

The Chair  
Cabinet Social Policy Committee

## Modernising Parental Leave: Extending access and flexibility

### Proposal

- 1 To seek agreement to extend parental leave and payments to more workers and increase the flexibility of the scheme in order to support working families with a newborn and attachment to work objectives.

### Executive Summary

- 2 Paid leave and job security promotes economic growth as it reduces the time mothers remain outside the labour market, and helps improve women's attachment to the labour market over time. It also supports newborn development by allowing for full-time personal care, which is particularly important in the first six months.
- 3 New Zealand's parental leave legislation is not working as effectively as it could – current restrictions prevent some working parents from being eligible for the provisions and the lack of flexibility can make it difficult for some parents to stay connected to the workforce.
- 4 As part of Budget 2014, the Parental Leave and Employment Protection Amendment Bill (No 2) was passed on 16 May 2014, which extended the duration of paid parental leave from the current 14 weeks to 18 weeks by 1 April 2016.
- 5 Cabinet also agreed in principle to a range of measures to modernise and improve the parental leave legislation [CAB Min (14) 13/12 refers]. These measures included broadening the eligibility to better reflect current work and family arrangements, and providing more flexibility to increase choice and support labour market attachment. Cabinet agreed to consult on the detailed design of these proposals with employers and employees and other stakeholders.
- 6 The Ministry of Business, Innovation and Employment (MBIE) has recently completed public consultation on the proposed changes and received almost 900 submissions. Overall, submitters (employers and employees alike) were positive about the proposals to modernise parental leave provisions.
- 7 Therefore, the proposals in this paper are broadly consistent with those in the discussion document, with more detail around workability added in some places, and include:
  - Extending parental leave payments to non-standard workers (such as casual, seasonal, and employees with more than one employer) and those who have recently changed jobs
  - Extending parental leave entitlements to 'primary carers' other than biological or formal adoptive parents
  - Extending unpaid leave to workers who have been with their employer for more than six months (but less than 12) as a standard six month leave period (inclusive of the 18 weeks' paid leave)

- Enabling Keeping in Touch days so employees can work limited hours during their paid leave period if they choose
  - Enabling employees to take the unpaid parental leave flexibly, by mutual agreement with the employer
  - Allowing eligible employees to resign and still receive parental leave payments (not proposed in discussion document)
  - Increasing the penalty for making a false statement or misleading to a maximum fine of \$15,000 (up from \$5,000) (not proposed in discussion document)
  - Reducing regulation by prescribing the annual adjustment process in the legislation (not proposed in discussion document)
  - Allowing members of the Armed Forces to access parental leave payments (not proposed in discussion document).
- 8 These changes have been designed to reach a broad range of families and working arrangements in New Zealand and improve outcomes for children, while being fiscally responsible and recognising current economic conditions.
- 9 Funding for this package was agreed to as part of Budget 2014 [CAB Min (14) 13/12 refers]. The estimated fiscal cost of this package comes to \$9.4m in 2015/16, \$10.5m in 2016/17 and \$10.9m in 2017/18.

### **Next steps**

- 10 I intend to progress these changes, along with the changes to strengthen the enforcement of employment standards, in an Omnibus Employment Standards Bill. In order to achieve the 1 April 2016 implementation date for the parental leave changes, I intend to seek Cabinet approval to introduce the Bill by mid-2015.

### **Background**

- 11 There is evidence that paid parental leave has economic and social benefits, including a positive impact on child cognitive development, child health, economic growth and labour force participation, and reducing child poverty.<sup>1</sup>
- 12 The *Parental Leave and Employment Protection Act 1987* (the Act) has provided employment protected leave on the birth/adoption of a child to eligible parents for 27 years (and paid parental leave since 2002). During this time, the nature of both the labour market and families has undergone significant change. New Zealand has an increasing number of women in paid work, and family structures and parenting arrangements have become significantly more diverse.
- 13 The Act was amended in Budget 2014 to extend the 14 weeks of paid parental leave to 16 weeks from 1 April 2015, and to 18 weeks from 1 April 2016. Cabinet agreed in principle to a range of proposals to improve the parental leave legislation and agreed to consult on the design of these proposals with employers and employees and other stakeholders [CAB Min (14) 13/12 refers].

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<sup>1</sup> The Treasury (2003) *Work and Family Balance: An Economic View*; OECD (2007) *Babies and Bosses – Reconciling Work and Family Life: A Synthesis of Findings for OECD Countries*.

