

# **Fair Pay Agreements Bill**

Government Bill

As reported from the Education and Workforce Committee

## **Commentary**

### **Recommendation**

The Education and Workforce Committee has examined the Fair Pay Agreements Bill and recommends by majority that it be passed. We also recommend all amendments by majority.

### **About the bill as introduced**

The Fair Pay Agreements Bill is intended to improve New Zealand’s labour market and address inadequate working conditions, low wages, and low labour productivity. The bill seeks to bring about improvements by enabling employees and employers to bargain minimum employment terms across whole industries or occupations.

The bill would create a framework for bargaining for fair pay agreements (FPAs) by:

- setting out a general duty of good faith
- prescribing processes for initiating bargaining, carrying out bargaining, and finalising an FPA
- providing processes to resolve disputes that may arise during bargaining for an FPA
- establishing regulation-making powers to give full effect to FPAs bargained under the bill.

### **About parliamentary paper G.46C**

On 6 April 2022, the Minister for Workplace Relations and Safety wrote to us asking that we consider, alongside the bill, some proposed changes set out in parliamentary paper G.46C.

The paper proposed a “backstop policy” for what would happen in the event that no party was willing to represent the non-initiating bargaining side (or if there was a rep-

resentation gap on the initiating side). If this occurred, the Employment Relations Authority would be able to set the terms of the FPA. The proposal also included making the default bargaining party role voluntary, instead of mandatory.

We considered the changes proposed in the parliamentary paper, and called for public submissions jointly on the bill and the paper. The main amendments that would give effect to the “backstop policy” are contained in new Parts 3A (subparts 2 and 3) and 10A. We discuss these amendments later in our commentary, and recommend incorporating into the bill all the amendments resulting from the parliamentary paper. We have also recommended some changes to these amendments.

### **Legislative scrutiny**

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We initially had some queries, but are satisfied that they have been answered.<sup>1</sup>

### **Recommended amendments**

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

### **Preliminary provisions**

#### **Commencement**

We recommend amending clause 2 so that the regulation-making powers in the bill, and the powers for the chief executive of the Ministry of Business, Innovation and Employment (MBIE) to approve forms, would come into force the day after Royal assent. This would allow regulations and forms to be approved and issued before the rest of the bill would come into force.

#### **Purpose of the bill**

As introduced, the bill’s purpose is to “provide a framework for collective bargaining for fair pay agreements that specify industry-wide or occupation-wide minimum employment terms”. We believe that clause 3 should be changed to reflect the bill’s broader policy intents and the possibility that the Employment Relations Authority may set the terms of an FPA.

We recommend amending clause 3 so that the purpose of the bill is “to enable employment terms to be improved for employees by providing a framework for bargaining for fair pay agreements that specify industry or occupation-wide minimum employment terms; or in certain circumstances, for the Authority to determine those minimum employment terms.”

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<sup>1</sup> Refer to the appendix of the departmental report, which outlines our queries and the Ministry of Business, Innovation and Employment’s responses.

### **Defining default bargaining parties**

We recommend amending clause 5(3) so that, before making regulations that name the default bargaining parties, the Minister must be satisfied that the parties are “the most representative organisation” of unions and employers respectively.

## **General principles and obligations**

### **Representing collective interests**

We recommend amending clause 11 to clarify that employee bargaining parties represent the collective interests of the employees who would be covered by an FPA, not the individual interests of covered employees. We recommend that clause 12, which mirrors clause 11 but refers to employers, also be amended accordingly.

### **Good faith obligations**

Clause 19 sets out the good faith obligations of bargaining parties on different bargaining sides. As introduced, clause 19(3)(d) would require bargaining parties “to continue to bargain with the other bargaining side on any matter on which the bargaining sides have not reached agreement, even if either side considers that the bargaining has reached a deadlock on that, or any other, matter”.

It was not intended that parties would have to continue bargaining on matters that are deadlocked. Rather, if parties are deadlocked on one matter, it was intended that they would still be obliged to continue bargaining on other matters. We recommend amending clause 19(3)(d) to this effect.

### **Personal information**

The Privacy Act 2020 governs how organisations and businesses can collect, store, use, and share personal information. It is important that all legislation upholds the Privacy Act and its principles. We recommend amending clause 23 (which we renumber as clause 234C) so that nothing in the bill “limits the rights of an individual under the Privacy Act 2020”.

Clause 24 specifies when the chief executive of MBIE could collect personal information. Under the bill, the chief executive of MBIE would assess applications to be a bargaining party. One requirement to be a bargaining party is to have a member who would be covered by the FPA. We recommend amending clause 24 (which we renumber as clause 234D) to specify that the chief executive of MBIE may collect personal information when assessing whether to approve an application to be a bargaining party.

## **Initiating bargaining for a proposed FPA**

### **Criteria to initiate bargaining**

Clause 28 of the bill outlines the criteria for a union to initiate bargaining for an FPA.

As introduced, clause 28(2) would prevent a union from initiating bargaining if the proposed FPA and an existing FPA have “exactly the same coverage”. This was intended to prevent new FPAs that would only cover people who are already covered by another FPA.

It may be the case that an existing FPA covers everyone the proposed FPA would cover, and more. However, these two FPAs do not strictly have “exactly the same coverage”. We recommend amending clauses 28(2), and any other relevant clauses, so that bargaining cannot be initiated if the proposed FPA would only cover work that is already covered by an FPA.

To initiate bargaining, unions would also have to meet either the representation test or the public interest test:

- The representation test would require the union to prove that either 1,000 covered employees or 10% of all covered employees support initiating bargaining.
- The public interest test would require the union to prove that the employees covered by the proposed FPA meet at least one of the following criteria:
  - low pay
  - little bargaining power
  - a lack of pay progression
  - inadequate pay, taking into account factors such as contractual uncertainty or long or unsocial working hours.

The public interest test is intended to help occupations or industries that have systemic labour market problems, but struggle to meet the representation test. It would enable them to still initiate an FPA.

