

Employment Relations (Extended Time for Personal Grievance for Sexual Harassment) Amendment Bill

Member's Bill

As reported from the Education and Workforce Committee

Commentary

Recommendation

The Education and Workforce Committee has examined the Employment Relations (Extended Time for Personal Grievance for Sexual Harassment) Amendment Bill and recommends unanimously that it be passed. We also recommend all amendments unanimously.

Introduction

This is a Member's bill in the name of Dr Deborah Russell, MP. The bill would amend the Employment Relations Act 2000 to extend from 90 days to 12 months the time available to raise a personal grievance of sexual harassment. It aims to improve the personal grievance process for victims of sexual harassment by allowing them more time to consider what has happened to them before deciding whether to raise a personal grievance.

The bill would only extend the 90-day time period for raising a personal grievance for sexual harassment, and not for any other type of personal grievance.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We initially queried whether the bill was intended to be retrospective. However, we understand that it is not. We have no issues regarding the legislation's design to bring to the attention of the House.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Time period in employment agreements

Clauses 4 and 5 of the bill would amend sections 54(3)(a)(iii) and 65(2)(a)(vi) of the Employment Relations Act, respectively. These sections require employment agreements to refer to the time period within which a personal grievance must be raised.

As introduced, the bill would replace the reference to 90 days with “the relevant periods”. We believe that “the relevant periods” should be defined to provide more clarity. We recommend that the clauses specify the two different periods that would apply depending on the nature of the personal grievance (12 months for personal grievance for sexual harassment, and 90 days for any other personal grievance).

Extending the period for raising personal grievances relating to sexual harassment

Section 114 of the Act requires every employee who wishes to raise a personal grievance to do so “within the period of 90 days beginning with the date on which the action alleged to amount to a personal grievance occurred or came to the notice of the employee, whichever is the later”. We recommend amending this section to replace “period of 90 days” with “applicable employee notification period”.

We recommend amending clause 6 of the bill to insert clause 114(7) into the Act. Clause 114(7) would define “employee notification period” to mean:

- in respect of a personal grievance for sexual harassment, “the period of 12 months beginning with the date on which the action alleged to amount to the personal grievance occurred or came to the notice of the employee, whichever is later”
- “in respect of any other personal grievance, the period of 90 days beginning with the date on which the action alleged to amount to a personal grievance occurred or came to the notice of the employee, whichever is later”.

It is not clear that clause 6 of the bill as introduced would allow employers to consent to personal grievances being raised after the specified period had expired. We recommend amending clause 6 to explicitly state that grievances can be raised after the expiration of the relevant period, with employer consent. This would be consistent with current section 114(1) of the Act.

Section 115(a) of the Act specifies the exceptional circumstances under which the Employment Relations Authority can grant leave for a personal grievance to be brought after 90 days without the consent of the employer. We recommend inserting clause 6A into the bill, which would amend section 115(a) to refer to the “applicable employee notification period under section 114”.

Retrospectivity

Clause 8 of the bill would insert a new part into Schedule 1AA of the Act relating to the extended time period for personal grievance proceedings for sexual harassment. As introduced, clause 17 of new Part 4 specifies that, when the bill is enacted, any outstanding personal grievance proceedings before the Employment Relations

Authority or the court must be determined or completed under the law as it stood when the proceedings were brought.

We believe clause 17 could be more explicit. We recommend amending it to state that the extended time to raise a personal grievance for sexual harassment only applies “if the action alleged to amount to the personal grievance occurred or came to the notice of the employee on or after” this bill’s commencement date.

Appendix

Committee process

The Employment Relations (Extended Time for Personal Grievance for Sexual Harassment) Amendment Bill was referred to us on 18 May 2022.

The closing date for submissions on the bill was 15 July 2022. We received and considered 43 submissions from interested groups and individuals. We heard oral evidence from 19 submitters at hearings held in Wellington and via videoconference. We invited the member in charge of the bill to make an oral submission on the bill. She did so on 10 August 2022.

We received advice on the bill from the Ministry of Business, Innovation and Employment. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Marja Lubeck (Chairperson)

Chris Baillie

Camilla Belich

Jan Logie

Jo Luxton

Ibrahim Omer

Angela Roberts

Penny Simmonds

Erica Stanford

Hon Paul Goldsmith participated in our consideration.

**Employment Relations (Extended Time for Personal
Grievance for Sexual Harassment) Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Dr Deborah Russell

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Member's Bill

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New Part 4 inserted into Schedule 1AA

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Employment Relations (Extended Time for Personal Grievance for Sexual Harassment) Amendment Act **2021**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

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3 Principal Act

This Act amends the Employment Relations Act 2000 (the **principal Act**).

4 Section 54 amended (Form and content of collective agreement)

In section 54(3)(a)(iii), replace “the period of 90 days” with “the relevant periods”.

Replace section 54(3)(a)(iii) with:

- (iii) a plain language explanation of the services available for the resolution of employment relationship problems, including a reference to—
 - (A) the 12-month period within which a personal grievance must be raised under section 114(1) if the grievance is in respect of sexual harassment under section 103(1)(d); and
 - (B) the 90-day period within which any other personal grievance must be raised under section 114(1); and

5 Section 65 amended (Form and content of individual employment agreement)

In section 65(2)(a)(vi), replace “the period of 90 days” with “the relevant periods”.