- 14 Some parents who do not qualify for paid parental leave may be able to claim a parental tax credit, which was also extended in Budget 2014 (from its current maximum of \$150 per week for eight weeks to a new maximum of \$220 per week for 10 weeks).

### Parental leave legislation

- 15 **Purpose:** The objectives of the parental leave scheme, which was introduced in 2002, are:
- gender equity within the labour market* with increased female labour force retention and the opportunity to return to paid work without disadvantage to position or pay
  - gender equity within families* with fathers sharing leave and caring responsibilities
  - improved health outcomes for both mother and child* with a mother being able to recover from childbirth, bond with a new baby and return to work without negative consequences to her health and that of her child
  - income stability for families* to provide a period of financial security during the leave period.
- 16 **Entitlements:** The legislation provides for two types of entitlement:
- paid leave – currently 14 weeks, moving to 18 weeks as of 1 April 2016
  - unpaid job-protected leave – up to 52 weeks (includes the paid leave period).
- 17 **Eligibility:** The entitlements are subject to the following eligibility requirements:
- 14 weeks of paid leave to employees with at least six months' continuous service with the same employer
  - 14 weeks of paid leave to the self-employed
  - 52 weeks of unpaid job-protected leave to employees with at least 12 months' continuous service with the same employer (less any paid leave taken).<sup>2</sup>
- 18 **Transferring leave to spouse/partner:** The legislation allows paid leave and unpaid job-protected leave to be transferred to an eligible spouse/partner.<sup>3</sup>
- 19 **Partner/paternal leave:** Up to two weeks of unpaid partner's/paternity leave is also available (one week for six months' continuous service and two weeks for 12 months' continuous service).

### Comment

#### *General overview: feedback on discussion document*

- 20 The consultation seeking feedback on the design of the proposals received almost 900 submissions. The majority of submitters, including employers and employees, were positive about the proposals to modernise parental leave provisions and supportive of the changes.

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<sup>2</sup> The hours' criterion for 'continuous service' for PPL and the extended unpaid leave is for an average of at least 10 hours a week (including at least one hour in every week or 40 hours in every month).

<sup>3</sup> Transfers of PPL to a partner/spouse occur in less than 1 per cent of cases, and uptake of the unpaid partner/paternity leave is very low (4 per cent).

- 21 Most submitters supported amendments to ensure that workers are not ineligible for payments based on their employment status (such as seasonal and casual workers); that hours' tests are reflective of the different working arrangements and circumstances of prospective parents; and that these provisions need to work within flexible modern working arrangements. Many employer comments included the need for the verification process and determination of eligibility to be the responsibility of a government agency rather than the employer.

### **Extending paid leave to non-standard workers and those who have recently changed jobs**

#### *Current issue*

- 22 The Act currently requires continuous employment with one employer prior to the birth/adoption of the baby. The minimum test of continuous employment for at least six months' entitles an employee to paid leave only (the current 14 weeks' payment) and job protection for those 14 weeks. Continuous employment for at least 12 months' entitles an employee to the 14 weeks' paid leave *and* unpaid job-protected leave for 12 months (inclusive of the 14 weeks' paid leave).
- 23 The Act's lack of flexibility and strict eligibility criteria (relating to continuous employment with one employer prior to the baby's due date) not only discourages labour mobility but frequently causes employees to miss out on the necessary support payments and job protection. For example, non-standard workers (such as casual, seasonal, temporary and fixed-term workers), or other workers with more than one employer, are ineligible for paid leave despite often having a long work history.
- 24 Employees who have a change of employer in the six months prior to the birth/adoption of the baby are not eligible for paid leave or unpaid job-protected leave (including, for example, those who change jobs between franchises).

#### *Proposed change*

- 25 I propose to extend eligibility for paid leave, but not for unpaid job-protected leave, to those who have recently changed jobs and to non-standard workers (ie casual, seasonal, and employees with more than one employer).
- 26 To do this, I propose to continue with the current work test to assess eligibility for paid leave and unpaid job-protected leave, and have an additional separate test to assess eligibility for paid leave only, based on general workforce attachment (rather than the current requirement for attachment to one workplace):
- a. To access paid leave only, employees and the self-employed will need to have worked an average of at least 10 hours per week over any 26 out of the 52 weeks immediately preceding the expected date of delivery/assumption of care. This work can be for the same or multiple employers.
  - b. Employees entitled to paid leave only would be required to undertake no paid work while they are receiving payments, as is currently the case with self-employed, subject to the Keeping in Touch proposal below.
  - c. Employees entitled to paid leave only who have multiple employers will be able to combine their income from each job in the weeks worked to maximise their payment up to the cap. This is consistent with current provisions for self-employed applicants, employees with multiple jobs, and combined (self-employee and employee) applicants.