As introduced, the bill would allow a highly paid industry or occupation to initiate an FPA under the public interest test. We recommend amending clauses 29(4) to 29(7) (which we renumber as new clause 29A) so that the public interest test would require employees within the coverage of the proposed FPA to be low paid, and to meet one of the other three criteria.

This change would mean that higher-pay workforces who want to improve or standardise terms would need to use the representation test to initiate an FPA. We believe it is appropriate to set this threshold for the public interest test because the test would allow an FPA to reach the ratification stage before having to demonstrate employee support. It is important that FPAs initiated using the public interest test are genuinely in the public interest.

As introduced, clause 29(4) could be taken to mean that all employees who would be covered by a proposed FPA must meet the criteria of the public interest test. This is not the intent. We recommend amending clauses 29(4) (which we renumber as clause 29A(1)) to specify that a prescribed portion of employees has to be within coverage. We also recommend amending clause 29(6) (which we renumber as clause 29A(3)) to

enable regulations to indicate what portion of covered employees must meet the criteria of the public interest test.

Clause 30 would require a union that is seeking to initiate bargaining for a proposed FPA to provide evidence that demonstrates how its application meets the relevant initiation test. Similarly, clause 189 would require an applicant to provide evidence when seeking to renew or replace an FPA. We recommend inserting clauses 30A, 189(1A), 189(1B), 189(1C), and 189A to clearly specify what information is required.

### **Coverage of a proposed FPA**

Clause 31 concerns the coverage of a proposed FPA. An FPA could cover an occupation (for example, all commercial cleaners) or an industry (for example, all employees in the supermarket and grocery industry). Clause 31 would require the coverage of a proposed FPA to be defined with sufficient clarity so that all employees and employers are able to determine whether they would be covered.

We recommend amending clause 31 to also require the coverage of a proposed FPA to be defined in accordance with regulations.

### **Applications to initiate bargaining**

Under the bill, the chief executive of MBIE would assess applications to initiate bargaining for an FPA.

As introduced, clause 32(1) would require the chief executive to assess applications “as soon as practicable”. We believe the timeframe should be more definite. We recommend inserting clause 32A so that:

- the chief executive would have a maximum of 30 working days, extendable to 45, to assess applications to initiate, renew, or replace an FPA
- this timeframe would come into force six months after the main parts of the bill. This recognises the possibility that many applications could be submitted when the bill was first enacted. For manageability, in the first six months the timeframe for the chief executive should be “as soon as is reasonably practicable”.

We note that this is the only instance in which we have recommended using the term “as soon as is reasonably practicable” (as opposed to “as soon as is practicable”). We consider it appropriate to use “reasonably” for this timeframe because it is difficult to predict how many applications will be submitted in the first six months.

We recommend using the term “as soon as is practicable” throughout the rest of the bill. We believe this would minimise the potential for unnecessary delay.

The chief executive could invite public submissions when considering applications. Clause 33 states that the public submission period must be at least 20 working days. We recommend amending this clause so that the submission period could only be a maximum of 30 working days. We also recommend inserting clause 32A(4)(a) so that

the public submission period would not be included in the 30 working day timeframe for the chief executive to assess applications.

### **Notifying affected employers and unions**

Within 15 working days of receiving notice that its application to initiate bargaining had been approved, the initiating union would be required by clause 36 to identify and notify:

- other unions whose members it believes are likely to be covered by the FPA
- employers who it believes are likely to be covered by the FPA.

These obligations are important to assist those who are likely to be covered by the FPA. However, it will be a difficult task to notify every employer or union that is likely to be affected.

We recommend amending clauses 36 and 193 so that the initiating union would be required to use their best endeavours to identify and notify other unions and employers, as opposed to this being an absolute obligation. Further, we recommend requiring initiating unions to publish a notice on a free and public internet site, and in the daily newspapers that circulate in Auckland, Hamilton, Tauranga, Wellington, Christchurch, and Dunedin. The same obligation would apply to applicants that gain approval to initiate bargaining for a proposed renewal or replacement of an FPA.

Clause 37 would require employers that are covered by a proposed FPA to notify covered employees and unions that bargaining has been initiated. We recommend that this is also a best-endeavours obligation, consistent with our recommended changes to clause 36.

### **Employee contact details**

Clause 39 of the bill as introduced would require employers to provide employee contact details to the initiating union “as soon as is reasonably practicable after the date that is 20 working days after the employer provided the relevant information to its employees” under clause 37.

We recommend amending clause 39(2) so that employers have a maximum of 30 working days to provide contact details for employees who have not opted out from having their details provided.

As introduced, clause 39 would require employers to provide employee contact details to the initiating union and any other employee bargaining party. We recommend an amendment so that employers only have to provide employee contact details to the initiating union (or to an updated contact address for the employee bargaining side). This change recognises that not all employee bargaining parties have appropriate systems to safely store personal information.

Clause 40 of the bill as introduced would prohibit employee contact details from being used “for a purpose that is not related to the proposed FPA, the proposed variation, the proposed renewal, the proposed replacement, or the fair pay agreement”. However, if the primary purpose of the communication is one of the above approved

purposes, then it may include supplementary information, including about how to join a union.

We have renumbered clause 40 as clause 234A and recommend amending it so that:

- employee contact details can also be used to communicate with employees about whether the initiating union or employee bargaining party should apply for approval to initiate bargaining for a proposed renewal or a proposed replacement
- supplementary information provided to employees may include the location of information about how to join a union but must otherwise be directly related to the primary purpose of the communication.

We recommend inserting clauses 234A(5) and 234B(3) to introduce penalties for initiating unions or employee bargaining parties that intentionally or recklessly fail to comply with their obligations to properly use and store employee contact details. This would emphasise the importance of handling personal information properly and securely.

