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

15/07/2022

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1 Introduction

- 1.1 The New Zealand Law Society | Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Employment Relations (Extended Time for Personal Grievance for Sexual Harassment) Amendment Bill (**Bill**).
- 1.2 This Member's Bill seeks to amend the Employment Relations Act 2000 (**Act**) and extend the time available to raise a personal grievance that involves allegations of sexual harassment, from 90 days to 12 months.¹
- 1.3 The Law Society does not seek to comment on the policy rationale behind the proposed amendments (including whether the proposed 12-month period is an appropriate timeframe for raising sexual harassment grievances, or whether the timeframes for raising personal grievances for other reasons, such as racial harassment or an unjustifiable action by the employer, should similarly be extended). We note all employees are entitled to work in a safe and inclusive workplace, and sexual harassment can take a very significant toll on victims.
- 1.4 However, the Law Society is concerned that the drafting of the Bill goes beyond the intended policy rationale by allowing employees to raise a personal grievance on *other grounds* (such as unjustified dismissal or unjustified disadvantage) outside of the 90-day period prescribed in the Act, simply by including reference to alleged sexual harassment in relation to that other claim. The Law Society recommends a change to clause 6 of the Bill to address these concerns and ensure the proposed amendments meet the objectives of the Bill.
- 1.5 This submission has been prepared with input from the Law Society's Employment Law Committee.²
- 1.6 The Law Society does not wish to be heard.

2 Personal grievances involving "allegations of sexual harassment" (clause 6)

- 2.1 Section 103(1)(d) of the Act currently provides that an employee can raise a personal grievance because of a claim "*that the employee has been sexually harassed in the employee's employment*". Section 114(1) of the Act requires these personal grievances to be raised "*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*".
- 2.2 Clause 6 of the Bill seeks to amend section 114 of the Act by inserting a new subsection (1A). This subsection provides that an employee who wishes to raise a personal grievance that involves "allegations of sexual harassment" must raise the grievance with their employer within 12 months from the date on which the harassment occurred or came to the notice of

¹ Explanatory Note of the Bill.

² More information about this Committee is available on the Law Society's website: <https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/employment-law-committee/>.

the employee. As noted above, the Law Society has some concerns regarding the drafting of this clause.

- 2.3 First, the clause would allow an employee to raise a personal grievance on other grounds³ within 12 months, rather than the current 90-day period, provided only that the grievance ‘involves’ allegations of sexual harassment. This effectively enables the 90-day period for those other grievances to be extended too, simply by including an allegation of sexual harassment. This in turn risks unfounded allegations of sexual harassment being made for this purpose.
- 2.4 Second, the Bill does not address how such personal grievances (i.e., grievances raised on other grounds) are to be treated if the allegations of sexual harassment are subsequently found not to have been established. In such circumstances, it is unclear whether the grievance would then proceed if the elements of the grievance which do not relate to sexual harassment were raised after the prescribed 90-day period.
- 2.5 Given that section 103(1)(d) of the Act contains a specific personal grievance ground for sexual harassment, the Law Society suggests that it would be clearer to only apply the extended time period to grievances raised under that section. This could be achieved by amending new subsection (1A) as follows (amendments in red font):
- Despite subsection (1), an employee who wishes to raise a personal grievance ~~that involves allegations of sexual harassment under section 103(1)(d) of this Act, because of a claim that the employee has been sexually harassed in the employee’s~~ **employment** 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.
- 2.6 This amendment will clarify that only personal grievances for sexual harassment can be raised after the 90-day period that applies to the other types of personal grievances. For the avoidance of any doubt, we also note that this amendment will not affect any of the remedies that can be awarded in respect of sexual harassment grievances, under section 123 of the Act (which include reinstatement, reimbursement of lost wages, and compensation).
- 2.7 If the current wording of new subsection (1A) is to be retained, the Law Society recommends amending the Act to also:
- (a) include a requirement for employees to confirm that a personal grievance raised after the 90-day period involves a bona fide allegation of sexual harassment (for example, by providing a statutory declaration); and

³ For example, because the employee has been unjustifiably dismissed (s 103(1)(a) of the Act), or disadvantaged by some unjustifiable action by the employer (s 103(1)(b) of the Act).

- (b) clarify that a personal grievance arising other than under section 103(1)(d), which is raised outside the 90-day period, need not be considered if the alleged sexual harassment is later found not to have been established (unless the employer consents to the personal grievance being raised after that period, or the Employment Relations Authority grants leave to do so).



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