- d. The current requirement for employees to have also worked one hour in every week or 40 hours in every month would be dropped, in recognition of the increasing flexibility of work and to achieve consistency across both work tests. This change has no impact on the minimum number of hours required to be worked.
- 27 I consider this proposal strikes an appropriate balance between providing support for parents of newborns and encouraging attachment to the labour market, while minimising the costs on employers and practices that may be disruptive to business development.

#### *Stakeholder feedback*

- 28 The majority of employers and employees who submitted are in favour of extending the scheme to cover non-standard employees. Most are comfortable with the proposed criteria outlined above, with many commenting that the criteria needs to be as clear and straightforward as possible.

#### *Implementation and administrative issues*

- 29 Given the proposed split into a paid leave only entitlement and a paid leave and job-protected leave entitlement, the application process would mirror this. Employees applying for payment only would apply directly to Inland Revenue. Employees applying for payment and leave would follow the current process of providing written notice to the employer and applying to Inland Revenue for payments.
- 30 For some non-standard or less regular employees, obtaining verification of hours worked from multiple employers, some of whom they may no longer be in contact with, could be overly onerous and be a disincentive to applying at all. Hence I propose that these workers for which the extended eligibility will apply to will be required to provide a declaration. This is consistent with the current verification processes for self-employed, who are able to verify their hours by statutory declaration.
- 31 Currently, the *Parental Leave and Employment Protection Regulations 2002* prescribe the process for the operational aspects of the Act. These regulations will be amended to provide for a declaration as the means of confirming eligibility for non-standard and less regular employees, and/or employees who have recently changed jobs.

#### *Risk*

- 32 Some employees may find themselves in situations where an employer refuses to give them leave, in which case they would face a choice of taking the payments and losing their job, or continuing with their work and forfeiting the payments, along with bonding and recovery time. Officials have informed me of instances where mothers have returned to work as little as two days after giving birth, in order to keep their job.
- 33 To mitigate this risk, I propose to require that employers have a duty to reasonably consider providing their employee with leave to allow them to take their entitled payments. Cases where this may not be possible would be in extenuating circumstances where there would be a clear and significant detrimental impact on business performance if they were to provide leave.
- 34 Given the difficulties associated with verification from multiple employers and the use, therefore, of a declaration, there is potential for an increased risk of fraudulent activity. However, this is the process that is currently followed for self-employed. Any increased risk is also small, given the low numbers of employees that the extension would apply to. (The current verification process would remain for the vast majority of those applying for parental leave that have one ongoing employer.)

- 35 A higher level of verification would significantly increase administration costs and preclude the groups of workers that the changes are addressing.
- 36 Other factors that help to mitigate the potential for gaming include the availability of other options that may result in a higher payment, particularly for workers with a low level of attachment to the labour market and low earnings, such as the Parental Tax Credit, or the Sole Parent Support, Jobseeker Support and Supported Living Payments. Paid parental leave is a relatively low level of payment that is capped at the maximum rate<sup>4</sup> or set at an employee's pay rate, whichever is lower.
- 37 The requirement to cease working for the duration of the paid leave period acts as a further disincentive to gaming. Furthermore, I propose to increase the penalty for making a false declaration to \$15,000 (up from \$5,000), as set out below.
- 38 Overall, I consider that the cost of requiring a higher level of verification to mitigate a potentially small increase in the risk of fraudulent activity would likely outweigh the benefits, and may undermine the policy intent of extending the scheme. Officials will closely monitor the increased uptake of parental leave following implementation of the proposed changes and will reassess verification processes, should the increased numbers and income statistics depart significantly from the estimated increased uptake.

### **Extending parental leave entitlements to 'primary carers'**

#### *Current issue*

- 39 The current eligibility criteria for parental leave entitlements do not recognise different family arrangements. The Act covers eligible birth mothers or parents who adopt under the *Adoption Act 1955*. Family structures and parenting arrangements have become significantly more diverse since the Act was enacted, with a third of New Zealand families now being single-parent families, and permanent guardianship arrangements being more prevalent than formal adoption.
- 40 Some examples of the issues that arise are: the Act is set up to respond to the Adoption Act 1955, which no longer reflects 'adoption' in practice, often resulting in cases ending up with the Employment Relations Authority; parents who may want to formally adopt are often guided by Child, Youth and Family towards a guardianship arrangement if that is in the best interests of the child; and grandparents, biological fathers, and permanent guardians who work but take time off work to care for young children are all excluded from the scheme.