### **Formation of a bargaining side**

We believe each bargaining party should learn who the other is as soon as possible. We recommend inserting new clause 44A and amending clause 52 so that, when they approve a new bargaining party, the chief executive of MBIE must notify the other parties on that bargaining side. We also recommend inserting a requirement in clauses 44A, 52, and 68A for the chief executive to publicly notify the name of a new bargaining party:

- within 5 working days of approving their application to be a bargaining party
- within 5 working days after a specified employer bargaining party has notified the chief executive that it is an employer bargaining party.

### **Regular updates about bargaining**

Clauses 46 and 53 would require bargaining parties to provide regular updates about bargaining to all employers and employees who would be covered by a proposed FPA. We have renumbered these clauses as 92F and 92C respectively, and recommend amending them so that bargaining sides only have to use their best endeavours to notify everyone who would be covered.

If a private sector employer receives public funding to deliver public services, clause 46(2)(f) (now clause 92F(2)(f)) would require employer bargaining parties to provide regular updates about bargaining to the government department that funds the private sector employer. We recommend inserting clause 92F(2)(f)(i) to expand this requirement so that local government entities also have to be regularly updated if they fund a private sector employer that is covered by a proposed FPA.

We recommend inserting clause 92F(2A) so that employer bargaining sides only have to provide these regular updates if they know which department or local government entity funds the private employer.

## **Default bargaining parties**

Clauses 69 to 80 of the bill as introduced concern default bargaining parties. We recommend amending these clauses so that the default bargaining party role is always voluntary, and never mandatory.

We recommend amending clause 69 to more clearly set out the range of situations in which a default bargaining party may elect to be a bargaining party.

We recommend amending clauses 76 and 77 so that, if no bargaining party is approved to represent the non-initiating side, the initiating side could apply for the Employment Relations Authority to determine the terms of an FPA.

We recommend inserting new clause 80C. This clause would require the chief executive of MBIE to notify the bargaining sides if a default bargaining party decided not to step in. The chief executive would also have to indicate whether an application could then be made for the Employment Relations Authority to set the terms of a proposed agreement. If such an application is not made, then bargaining would be discontinued.

## **Consolidating industry-based FPAs**

If bargaining had started for a proposed industry-based FPA, and within 6 months the chief executive approved bargaining for a second FPA that would cover an occupation within the same industry, then bargaining for the two FPAs must be consolidated.

We recommend inserting clause 109(4) so that the bargaining sides for the first proposed agreement would have to provide a copy of their inter-party side agreements to the bargaining sides for the second proposed agreement. We recommend that this should have to occur within 5 working days of the 2 agreements being consolidated.

## **Content of fair pay agreements**

Clause 114 sets out mandatory content for FPAs. Each FPA would have to specify, among other things, when it would come into force and when it would expire, its coverage, the normal hours of work, and details of wages and superannuation. Clause 115 sets out several other topics that would be mandatory for bargaining parties to discuss, but would not have to be included in the FPA.

In the bill as introduced, arrangements relating to training and development and leave entitlements would only be mandatory to discuss. However, to better meet the objectives of the FPA system, we recommend amending clause 114 (and other relevant clauses) so that arrangements relating to training and development and leave entitlements would have to be specified in FPAs.

We recommend amending clause 114 (and other relevant clauses) so that it would no longer be mandatory to specify in FPAs “whether the minimum base wage rates include or exclude the employer’s contribution for superannuation (if any)”. This would make clear that compulsory employer contributions to KiwiSaver cannot be deducted from an FPA minimum base wage.



We recommend amending clause 114(1)(c) to make clear that the standard hours of work required of each class of employees are intended to provide the basis for when base wage rates apply, rather than overtime or penalty rates.

### **Finalising a proposed agreement**

After bargaining, in order to finalise an FPA it must be:

- assessed and approved by the Employment Relations Authority
- ratified by the employees and employers who would be covered by the proposed FPA
- verified by the chief executive of MBIE
- brought into force through secondary legislation.

When an FPA has been finalised, it applies to all employers within its coverage, regardless of whether they participated in the bargaining process. Likewise, all employees within coverage would receive the new minimum employment terms.

We recommend amending clause 142 to require bargaining sides to hold a ratification vote as soon as practicable after the specified timeframes.

We recommend inserting clause 143A so that:

- an employee would be entitled to vote in a ratification vote for a proposed agreement if, at the time of voting, they consider they would be covered by the proposed agreement
- an employer would be entitled to vote in a ratification vote for a proposed agreement if, at the time of voting, the employer considers that they have at least one employee who would be covered by the proposed agreement.

We believe that giving voting rights only to employees and employers who are likely to be covered by an FPA would improve the FPA's legitimacy.

Clause 145 specifies that one bargaining side must inform the other that it has completed its ratification vote for a proposed FPA "as soon as is reasonably practicable". We recommend replacing "as soon as is reasonably practicable" with a maximum period of 5 working days.

Clause 148 would require the chief executive of MBIE to verify ratification. We recommend inserting clause 148(4A) to make it clear that the chief executive is not required to consider each vote cast, but may be satisfied by considering a sample of votes.

We recommend amending clauses 151 and 152 to make it clear that the chief executive of MBIE would not determine whether there was an overlap between a proposed FPA and an existing FPA. Rather, they would only check to see whether there may be an overlap. If there appears to be, they would advise bargaining sides to resubmit the proposed FPA to the Employment Relations Authority. The Authority would then make the determination about whether there was an overlap under clause 153.

Clause 159 would allow the chief executive of MBIE to make editorial changes to an FPA that had already been verified. We recommend amending this clause so that the chief executive could only make changes that were minor and technical, and did not risk altering the meaning of the FPA.

### **Application and effect of fair pay agreement**

We believe the bill should make clear what happens in situations when an FPA only covers a portion of an employee's work, or when multiple FPAs apply to an employee's work. We recommend inserting clause 160A so that:

- where at least 25% of an employee's work is covered by an FPA, that employee is covered by the FPA
- if two or more FPAs meet this 25% threshold, the FPA that covers the largest portion of the employee's work should apply
- assessments about whether or which FPA applies to an employee should be based on work done within a reasonable period of the date of the assessment, taking into account the employee's particular circumstances.

