

15 July 2022

ADLS EMPLOYMENT LAW COMMITTEE

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



INTRODUCTION

The ADLS Employment Law Committee is comprised of lawyers primarily in the Auckland region who practice employment law and collectively have significant experience in advising clients who have experienced sexual harassment in the workplace, clients who are the subject of sexual harassment allegations, as well as their employers.

Given that MBIE has identified that workplace sexual harassment is a significant issue in New Zealand, the ADLS Employment Law Committee welcomes the opportunity to provide feedback to the Education and Workforce Committee on this bill. We have reviewed the bill and wish to provide some general and pragmatic feedback relevant to lawyers and their clients.

Key points arising from consultation with the ADLS Employment Law Committee are as follows:

Extension of reporting timeframe from 90 days to 12 months

1. We agree with the reasoning behind the bill and support the extension of the reporting timeframe from 90 days to 12 months. This will greatly increase access to justice for people who have been sexually harassed in the workplace. In our experience many clients do not feel ready to report within 90 days, let alone seek legal advice, and the 90-day timeframe can be a significant barrier for them.

The “exceptional circumstances” test

2. We also invite the Committee to consider whether the exception circumstances test, which allows a person to file a personal grievance outside the statutory timeframe, sets a threshold which is too high and acts as a further barrier to access justice.
3. Attached is a New Zealand Law Journal article by former committee member Simon Schofield, which provides in depth commentary about the test and recent case law on its interpretation.
4. At present the onus is on the person filing the personal grievance to explain why they should be able to file outside the statutory timeframe. A potential amendment to the test could be to put the onus on the employer to explain why they think the personal grievance should not be accepted for filing outside the timeframe.

Other types of personal grievances

5. The reasoning behind the bill very arguably applies to other workplace situations including where there are allegations of bullying, harassment (other than sexual harassment, for example racial harassment) and victimisation. The Committee may wish to consider extending the timeframe to raise personal grievances of this nature.

We hope the above feedback is of assistance and look forward to reading the report of the Education and Workforce Committee in due course. We would be happy to provide an oral submission remotely via Zoom should the Committee wish to discuss our feedback further.

Yours sincerely



CATHERINE STEWART

Convenor, ADLS Employment Law Committee