#### *Proposed change*

- 41 I propose that amendments be made to the Act to incorporate the notion of a 'primary carer', as Inland Revenue does with the Working for Families tax credits scheme. Each child would only be allowed one primary carer and they would have to meet eligibility criteria relating to attachment to the workforce. This would include: Home for Life carers<sup>5</sup>, and other permanent care arrangements (such as permanent guardianship, whāngai arrangements, parenting orders, and grandparents). This would ensure children get the necessary support they need, and potentially encourage more people to undertake permanent care arrangements for children.

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<sup>4</sup> The maximum rate is currently \$504.10 per week (gross).

<sup>5</sup> Home for Life is a Child, Youth and Family programme that involves taking on a foster child as a permanent fostering arrangement.

- 42 The primary carer will be required to be the principal person who is providing the day-to-day care of the child on an ongoing or permanent basis, subject to meeting the eligibility criteria. Payments will cease (subject to some instances for birth mothers) if the person no longer has the care for the child.
- 43 Subsequent carers can only claim paid leave or unpaid job-protected leave if the child is under six years of age. This aligns with the current provisions in the Act for adoptions. The provisions for primary care would mirror the adoption provisions in the Act. As with adoption currently, there may be instances where subsequent carers can apply for parental leave entitlements in respect of the same child, such as a Home for Life arrangement breaking down and, in such cases, Child, Youth and Family needing to seek another Home for Life option.

#### *Stakeholder feedback*

- 44 The majority of submitters are in support of the proposal to extend the scheme to 'primary carers' and are comfortable with a broad definition.

#### *Implementation and administrative issues*

- 45 As with the proposal to extend eligibility to non-standard workers, the extension of parental leave entitlements to primary carers necessitates a low level of verification if the intent is to address the current problems with the Act and recognise less formal care arrangements. Again, the most feasible option would be a declaration (or formal certification through Child, Youth and Family where it exists).

#### *Risk*

- 46 There are potential risks associated with including more informal arrangements in the scheme, such as people seeking to be a primary carer solely to access parental leave payments or extended leave. Officials consider this is unlikely to be a significant risk, given the employee will need to cease working for the duration of the payment period, in addition to the points discussed above in the proposal to extend eligibility to non-standard workers. This includes increasing the existing penalty for making a false declaration to a maximum fine of \$15,000 (up from \$5,000), as set out below.

### **Providing extended unpaid leave to parents who have been with their employer for more than six months (but less than 12 months)**

#### *Current issue*

- 47 Existing parental leave entitlements mean that women who have been with their employer for at least six months (but less than 12 months) may access only 14 weeks' paid leave, but not any unpaid job-protected leave.
- 48 The proposal consulted on was for unpaid job-protected leave to be made available to parents on a pro rata basis according to length of service. For example, a person who had been with their employer for seven months would be entitled to seven months of unpaid job-protected leave. The discussion paper also included an alternative design that all employees in this group be entitled to a standard six months extended unpaid job-protected leave (less any paid leave taken).

### *Proposed change*

- 49 I propose to extend unpaid job-protected leave to six months for employees who have been with their employer for at least six months but less than 12 months. This supports the objectives of the Act and aligns with the World Health Organisation's recommendation of exclusive breastfeeding for six months, without unduly increasing compliance costs for employers.
- 50 If employers preferred a more consistent and aligned approach with their leave entitlements, they could choose to extend the 12 months' unpaid job-protected leave entitlement to all employees within their contractual arrangements, irrespective of whether they had worked a minimum of six months or 12 months. This could also serve to encourage mobility.

### *Stakeholder feedback*

- 51 The majority of submitters supported an extension of unpaid job-protected leave and of a pro rata approach for reasons of fairness for those who have worked for a longer period. Employer responses were mixed, with some saying they did not support extended unpaid job-protected leave at all, others saying they preferred the blanket six months leave because of ease of administration, whilst a number preferred the pro rata option or felt there would be no difference between the two options.
- 52 Employers who opposed the pro rata approach cited costs of administration and of finding a replacement for a longer period, and costs of investing in staff with less than 12 months' tenure.

### *Risk*

- 53 Some employers, as indicated in the consultation, will oppose this proposal because of the additional business costs of increasing the period of unpaid job-protected leave. I consider the costs would be relatively low. Employers will already be extending unpaid job-protected leave of 18 weeks' to these employees from 2016, so this proposal is only for an additional eight weeks' unpaid job-protected leave. Longer leave may increase the likelihood of a return to work, and six months is considered to be the minimum optimum period for full-time personal care of children.