### **Penalties**

The bill would penalise people who did not comply with their bargaining obligations or obligations to comply with an FPA. Clause 201 would allow "any party to the agreement who is affected by the breach" of an FPA to bring an action to recover a penalty. We note that employers and employees would not be party to an FPA. Rather, they would be covered by an FPA. We recommend amending clause 201(1)(a) to clarify that any of the following parties who are affected by a breach could bring an action:

- employers covered by an FPA
- employees covered by an FPA
- bargaining parties to an FPA.

### **Employment Relations Authority**

The bill refers to the Employment Relations Authority simply as "the Authority".

Clause 211 sets out the role the Authority would play in the FPA system. It would make determinations and recommendations, resolve disputes relating to FPAs, and assess whether a proposed FPA complied with the requirements of this bill.

We recommend amending clause 211(1)(b) to make it explicit that the Authority would decide whether FPAs overlapped in their coverage.

Clause 212 specifies which parties could apply to the Authority for a determination. We recommend amending clause 212 to ensure it is clear that employees and employers could apply for a determination about the coverage of an FPA.

A bargaining party could apply for the Authority to fix the terms of an FPA if agreement could not be reached during bargaining and:

- all other reasonable alternatives for reaching agreement had been exhausted by both bargaining sides; or
- the proposed FPA had failed the ratification process twice.

Submitters noted that the requirement for both bargaining sides to have taken action to resolve a bargaining stalemate could not be met if one side was unwilling to engage in the process.

It is important that there is a mechanism for finalising an FPA if one bargaining side is not engaging. Therefore, we recommend amending clause 218 so that the Authority could fix the terms of an FPA if one bargaining side breached the duty of good faith, and the breach was either:

- deliberate, serious, and sustained; or
- involved behaviour that undermined the bargaining process.

As introduced, clause 219 is phrased in a way that could imply that the Authority could choose whether to fix the terms of a proposed FPA. We recommend amending this clause to make it clear that, once the threshold was met for the Authority to fix the terms of an FPA, it must do so.

Clause 220 of the bill states that the Authority must consider a number of variables when fixing the terms of an FPA. We believe that the Authority should be given more discretion over its approach. We recommend that clause 220 be amended so that the Authority “may” consider the listed variables, rather than “must”. This change would also reduce the risk that the Authority’s decisions would be challenged, and FPAs delayed.

## **New Part 10A**

We recommend inserting Part 10A to give effect to the proposed “backstop policy” outlined in parliamentary paper G.46C. Part 10A would allow the Employment Relations Authority to set the terms of an FPA when the non-initiating side lacked any bargaining parties:

- New clause 228BA sets out that a party could apply for the Employment Relations Authority to determine the terms of a proposed FPA if all of the following conditions are met:
  - the chief executive of MBIE has informed the party it can make an application (under clause 80C)
  - the party is on the initiating side
  - the party applies within 3 months.

If a bargaining party applied for a determination from the Authority under clause 228BA, it would be doing so on behalf of all parties on that bargaining side.

- New clause 228BB would require applications to the Authority to be made in the prescribed form, and to specify the coverage of the proposed agreement.

- New clause 228BC specifies that any other bargaining parties on the same bargaining side as the party that applied for the determination would be a joint applicant and a party to the determination proceedings. In the unlikely event there was any bargaining party on the opposing bargaining side, they would be a party to the application and the determination, but not a joint applicant.
- New clauses 228BD and 228BE would require bargaining sides to notify MBIE and the employers and employees who would be covered by the proposed FPA as to whether it had applied for a determination from the Authority.
- New clauses 228BG and 228BH would restrict when applications could be made to the Authority for a determination:
  - If a bargaining side formed after a bargaining party received notice that it could apply for a determination from the Authority, but the application had not yet been made, then bargaining would resume. An application could no longer be made to the Authority.
  - If a party had been notified that it could apply to the Authority for a determination on an industry-based FPA, and a second FPA was initiated in the same industry, then the FPAs would be consolidated and bargained together. The ability to request a determination from the Authority for the first FPA would cease.
- New clause 228C would require the Authority to fix the terms of a proposed FPA if the chief executive of MBIE notified a bargaining party that it could apply for a determination, and the party made an application within 3 months.
- New clause 228D would require the Authority to fix the terms of an FPA that are mandatory to include, under clause 114(1). The Authority must also fix the terms for any topics that are mandatory to discuss (under clause 115(1)) if the applicant asks to have them included in the FPA (unless the Authority considers there is good reason not to).
- New clause 228F would prevent the Authority from fixing terms other than those that are mandatory to include or mandatory to discuss. The Authority would also be unable to fix terms that provide for a union member payment, or for the FPA to have a delayed commencement date for a specified employer, or that amend the coverage of the proposed agreement.
- New clause 228H would enable the Authority to consolidate two proposed FPAs if they were within the same industry and both were being fixed under the “backstop” determination process.
- New clause 228L would require employers that would be covered by a proposed FPA to provide employee contact details to the employee bargaining side if the FPA was being determined by the Authority.
- New clauses 228N and 228O set out requirements related to FPA meetings that would apply during the “backstop” period. The employee bargaining side could hold meetings to seek input from employees. Employers would be required to pay employers at their normal rate while they attended FPA meetings.

## **Labour Inspectors**

Clause 236 sets out that a Labour Inspector could determine whether an employee was covered by an FPA. Clause 236(3)(a) would allow a Labour Inspector to decide whether to investigate an application for a determination. We recommend amending clause 236(4) to make it clear that, if a Labour Inspector decided not to make a determination, they should tell the applicant what other avenues could be taken to resolve the issue.

## **Application of provisions of the Employment Relations Act relating to the Employment Relations Authority**

The bill would enable the Employment Relations Authority to seek its own independent expert advice when performing its functions under the bill. Schedule 2 of the Employment Relations Act 2000 limits the remuneration of witnesses. We consider that there may be insufficient incentive for experts to work with the Authority if they are paid less than market rate. We therefore recommend amending Schedule 3 of the bill so that fees paid to experts can be determined in accordance with regulations made under this bill.

