71L(3)(b) is amended by omitting “section 39A” and substituting “**section 72B**”. 15

**New (unanimous)**

- (3) Section 71L(4) is amended by omitting “71E(3) (effect of transfers of entitlement)” and substituting “**71EA** (effect of transfer of entitlement to spouse or partner)”. 20

**33 New section 71LA inserted**

The following section is inserted after section 71L:

**“71LA End of parental leave payment for self-employed persons**

- “(1) A parental leave payment is payable to a self-employed person for a period that ends on the (*earlier*) earliest of— 25
- “(a) 14 weeks after the date of commencement of his or her parental leave; or
  - “(b) the date on which the self-employed person returns to work; or
  - “(c) the date on which the self-employed person ceases self-employment. 30
- “(2) The period does not end earlier than the date referred to in **subsection (1)** even though the self-employed person’s parental leave may end earlier because—

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- “(a) the self-employed person is declared bankrupt or the business in which the person is self-employed goes into liquidation:
- “(b) the self-employed person has a miscarriage or ceases to have the care of the child: 5
- “(c) the self-employed person or the child dies.
- “(3) The period ends earlier than the date referred to in **subsection (1)** if the person’s spouse or partner succeeds to the parental leave payment entitlement under **section 72B**, in which case the payment to the person stops on the date of succession. 10

**New (unanimous)**

“(4) This section is subject to **section 71EA** (effect of transfer of entitlement to spouse or partner).”

**34 Amount of parental leave payment**

- (1) Section 71M(1)(a) is amended by omitting “; or” and substituting “; and”. 15
- (2) Section 71M(1)(b)(i) is amended by omitting “; or” and substituting “; and”.
- (3) Section 71M is amended by inserting the following subsection after subsection (1):
  - “(1A) The rate of parental leave payment payable to any self-employed person is the lesser of— 20
    - “(a) \$357.30 per week (or any adjusted amount set under section 71N or any other amount set under section 71O); and
    - “(b) the greater of— 25
      - “(i) 100% of the self-employed person’s average weekly earnings; and
      - “(ii) the minimum amount of parental leave payment for a self-employed person set under **section 710A**.” 30
- (4) Section 71M(2) is repealed.

- 35 Annual adjustment of maximum rates of parental leave payment**  
Section 71N(1) is amended by inserting “and **section 71M(1A)(a)**” after “section 71M(1)(a)”.
- 36 Discretionary increases in payment amount by Order in Council** 5  
Section 71O(1) is amended by adding “and **section 71M(1A)(a)**”.
- 37 New section 71OA inserted**  
The following section is inserted after section 71O:
- “71OA Annual adjustment of minimum rates of parental leave payment for self-employed persons** 10  
The minimum rate of parental leave payment that applies under section **71M(1A)(b)(ii)** must be set, by Order in Council, as at 1 July each year, as a weekly amount that is equivalent to 10 hours’ work at the highest rate of minimum wage that applies under the Minimum Wage Act 1983 at that date.” 15
- 38 Obligation to notify early return to work, etc**  
Section 71U is amended by inserting the following subsection after subsection (1):
- “(1A) A self-employed person must give notice if, during the period for which the person is receiving a parental leave payment under this Part,— 20  
“(a) the self-employed person returns to work; or  
“(b) the person ceases self-employment.”
- 39 Obligation to supply information** 25  
(1) Section 71W is amended by inserting the following subsection after subsection (1):
- “(1A) The department may, by written notice, request a self-employed person who has applied for a parental leave payment to supply to the department any information in the self-employed person’s possession relating to that person’s entitlement or continued entitlement to payment under this Part.” 30
- (2) Section 71W(2) is amended by omitting “or the employer” and substituting “, employer, or self-employed person”.

**New (unanimous)**

**39A Offence to mislead department**

- (1) Section 71Z(1)(b) is amended by inserting “(including failing to provide information requested under section 71W)” after “says anything”.
- (2) Section 71Z is amended by adding the following subsection: 5
- “(4) An information in respect of an offence against this section may be laid at any time within 6 months after the earlier of—
- “(a) the date when the alleged offence first became known to the department; and
- “(b) the date when the alleged offence should reasonably 10  
have become known to the department.”