### **Increasing the flexibility of the Act**

- 54 The Act does not encourage connection to work as effectively as it could and, unlike overseas jurisdictions, the leave entitlements are inflexible in the way they can be taken. I propose the following amendments to the Act to address these issues, which would have no or low costs, and benefit employers and employees:

#### **a) Enabling employees to work limited hours (Keeping in Touch hours) during the paid leave period**

### *Current issue*

- 55 Currently, any work undertaken during the paid or unpaid job-protected leave period results in the employee forfeiting any remaining leave entitlement. Limited attachment to work can be beneficial for both the employer and the employee (for example, enabling the employee to make visits to work to encourage attachment or keep up skills development or undertake training).



### *Proposed change*

- 56 I propose to allow an employee to work for up to 40 hours (across all employers if they have more than one) during the 18 week paid leave period, without losing their entitlement. This would require the agreement of both the employee and the employer. This approach gives employees and employers sufficient flexibility, without allowing an excessive amount of work during a protected period of leave, and helps to ease the transition back to work.
- 57 To ensure that a birth mother and baby's health outcomes are not compromised, Keeping in Touch (KIT) hours may not be used where the child is under four weeks old.
- 58 A person wishing to use KIT hours during the paid leave period will not have to provide any notice to Inland Revenue or MBIE. However, any person who breaches any condition of KIT (either hours or the timeframe for commencement) will be liable to repay all payment received.
- 59 Both the employer and the employee would need to agree to the terms of work and the type of work to be undertaken, and neither party would be obliged to agree. Any work undertaken would be subject to all the usual statutory protections. We would expect that, in light of the employer's and employee's duty of good faith, employees will return to work on broadly the same terms and conditions that they were on immediately before they went on leave.

### *Stakeholder feedback*

- 60 Employers and employees supported the KIT proposal for tasks such as completing a work handover and keeping up to date with training. Specific issues raised included: a preference for KIT to be measured in hours rather than days, unintended consequences where people may be pressured to return to work, and ensuring that people do not return to work on inferior conditions to those they were on before.

### *Risk*

- 61 Monitoring the respective conditions and ensuring adherence to them would be costly and administratively difficult. However, current provisions allow self-employed parents to carry out work in the nature of oversight while receiving paid leave, so I propose to implement the provisions in a similar way to ensure the administration of the scheme is simple and cost-effective.
- 62 Some employee groups were also concerned with the potential for employers to place pressure on employees to work more hours than they would like. However, clear provisions (ie stipulating the importance of both parties' agreement) and existing protections and the duty of good faith will mitigate this risk.

## **b) Enabling employees to take the unpaid job-protected leave flexibly**

### *Current issue*

- 63 Currently, all forms of parental leave available to employees (both paid leave and unpaid job-protected leave) must be taken full-time and in one continuous block. On returning to work, an employee forfeits any remaining parental leave entitlement.

### *Proposed change*

- 64 I propose to enable employees who have returned to work by agreement to continue to be eligible for any remaining leave by mutual agreement (up until the child is one year old or one year after assuming primary care). This would require both parties to agree up front to an employee returning to work for a period, then taking their remaining leave entitlement should they wish to.
- 65 The aim of this proposal is to allow employers and employees to come to arrangements that best suit their needs, while encouraging attachment to work. The impact on employers would not be significant, given the proposal would be by mutual agreement, and would benefit both parties by allowing for choice and flexibility of the leave entitlement.

### *Stakeholder feedback*

- 66 The majority of employers and employees were supportive of this proposal, citing the importance of flexibility, and that increased options about how parents return to work increases the likelihood of a return. Employers were more likely to emphasise the importance of negotiation, and expressed concerns for small businesses in particular if flexible leave were to be a right.

## **Allowing employees to resign and still receive payments**

### *Current issue*

- 67 Currently, an employee can only receive paid leave if they tell their employer they intend to return after the leave and provide a return date, as part of the notification advising their employer of their intention to take parental leave. If the employee decides not to return to work at the end of the parental leave period, they are not required to repay the parental leave payments.
- 68 There are situations where the employee may be intending to resign but does not inform the employer because they will forfeit their eligibility for payments. Where the employer needs replacement cover, they are obliged to recruit a temporary replacement when they could have saved costs and recruited a permanent replacement from the outset.