## **Access to judicial review**

Submitters raised concerns that there would be significant potential for disputes and litigation in the FPA system. We consider it important to maintain access to judicial review, but this needs to be balanced against the risk that it is used to frustrate bargaining. We recommend amending clause 19 of Schedule 3, and adding new clause 19A, so that judicial review of the decisions of bargaining parties would be limited to situations where:

- all alternative avenues to resolve a breach of obligation had been exhausted (namely dispute resolution and a compliance order, if available)
- the complaint was that the bargaining party has exercised a statutory power or statutory power of decision that was not authorised under the legislation, or the bargaining party did not act in accordance with the duty of good faith when exercising a statutory power or statutory power of decision.

We note that, under the bill, bargaining parties would also have access to mediation and bargaining support services to resolve issues and avoid litigation.

## **ACT New Zealand differing view**

ACT is opposed to this bill.

The ACT Party believes that an employment contract is between an employee and an employer. While we believe that unions play an important role as bargaining agents if wanted by the employee, this bill overrides basic freedom of association by allowing the union to represent a worker even when the worker does not wish that to happen, and to set conditions that may be against the wishes of the employee.

The current employment contracts legislation has provided for the necessary safeguards for employees and has proved to be very successful over the past 30 years. A return to the national awards system of the 1970s and 1980s risks a return to the industrial chaos of that era, as individual businesses find themselves dragged into disputes that they have nothing to do with. At a time when workers are demanding more flexibility, this bill creates a system that is designed to create inflexible national standards.

The bill is extremely complicated and will be a huge burden for businesses that are currently operating without employment issues, but can be caught up in fair pay agreement negotiations, even if that business and its workers do not wish to be involved.

The threshold for initiating an FPA of 10% of workers (however they are defined) in an industry, or 1000 employees in an industry (however that can be defined) is practically unworkable. It will bring in workers who don't want to be subject to the FPA into disputes they want nothing to do with.

The bill sets out that employers will be represented by bargaining agents, but no organisations are willing to do so. With the refusal of employer organisations to act as bargaining agents, the Employment Relations Authority will be dragged in as a participant, undermining the independence of that judicial body.

This bill is an attack on freedom of association and creates a failed 1970s industrial relations model when workers are demanding greater individual flexibility.

### **New Zealand National differing view**

The National Party opposes this bill, and will repeal it, if elected next year.

The legislation is not about fair pay; it is about the Government imposing mandatory union deals on Kiwi workplaces. There is no choice involved, either for the majority of workers or for business operators, once a small minority in an industry or occupation start the process outlined in this bill. The misnamed fair pay agreements will be imposed on our workplaces.

Labour market flexibility has been one of the key elements of New Zealand's relative success since the early 1990s, a period when we have generally enjoyed high rates of job creation and relatively low rates of unemployment. The mandatory union deals make our workplaces less agile, less flexible—at the very time when they need to be both those things. The bill imposes one-size-fits-all agreements, potentially covering tens of thousands of workers, scattered across the country, working in businesses that might bear no relation to each other in terms of size, capital, or the market conditions they face.

This bill also arrives at a time when New Zealand is facing very significant economic challenges. Globalisation is in retreat, protectionism is rising. For a small trading nation, like New Zealand, this is dangerous. It is the time when we should focus on building our economic strength so that New Zealanders have the opportunity to thrive and succeed. And we're also facing the highest inflation in 30 years, and an associ-

ated cost of living crisis, where the price of goods are increasing at twice the rate of wages.

And in this context, as well as making our employment regime less agile, this legislation is adding costs and uncertainty to businesses, large and small.

The legislation lists a number of mandatory issues that must be included in an agreement, and others that must be considered. Nowhere is productivity mentioned as something that must be discussed in putting together an agreement. Nor is there any reference to our international competitiveness, for those businesses that trade internationally.

As the Treasury pointed out: “There’s been minimal identification of empirical evidence for the problem or the policy response.” There is no evidence to show how this bill will help New Zealand businesses become more agile, more flexible, and competitive in a rapidly changing workplace environment, and, in a rapidly changing global environment.

As well as opposing the bill in its entirety, the National Party has particular concerns about the low bar for initiating the process. Any eligible union can initiate the bargaining process if it meets a test of only 10% of employees in the proposed coverage, or 1,000 employees. An occupation with more than 100,000 workers across the country, would thus need only 1% to call for it. Worse, those initiators won’t even need 1% if they can pass the so-called public interest test, based on low pay or bargaining power. The bar is set far too low. And once the process starts, there is no way to stop it—unless the initiating union pulls out.

Inevitably, the process will favour the large businesses in whatever sector it enters. Using check-out operators as an example, the large two operators, with tens of thousands of employees might be able to sustain a wide range of terms and conditions across their organisations; the small operator with one or two employees in the Hokianga, for example, probably won’t even be aware of the negotiations, won’t be considered when agreements are made, and are unlikely to be able to cope with additional rigid requirements agreed by those with large workforces. While one part of Government is attempting to deal with the competitive challenges of a sector dominated by a duopoly, this legislation is one of many favouring those same big players.

The ill-considered nature of the bill was exemplified by the need for the Minister to bring amendments to the bill a couple of days after it was introduced, creating a back-stop regime if no negotiator appears on the employer side. If no employer group emerges, the Employment Relations Authority will make a determination. There is no evidence to suggest that the people on the Authority will be better placed to make decisions about the pay, terms and conditions that best suit the tens of thousands of businesses across New Zealand than the individual workers and their employers.

There are many other elements of the bill that are objectionable, and while opposing the bill in its entirety, the National Party will be proposing amendments at the committee stage.

## Appendix

### Committee process

The Fair Pay Agreements Bill was referred to us on 5 April 2022. We considered parliamentary paper G.46C alongside the bill at the request of the Minister for Workplace Relations and Safety.