Replace section 65(2)(a)(vi) with:

- (vi) a plain language explanation of the services available for the resolution of employment relationship problems, including a reference to—
 - (A) the 12-month period within which a personal grievance must be raised under section 114(1) if the grievance is in respect of sexual harassment under section 103(1)(d); and
 - (B) the 90-day period within which any other personal grievance must be raised under section 114(1); and

6 Section 114 amended (Raising personal grievance)

(1) In section 114(1), replace “subject to subsections (3) and (4)” with “subject to subsections **(1A)**, (3) and (4)”.

(2) After section 114(1), insert:

(1A) Despite **subsection (1)**, an employee who wishes to raise a personal grievance that involves allegations of sexual harassment must, subject to subsections (3) and (4), raise the grievance with his or her employer within the period of 12 months beginning with the date on which the action alleged to amount to a personal grievance occurred or came to the notice of the employee, whichever is the later.

- (3) In section 114(3), after “90-day period,” insert “or 12-month period if **sub-section (1A)** applies.”
- (1) Replace section 114(1) with:
- (1) An employee who wishes to raise a personal grievance must, subject to subsections (3) and (4), raise the grievance with their employer within the applicable employee notification period unless the employer consents to the personal grievance being raised after the expiration of that period. 5
- (2) In section 114(3), replace “90-day period” with “employee notification period”.
- (3) After section 114(6), insert:
- (7) In this section, **employee notification period** means— 10
- (a) in respect of a personal grievance under section 103(1)(d), the period of 12 months beginning with the date on which the action alleged to amount to the personal grievance occurred or came to the notice of the employee, whichever is later;
- (b) in respect of any other personal grievance, the period of 90 days beginning with the date on which the action alleged to amount to a personal grievance occurred or came to the notice of the employee, whichever is later. 15
- 6A Clause 115 amended (Further provision regarding exceptional circumstances under section 114)** 20
- In clause 115(a), replace “period specified in section 114(1)” with “applicable employee notification period under section 114”.
- 7 Section 115A amended (Notifying controlling third party of personal grievance)**
- (1) In section 115A(1)(a)(ii), ~~delete~~ replace “90-day” with “applicable” in each place. 25
- (2) In section 115A(2), delete “90-day”.
- (3) In section 115A(3), delete “90-day”.
- (4) In section 115A(6), repeal the definitions of **90-day employee notification period** and **relevant 90-day notification period**. 30
- (5) In section 115A(6), insert in their appropriate alphabetical order:
- employee notification period** has the same meaning as in section 114(7)
- relevant notification period** means the applicable employee notification period or the 90-day employer notification period.
- (4) Replace section 115A(6) with: 35
- (6) In this section,—

~~employee notification period~~ means—

- (a) ~~the period of 12 months beginning with the date on which the action alleged to amount to a personal grievance occurred or came to the notice of the employee (whichever is later), in respect of a personal grievance that involves allegations of sexual harassment; or~~
- (b) ~~the period of 90 days beginning with the date on which the action alleged to amount to a personal grievance occurred or came to the notice of the employee (whichever is later), in any other case~~

~~employer notification period~~ means the period of 90 days beginning with the date on which the employer's employee raised the personal grievance with the employer

~~relevant notification period~~ means the employee notification period or the employer notification period.

8 Schedule 1AA amended

In **Schedule 1AA**,—

- (a) insert the Part set out in the Schedule of this Act as the last Part; and
- (b) make all necessary consequential amendments.

Schedule
New Part 4 inserted into Schedule 1AA

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Part 4	
Provisions relating to Employment Relations (Extended Time for Personal Grievance for Sexual Harassment) Amendment Act 2021	5
17 Application of When extended time period for personal grievance for sexual harassment under section 103(1)(d) applies	
(1) Any personal grievance proceedings brought before the Authority or the court (or a court on appeal), but not finally determined or completed, before the commencement of the 2021 Amendment Act must be determined or completed under the law as it was at the time the proceedings were brought.	10
(1) <u>This clause applies for the purposes of determining the period within which an employee who wishes to raise a personal grievance under section 103(1)(d) must—</u>	15
(a) <u>raise the personal grievance; and</u>	
(b) <u>if applicable, notify a controlling third party that the employee considers that the actions of the controlling third party caused or contributed to the personal grievance.</u>	
(1A) <u>Sections 114 to 115A (as amended by the 2021 amendment Act) apply in respect of a personal grievance if the action alleged to amount to the personal grievance occurred or came to the notice of the employee on or after the date of commencement of the 2021 amendment Act.</u>	20
(1B) <u>Sections 114 to 115A (as they read immediately before commencement of the 2021 amendment Act) continue to apply in respect of a personal grievance if the action alleged to amount to the personal grievance occurred and came to the notice of the employee before commencement of the 2021 amendment Act.</u>	25
(2) In this clause, the 2021 amendment Act means the Employment Relations (Extended Time for Personal Grievance for Sexual Harassment) Amendment Act 2021 .	30

Legislative history

21 October 2021
18 May 2022

Introduction (Bill 87–1)
First reading and referral to Education and Workforce
Committee