### *Proposed change*

- 69 I propose to allow employees to resign if they wish and still receive payments. This is unlikely to mean anyone is entitled to leave who is not currently (as they currently simply inform the employer they are planning to return). However, this will reduce costs for employers by allowing for more certainty and enabling recruitment of a permanent replacement, rather than a temporary replacement, in a situation where the employee has no intention of returning.
- 70 This will also mean that all workers are treated consistently if other proposals in this paper are accepted; ie under the proposed changes non-standard workers would be able to receive parental leave payments even if they had no job to return to, such as fixed-term, casual or seasonal workers.
- 71 There is a similar issue with parents who qualify for the in-work tax credit while claiming paid parental leave. If they resign, then in-work tax credits would stop, so those who wish to continue to receive payments would simply defer resignation. To be consistent with the policy change to allow payments to continue when an employee resigns, the in-work tax credit should also continue to be paid for as long as parental leave payments are paid.

### *Stakeholder feedback*

- 72 While this issue was not directly consulted on, a small number of employer groups in the consultation raised the difficulty they face in situations where their employees are not able to be honest with them about their intentions and whether they intend to return or not after taking parental leave. This is a concern that employers have previously raised about the parental leave scheme.

### *Risk*

- 73 This proposal was not in the discussion document and employee groups are likely to oppose it on the basis of a potential for employers to put pressure on employees to resign prior to taking leave. Officials are of the view that the protections in the Act and in the *Employment Relations Act 2000*, including good faith and the personal grievance process, are sufficient to deter this. Furthermore, there is nothing to prevent the status quo continuing, ie employees not making a decision on whether to return to work until after their period of paid leave.

## **Increasing the penalty for making a false statement or misleading**

### *Current issue*

- 74 Currently, if a person commits an offence by making a false statement, or says or does anything (or omits to do or say anything) with the intention of misleading the “department or any other person concerned in the administration of the Act”, it is punishable by a maximum fine of \$5,000.
- 75 This maximum fine was an appropriate setting in 2002 when it exceeded the maximum parental leave payment of \$3,900 (based on maximum weekly payments of \$325 for 12 weeks).
- 76 In 2016, when these changes are proposed to take effect, the maximum parental leave payment will be \$9,073 (based on 18 weeks of payments at the current rate of \$504.10).<sup>6</sup> As such, a maximum penalty of \$5,000 falls well short of the maximum parental leave payment and will therefore no longer be a sufficient deterrent against acts of fraud.

### *Proposed change*

- 77 I propose to increase the maximum fine that a person is liable to under the Act to \$15,000. This penalty better reflects the increased maximum payments that a person currently receives under the Act, and provides an additional deterrent for any potential increases in fraudulent activity as a result of the proposed changes to broaden eligibility.

## **Better and less regulation – including the annual adjustment process in the legislation**

### *Current issue*

- 78 Currently, the Act requires that the rates of payment be adjusted and set each year and the process for this is set out in the Act and the Parental Leave and Employment Protection Regulations 2002. The maximum rate of payment is adjusted annually by any percentage movement upwards in the average ordinary time weekly earnings.

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<sup>6</sup> If the annual adjustment is factored in, which is estimated as an approximate 3% increase per year, the maximum parental leave payment in 2016 will be closer to \$9,600.00.

- 79 There is no judgement required in the calculation and the rate is not discretionary. It involves a step-by-step, technical process determined by the Quarterly Employment Survey. However, the process of adjustment is cumbersome and inefficient. The rate is adjusted each year by Order in Council and requires Cabinet consideration. Consultation with Business New Zealand and the New Zealand Council of Trade Unions is also required, despite them having no ability to alter the outcome, given the rate is prescribed and already determined.

*Proposed change*

- 80 In the interests of less regulation and improved efficiency, I propose to amend the Act to set the annual adjustment process in the Act, rather than in regulation. As the Minister responsible for the Act, I would announce the new rate each year and publish it on the MBIE and Inland Revenue website. The legislation would set out the formula to calculate the rate.

**Providing access to parental leave payments to members of the Armed Forces**

*Current issue*

- 81 Members of the Armed Forces of the New Zealand Defence Force (NZDF) have been receiving parental leave payments since the scheme was introduced in 2002. In late 2012, and following Crown Law advice, the issue came to light that technically they were ineligible for payment because they fall outside the definition of “employee” in the Act.<sup>7</sup>
- 82 As it was not the policy intent to exclude the Armed Forces of the NZDF from being eligible for parental leave payments, a temporary solution was put in place in 2012. Specifically, the NZDF introduced its own scheme and an appropriation transfer was agreed to, so funds already appropriated to Inland Revenue could be transferred to the NZDF to cover its costs (Cab Min (14) 12/3(28) refers).