The closing date for submissions on the bill and the parliamentary paper was 19 May 2022. We received and considered 1,796 written submissions. We heard oral evidence from 120 submitters at hearings in Auckland, Wellington, and via videoconference. We invited the Minister for Workplace Relations and Safety to make the first oral submission. He did so on 1 June 2022.

We received advice 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 considering this bill.



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**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted by a majority

~~text deleted by a majority~~



*Hon Michael Wood*

# **Fair Pay Agreements Bill**

Government Bill

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Fair Pay Agreements Bill

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## Schedule 4 Consequential amendments

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The Parliament of New Zealand enacts as follows:

### 1 Title

This Act is the Fair Pay Agreements Act **2022**.

### 2 Commencement

~~This Act comes into force 1 month after the date on which it receives Royal assent.~~ 5

(1) **Sections 242 and 243** come into force on the day after the date of Royal assent.

(2) **Section 32A(3) and (4)** comes into force on the day that is 7 months after the date of Royal assent. 10

(3) The rest of this Act comes into force 1 month after the date of Royal assent.

## Part 1 Preliminary provisions

### 3 Purpose

~~The purpose of this Act is to provide a framework for collective bargaining for fair pay agreements that specify industry wide or occupation wide minimum employment terms.~~ 15

The purpose of this Act is to enable employment terms to be improved for employees by providing—

(a) a framework for bargaining for fair pay agreements that specify industry or occupation-wide minimum employment terms; or 20

(b) in certain circumstances, for the Authority to determine those minimum employment terms.

### 4 Overview of Act

(1) This Act is divided into ~~11~~ 13 Parts, and has 4 schedules. 25

(2) This Part contains preliminary provisions, including the purpose of the Act, definitions of terms used in the Act, and a prohibition against contracting out of the Act.

(3) **Part 2** contains general principles and obligations that apply throughout the Act. They include principles of freedom of association (set out in **subpart 1**) and a duty of good faith ~~obligations~~ (set out in **subpart 2**). 30

(4) **Part 3** contains the ~~process~~ preliminary requirements for ~~initiating~~ bargaining for a fair pay agreement. It includes details about who is eligible to initiate bar-

gaining, and how to form and join bargaining sides, ~~and how default bargaining parties may operate when a bargaining side has not been formed or no longer exists.~~

- (4A) **Part 3A** sets out the provisions relating to specified employer bargaining parties and default bargaining parties. 5
- (5) **Part 4** contains provisions that provide for an entitlement to attend fair pay agreement meetings (set out in **subpart 1**) and for a representative of an employee bargaining party to access workplaces (set out in **subpart 2**).
- (6) **Part 5** contains provisions relating to the process of bargaining. It includes obligations on bargaining parties to provide information, the implications of a bargaining party ceasing to meet the criteria for being a bargaining party, and the process to follow when the coverage of 2 agreements overlaps. 10
- (7) **Part 6** sets out what terms must, or may, be contained in a fair pay agreement. It also includes provisions relating to minimum entitlement provisions, differentiation that is prohibited or permitted (including district variation), and provisions for the delayed commencement of a fair pay agreement. 15
- (8) **Part 7** contains the process for finalising a proposed fair pay agreement (a **proposed FPA**), a proposed renewal of a fair pay agreement (a **proposed renewal**), or a proposed replacement of a fair pay agreement (a **proposed replacement**). The process includes requirements for a proposed ~~FPA agreement~~ agreement to be— 20
- (a) assessed and approved by the Employment Relations Authority (set out in **subpart 1**); and
  - (b) ratified by the employees and employers who would be covered by the proposed ~~FPA, the proposed renewal, or the proposed replacement agreement~~ agreement (set out in **subpart 2**); and 25
  - (c) verified by the chief executive (set out in **subpart 3**); and
  - (d) ~~assessed~~ checked by the chief executive for any coverage overlap with a fair pay agreement (set out in **subpart 4**); and
  - (e) brought into force by the chief executive issuing a notice (set out in **subpart 5**). 30
- (9) **Part 8** contains provisions that specify how a fair pay agreement may be varied (set out in **subpart 1**), or renewed or replaced (set out in **subpart 2**).
- (10) **Part 9** relates to penalties and enforcement.
- (11) **Part 10** contains provisions relating to employment relations institutions and includes the following subparts: 35
- (a) **subpart 1**, which relates to mediation services:
  - (b) **subpart 2**, which requires the chief executive to provide bargaining support services ~~for the bargaining parties~~:

- (c) **subpart 3**, which provides for the role of the Authority, including determining whether a proposed agreement or a fair pay agreement ~~which of 2 overlapping proposed FPAs~~ provides the better terms overall when there is coverage overlap, assessing a proposed FPA for compliance with this Act and other legislation, and making determinations and recommendations on the content of proposed FPAs. 5
- (11A) **Part 10A** contains the provisions that apply if a bargaining party applies to the Authority for a determination of a proposed agreement in the complete or partial absence of a bargaining side.
- (12) **Part 11** contains miscellaneous provisions, including provisions relating to representation, record-keeping, employee contact details, the powers of Labour Inspectors to determine whether an employee is covered by a fair pay agreement, and the power to make regulations. 10
- (13) The Act contains the following 4 schedules:
- (a) **Schedule 1** sets out the transitional provisions: 15
- (b) **Schedule 2** sets out the number of votes ~~an~~ a covered employer can make in a ratification vote, which depends on the number of the employer's covered employees:
- (c) **Schedule 3** applies provisions of the Employment Relations Act 2000 that relate to the Authority and the court: 20
- (d) **Schedule 4** contains consequential amendments to other legislation.