**40 New section 71ZB inserted**

The following section is inserted after section 71ZA:

- “71ZB Review of department’s decisions about parental leave payment 15**
- “(1) An employee or a self-employed person may apply to the Employment Relations Authority for a review of a decision made by the department relating to—
- “(a) the person’s entitlement to a parental leave payment:
- “(b) whether a parental leave payment may be transferred to 20  
the person under **section 71E**:
- “(c) the amount of parental leave payment made to the person:
- “(d) the deduction or recovery of overpayments by the 25  
department under section 71X.
- “(2) An application for review must be made within 12 months after the date on which the decision is notified to the employee or self-employed person.
- “(3) The Authority may confirm, modify, or reverse the decision of the department. 30
- “(4) An application for review under this section may be made in respect of a decision described in subsection (1) that is notified to the employee or self-employed person after the commencement of this section.”

**41 New sections 72B to 72D inserted**

The following sections are inserted after section 72A:

**“72B Succession to spouse’s or partner’s entitlements**

- “(1) A spouse or partner of an employee may succeed to the employee’s rights to parental leave and to a parental leave payment under this Act if, at any time after the employee gives notice to his or her employer of a wish to take parental leave,— 5
- “(a) the employee dies; or
- “(b) the spouse or partner becomes the sole guardian of the child, to the exclusion of the employee. 10
- “(2) The spouse or partner of a self-employed person may succeed to the self-employed person’s rights to a parental leave payment under this Act if, at any time after the self-employed person commences parental leave,— 15
- “(a) the self-employed person dies; or
- “(b) the spouse or partner becomes the sole guardian of the child, to the exclusion of the self-employed person.
- “(3) However, the spouse or partner may succeed only if he or she is— 20
- “(a) an employee, and—
- “(i) 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
- “(ii) 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; or 25
- “(b) an eligible self-employed person under **section 71CB** and gives reasonable notice to the department of his or her wish to succeed to a parental leave payment under this section. 30
- “(4) 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. 35

- “72C Date of succession to spouse’s or partner’s entitlements**
- “(1) The date of succession to the entitlements of an employee or self-employed person is the later of—
- “(a) the date of the death of the employee or self-employed person or the date when the spouse or partner becomes sole guardian, as the case may be; and 5
  - “(b) the date on which the bereavement leave of the spouse or partner expires (if any).
- “(2) The first payment of parental leave payment to the spouse or partner includes an amount for the period from the date of succession if the notice to the department referred to in **section 72B(3)** is received on or after that date. 10
- “72D Application of Employment Relations Act 2000 in case of self-employed persons**
- Part 10 of the Employment Relations Act 2000 applies to the extent applicable and with all necessary modifications to an application in respect of a self-employed person made to the Employment Relations Authority or Employment Court under this Act.” 15
- 42 Regulations** 20
- (1) Section 73(1) is amended by inserting the following paragraph after paragraph (ab):
- “(aba) prescribing the information that self-employed persons must give in, or the documents that self-employed persons must attach to, an application for, or other notices relating to, a parental leave payment:” 25
- (2) Section 73(1) is amended by inserting the following paragraph after paragraph (ad):
- “(ada) setting the amount under **section 710A**, including the amount that applies on 1 July 2006:” 30
- 43 Consequential amendments**
- Consequential amendments are set out in the Schedule.
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**Schedule**  
**Consequential amendments to principal Act**

s 43

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|---|----|
| <b>New heading above section 2</b><br>Insert the heading “ <i>Interpretation</i> ”.                                       |    |
| <b>Heading to section 2A</b><br>Omit “ <b>Interpretation:</b> ”.  | 5  |
| <b>Heading to section 2AB</b><br>Omit “ <b>Interpretation:</b> ”.   |    |
| <b>Heading to section 2AC</b><br>Omit “ <b>Interpretation:</b> ”.   | 10 |
| <b>New heading above section 3</b><br>Insert the heading “ <i>Application of Act</i> ”.                                   |    |
| <b>New heading above section 5</b><br>Insert the heading “ <i>Restrictions on parental leave</i> ”.                       |    |
| <b>Heading to section 19A</b><br>Insert “ <b>for spouses or partners of employees</b> ” after<br>“ <b>entitlements</b> ”. | 15 |
| <b>Heading above section 70A</b><br>Add “ <i>in relation to employees</i> ”.  |    |
| <b>New heading above section 71</b><br>Insert the heading “ <i>State employees</i> ”.                                     | 20 |
| <b>New heading above section 71C</b><br>Insert the heading “ <i>Interpretation</i> ”.                                     |    |
| <b>New heading above section 71I</b><br>Insert the heading “ <i>Applications for parental leave payment</i> ”.            | 25 |

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**Legislative history**

9 August 2005

Introduction (Bill 288-1)

6 December 2005

First reading and referral to Transport and Industrial  
Relations Committee

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