*Proposed change*

- 83 I propose to put a permanent legislative solution in place by explicitly providing eligible members of the Armed Forces with access to the paid parental leave scheme.
- 84 I do not propose to extend the leave and job protection aspects of the Act to members of the Armed Forces, as the NZDF provides its own entitlement to unpaid parental leave and job protection. The requirement that the nature of the regular force must be able to be deployed at any time precludes alignment with this aspect of the Act.
- 85 There are no fiscal implications for the Crown arising from the proposed legislative change, as members of the Armed Forces of the NZDF have been receiving parental leave payments in good faith since 2002. As the NZDF will no longer need to operate its own scheme, a fiscally neutral appropriation transfer will be made to fund Inland Revenue costs of extending the scheme to eligible members of the Armed Forces of the NZDF.

*Risk*

- 86 As this is a technical amendment, I do not anticipate any risks with this proposal.

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<sup>7</sup> The status of members of the Armed Forces is unique as they serve the Crown and swear an oath of allegiance. They do not have access to the protections afforded to employees by the Employment Relations Act, are unable to join a union or bargain terms and conditions of service, and may not take industrial action. Members of the civil staff of the NZDF are not affected by this issue as they fall within the definition of employee in the Act.

## Next steps

- 87 I intend to present an Omnibus Bill incorporating the changes outlined in this paper and the employment standards reforms to Cabinet in mid-2015 for introduction shortly after.

## Consultation

- 88 The following government agencies have been consulted on this paper and, as far as possible, the Cabinet paper reflects their comments: The Treasury, State Services Commission, Inland Revenue, Ministry of Justice, Ministry of Social Development, Ministry of Health, Ministry for Women, Te Puni Kōkiri, Ministry of Pacific Island Affairs, and the New Zealand Defence Force. The Department of Prime Minister and Cabinet has been informed.
- 89 Business New Zealand and the New Zealand Council of Trade Unions and their affiliated unions were also consulted on the key proposals in this paper.

## Financial Implications

- 90 The estimated costs of extending parental leave entitlements to less regular and non-standard employees, and 'primary carers' are set out in Table 1 below. Funding for this package was agreed to as part of Budget 2014 [CAB Min (14) 13/12 refers].

**Table 1: Estimated fiscal costs of extending parental leave payments to non-standard workers and permanent caregivers from 1 April 2016 (\$M)**

|                                                                                                                                                                         | 2014/15      | 2015/16      | 2016/17       | 2017/18       |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|--------------|---------------|---------------|
| <b><i>Costs of extending eligibility to non-standard workers (assuming eligibility increases from 90% to 95% and half those people take up paid parental leave)</i></b> | \$0.0        | \$5.7        | \$6.4         | \$6.6         |
| <b>Costs of extending eligibility to permanent caregivers</b>                                                                                                           | <b>\$0.0</b> | <b>\$3.7</b> | <b>\$4.1</b>  | <b>\$4.3</b>  |
| <b>Total cost of extending entitlement and eligibility to non-standard workers and permanent caregivers</b>                                                             | <b>\$0.0</b> | <b>\$9.4</b> | <b>\$10.5</b> | <b>\$10.9</b> |

Notes:

Assumes entitlement of 16 weeks from 1 April 2015 and 18 weeks from 1 April 2016. Therefore 2015/16 estimate is 3/4 year at 16 weeks and 1/4 year at 18 weeks.

Figures are before tax and estimates are based on the 2011/12 financial year.

Increase in average ordinary time weekly earnings estimated based on Treasury Budget 2013 nominal wage growth forecasts.

- 91 The greater choice and flexibility will mean some people who would otherwise receive the parental tax credit will now claim paid parental leave instead. This would result in a small savings on the parental tax credit.

## Human Rights

- 92 The proposals contained in this Cabinet paper appear to be consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. A final view as to whether the proposals will be consistent with the Bill of Rights Act will be possible once the legislation has been drafted.

## **Legislative Implications**

- 93 These proposals are likely to result in significant changes to the *Parental leave and Employment Protection Act 1987* and its associated regulations, subject to Cabinet decisions. I intend to progress these changes, along with the changes to strengthen the enforcement of employment standards, in an Omnibus Employment Standards Bill, [REDACTED] s 9(2)(g)(i) of the Official Information Act 1982 [REDACTED] In order to achieve the 1 April 2016 implementation date for the parental leave changes, the Bill needs to be introduced by mid-2015.