## 5 Interpretation

- (1) In this Act, unless the context otherwise requires,—
- Authority** means the Employment Relations Authority established by section 156 of the Employment Relations Act 2000 25
- bargaining**, in relation to a proposed ~~FPA, agreement or~~ a proposed variation, ~~a proposed renewal, or a proposed replacement~~,—
- (a) means all interactions between the bargaining parties that relate to the proposed ~~FPA, agreement or~~ the proposed variation, ~~the proposed renewal, or the proposed replacement~~; and 30
- (b) includes—
- (i) negotiations that relate to the proposed ~~FPA, agreement or~~ the proposed variation, ~~the proposed renewal, or the proposed replacement~~; and
- (ii) communications or correspondence (between or on behalf of the bargaining parties before, during, or after negotiations) that relate to bargaining for the proposed ~~FPA, agreement or~~ the proposed variation, ~~the proposed renewal, or the proposed replacement~~; and 35
- (iii) the ratification process under **subpart 2 of Part 7**; but

(c) excludes interactions between bargaining parties after a bargaining side applies, in accordance with **section 228BA**, to the Authority for a determination under **section 228C**

**bargaining party** means—

- (a) an employee bargaining party; or 5
- (b) an employer bargaining party

**bargaining process agreement** means the agreement that the employee bargaining side and the employer bargaining side must use their best endeavours to enter into under **section 19(3)(a)**

**bargaining side** means— 10

- (a) an employee bargaining side; or
- (b) an employer bargaining side

**bargaining side lead advocate** means a person appointed by a bargaining side, in relation to bargaining for a proposed ~~FPA, agreement or a proposed variation, a proposed renewal, or a proposed replacement,~~— 15

- (a) to represent the bargaining side; and
- (b) to act as primary spokesperson for the bargaining side; and
- (c) to perform any other role specified in the bargaining side's inter-party side agreement

**chief executive** means the chief executive of the department 20

**constitution** means,—

- (a) in relation to an employer association, the association's rules registered under the Incorporated Societies Act 1908 or the association's constitution registered under the Incorporated Societies Act 2022:
- (b) in relation to a union, the union's rules registered under the Incorporated Societies Act 1908 or the union's constitution registered under the Incorporated Societies Act 2022 25

**contact details**, in relation to an employee, means—

- (a) the employee's name:
- (b) the employee's job title: 30
- (c) the site at which the employee works predominantly:
- (d) if the employee has an email address at work that is not shared with other employees, that email address:
- (e) if the employee does not have such an email address at work but has a telephone number at work, that telephone number: 35
- (f) if the employee does not have a telephone number or such an email address at work but has provided a personal email address to the employer, that personal email address

**court** means the Employment Court established by section 186 of the Employment Relations Act 2000

**coverage** has the meaning given in **subsection (2)**

**coverage overlap** means that ~~1 or more employees are within~~ the coverage of a proposed FPA, a proposed renewal, or a proposed replacement and are also within agreement overlaps, partially or wholly, with the coverage of a fair pay agreement

~~covered employee means an employee who is within the coverage of a proposed FPA, a proposed variation, a proposed renewal, a proposed replacement, or a fair pay agreement (as applicable)~~

**covered employee** means an employee who, —

- (a) in relation to a proposed agreement, performs work that is within the coverage of the proposed agreement; or
- (b) in relation to a proposed variation, is a covered employee in relation to the fair pay agreement that is proposed to be varied; or
- (c) in relation to a fair pay agreement, meets the threshold specified in **section 160A**

**covered employer** means an employer that ~~has~~ employs at least 1 covered employee who is within the coverage of a proposed FPA, a proposed variation, a proposed renewal, a proposed replacement, or a fair pay agreement (as applicable)

**default bargaining party** means the employee default bargaining party or the employer default bargaining party ~~under **subpart 3 of Part 3**~~

**discontinued**, in relation to bargaining for a proposed agreement or a proposed variation, means that the bargaining ends and is not able to be restarted except by following the relevant process for initiating bargaining set out in this Act

**district** means the district of a territorial authority listed in Part 2 of Schedule 2 of the Local Government Act 2002

**eligible employer association** means, in relation to a proposed ~~FPA~~ agreement, a proposed variation, ~~a proposed renewal, a proposed replacement,~~ or a fair pay agreement, an employer association ~~(as defined in **section 42**) of which at least 1 member is a covered employer~~ —

- (a) of which at least 1 member is a covered employer; and
- (b) that has a constitution that enables the association to represent the collective interests of covered employers for the purposes of—
  - (i) bargaining for a proposed agreement or a proposed variation; and
  - (ii) a fair pay agreement; and
- (c) that has a constitution that is democratic, not unreasonable, not unfairly discriminatory, not unfairly prejudicial, and not contrary to any law

**eligible union** means, in relation to a proposed agreement~~FPA~~, a proposed variation, ~~a proposed renewal, a proposed replacement,~~ or a fair pay agreement, a union that—

- (a) has at least 1 member who is a covered employee; and
- (b) has a constitution that enables the union to represent the collective interests of covered employees, whether or not the employees are union members; ~~and~~ 5
- ~~(c) is registered under Part 4 of the Employment Relations Act 2000~~

**employee** has the same meaning as in section 6 of the Employment Relations Act 2000 10

**employee bargaining party** means a member of an employee bargaining side that ~~is~~—

- (a) is an eligible union that has had its application approved under **section 32, or 51, or 191**; or
- ~~(b) an employee default bargaining party~~ 15
- (b) is the employee default bargaining party and has, in accordance with **section 71A**, notified the chief executive of its election to be an employee bargaining party

~~**employee bargaining side** means a bargaining side, formed in accordance with **sections 28 to 35 and 49 to 52**, that represents, and bargains on behalf of, covered employees~~ 20

**employee bargaining side** means a bargaining side, formed in accordance with **sections 28 to 35, sections 49 to 52, section 80K, or section 195**, that—

- (a) represents covered employees; and 25
- (b) when bargaining takes place, bargains on behalf of covered employees; and
- (c) is made up of 1 or more of the bargaining parties listed in **section 57(1)**

**employee default bargaining party** means the employee default bargaining party specified in regulations (*see* **subsection (3)**) 30

**employer** has the same meaning as in section 5 of the Employment Relations Act 2000

~~**employer association** has the meaning given in **section 42**~~

**employer association** means an association of employers that— 35

- (a) is an incorporated society registered under the Incorporated Societies Act 1908 or the Incorporated Societies Act 2022; and
- (b) is independent from, and is constituted and operates at arm's length from, any union or worker organisation