## **Regulatory impact analysis**

- 94 A regulatory impact statement (RIS) is required for the proposed changes. This is attached. The RIS has not needed to be reviewed by Treasury's RIAT but has been circulated to the Treasury as part of the consultation on this Cabinet paper.

### *Quality of the Impact Analysis*

- 95 The General Manager, Strategic Policy branch and the Ministry of Business, Innovation and Employment Regulatory Impact Analysis Review Panel have reviewed the attached RIS prepared by the Ministry of Business, Innovation and Employment. They consider that the information and analysis summarised in the RIS meets the criteria necessary for Ministers to fairly compare the available policy options and take informed decisions on the proposals in this paper.

## **Publicity**

- 96 Media releases will be made at key points of the amendment of the legislation, such as the Bill's introduction. A communication strategy will be developed prior to any implementation of changes to parental leave to inform key stakeholders about their respective rights and responsibilities. The communications strategy will also assist parents to make informed choices about other social assistance that may be available to them, including advice on whether the parental tax credit or paid parental leave would be the most beneficial for their situation.

## Recommendations

The Minister for Workplace Relations and Safety recommends that the Committee:

- 1 **Note** that Cabinet has agreed in principle to a range of measures to modernise and improve the *Parental Leave and Employment Protection Act 1987* to address the changing nature of families and work and agreed to consult on the design of these proposals [CAB Min (14) 13/12 refers], and that the Ministry of Business, Innovation and Employment recently completed consultation on the proposed changes
- 2 **Agree** that the parental leave legislation be amended to extend the paid leave (but not unpaid job-protected leave) entitlement to those who have recently changed jobs and to non-standard workers (ie casual, seasonal, and employees with more than one employer)
- 3 **Agree** that the parental leave legislation be amended so that employers will have a duty to consider job protection to non-standard workers where they can reasonably do so
- 4 **Agree** that the parental leave legislation be amended to incorporate the notion of a 'primary carer', being the principal person providing the day-to-day care of the child on an ongoing or permanent basis, so that: Home for Life carers, and other permanent care arrangements (such as whāngai arrangements, permanent guardianship, parenting orders, and grandparents) can receive parental leave entitlements, subject to meeting the eligibility criteria
- 5 **Agree** that the parental leave legislation be amended to provide six months' unpaid job-protected leave to workers who have been with their employer for more than six months, but less than 12 months
- 6 **Agree** to the following amendments to the parental leave legislation to provide greater flexibility and connection to work:
  - 6.1 Keeping in Touch hours: to allow employees to work for up to 40 hours during the 18 week payment period (across all employers if they have more than one) without losing their parental leave entitlement, by mutual agreement with their employer
  - 6.2 Enabling employees who have returned to work early by mutual agreement, in their unpaid leave period, to continue to be eligible for any remaining leave by mutual agreement (up until the child is one year old or one year after assuming primary care)
- 7 **Agree** to amend the parental leave legislation to allow employees to resign if they wish and still receive payments and make consequential changes to the in-work tax credit in tax legislation
- 8 **Agree** to amend the parental leave legislation to increase the penalty for making a false statement or misleading to a maximum fine of \$15,000 (up from \$5,000)
- 9 **Agree** to amend the parental leave legislation to set the annual adjustment process of the rates of payment in the primary legislation, rather than in regulation
- 10 **Agree** to amend the parental leave legislation to bring members of the Armed Forces within scope of the paid parental leave scheme
- 11 **Agree** that recommendations 2, 3, 4, 5, 6, 7, 8, 9, and 10 be implemented through the Employment Standards Bill s 9(2)(g)(i) of the Official Information Act 1982  
  (to be introduced mid-2015) and coming into effect by 1 April 2016

- 12 **Agree** that the Ministry of Business, Innovation and Employment and Inland Revenue report to the Minister for Workplace Relations and Safety and the Minister of Revenue on further detail about the processes required to administer the changes proposed in this Cabinet paper prior to the Bill being introduced
- 13 **Agree** that the proposed verification process of a declaration for the groups of employees that the extended provisions will apply to will need to be given effect to through regulations
- 14 **Invite** the Minister for Workplace Relations and Safety to issue drafting instructions to the Parliamentary Counsel Office to give effect to these recommendations
- 15 **Authorise** the Minister for Workplace Relations and Safety to make decisions consistent with the overall policy decisions in this paper on any issues that arise during the drafting process.

**Hon Michael Woodhouse**  
**Minister for Workplace Relations and Safety**

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