**employer bargaining party** means a member of an employer bargaining side that ~~is~~—

- (a) is an eligible employer association that has had its application approved under **section 44 or 191**; or
- ~~(b) a specified employer bargaining party; or~~ 5
- ~~(e) an employer default bargaining party~~
- (b) is a specified employer bargaining party that is, in accordance with **sections 63 to 67**, an employer bargaining party; or
- (c) is the employer default bargaining party and has, in accordance with **section 71A**, notified the chief executive of its election to be an employer bargaining party 10

~~**employer bargaining side** means a bargaining side, formed in accordance with **sections 43 to 45** that represents, and bargains on behalf of, covered employers~~

**employer bargaining side** means a bargaining side, formed in accordance with **sections 43 to 45, section 80K, or section 194**, that— 15

- (a) represents covered employers; and
- (b) when bargaining takes place, bargains on behalf of covered employers; and
- (c) is made up of 1 or more of the bargaining parties listed in **section 58(1)** 20

**employer default bargaining party** means the employer default bargaining party specified in regulations (*see ~~subsection (4) (3)~~*)

**employment agreement** has the same meaning as in section 5 of the Employment Relations Act 2000 25

**fair pay agreement** means an agreement that the chief executive has validated in accordance with **section 156** by issuing a fair pay agreement notice, and ~~may include 1 or more of~~ includes the following:

- ~~(a) a variation of the fair pay agreement;~~
- ~~(b) a renewal of the fair pay agreement;~~ 30
- ~~(e) a replacement of the fair pay agreement;~~
- ~~(d) a schedule of the fair pay agreement~~
- (a) a fair pay agreement as varied in accordance with this Act;
- (b) a fair pay agreement that is renewed in accordance with this Act;
- (c) a fair pay agreement that, in accordance with this Act, replaces an earlier fair pay agreement; 35
- (d) a fair pay agreement that, in accordance with this Act, is attached as a schedule to another fair pay agreement

**FPA meeting** means a meeting held in accordance with **Part 4** or **sections 228N to 228P**

~~**independent contractor** has the same meaning as in section 69B of the Employment Relations Act 2000~~

**Health New Zealand** has the same meaning as in section 4 of the Pae Ora (Healthy Futures) Act 2022 5

**industry-based agreement** means a fair pay agreement described in **section 31(1)(b)**

**initiating party** means an employee bargaining party or an employer bargaining party that initiates bargaining under **section 36, 184, or 185** 10

**initiating union** means a union that has applied for approval to initiate bargaining for a proposed ~~FPA, a proposed renewal, or a proposed replacement agreement~~

**initiation test** means either the representation test described in **section 29(1)** or the public interest test described in **section 29A(1)** 15

**inter-party side agreement** means the agreement that each bargaining side must agree under **section 18(3)(a)**, and that must comply with the requirement set out in **section 60(1)**

**Labour Inspector** has the same meaning as in section 5 of the Employment Relations Act 2000 20

**minimum base wage rate** means the minimum rate of wages payable under a fair pay agreement to an adult employee in a class of employees,—

- (a) which may include a starting-out rate of wages or a training rate of wages; but
- (b) excludes any overtime rates or penalty rates payable under the fair pay agreement 25

**minimum entitlement provision** means a provision described in **section 117**

**non-SEBP employer** means an employer that is not an SEBP employer

**occupation-based agreement** means a fair pay agreement described in **section 31(1)(a)** 30

~~**overtime rates** means any identifiable amounts that are payable to an employee under a fair pay agreement for time spent working beyond the person's normal working hours but excludes any penalty rates payable under the fair pay agreement—~~

- (a) means any identifiable amounts that are payable to an employee under a fair pay agreement for time spent working beyond the employee's normal hours of work; and 35
- (b) includes any amounts payable at the same rate as the base wage rate payable for the employee's normal hours of work; but



- (c) excludes any penalty rates payable under the fair pay agreement  
~~penalty rates means any identifiable additional amounts that are payable to an employee under a fair pay agreement to compensate the employee for working on a particular day of the week, or on a public holiday, or outside of their normal hours of work, but excludes —~~ 5
- (aaa) means any identifiable additional amounts that are payable to an employee under a fair pay agreement to compensate the employee for working on a particular day of the week, or on a public holiday, or outside their normal hours of work; and
- (aab) includes any amounts payable at the same rate as the base wage rate payable for the employee's normal hours of work; but 10
- (a) excludes any additional payment, for example, for a sixth or seventh day of work; and
- (b) excludes any overtime rates payable under the fair pay agreement; and
- (c) excludes wages 15
- personal information** has the same meaning as in section 7(1) of the Privacy Act 2020
- proposed agreement** means a proposed FPA, a proposed renewal, or a proposed replacement
- proposed FPA** means a proposed fair pay agreement if— 20
- (a) ~~for which a union has applied for approval~~ under **section 30** for approval to initiate bargaining; but
- (b) ~~that~~ the chief executive has not validated the proposed fair pay agreement in accordance with **section 156**
- proposed renewal** means a proposed renewal of a fair pay agreement if— 25
- (a) ~~the chief executive has, under section 191, approved a party listed in~~ **section 183(2)** has applied for approval to initiate bargaining for the proposed renewal; but
- (b) the chief executive has not validated the renewal under **section 156**
- proposed replacement** means a proposed replacement of a fair pay agreement if— 30
- (a) ~~the chief executive has, under section 191, approved a party listed in~~ **section 183(2)** has applied for approval to initiate bargaining for the proposed replacement; but
- (b) the chief executive has not validated the replacement under **section 156** 35
- proposed variation** means a proposed variation of a fair pay agreement if—
- (a) both bargaining sides ~~of~~ for the fair pay agreement have agreed to bargain for the proposed variation (*see* **section 166**); but

- (b) the chief executive has not validated the variation under **section 178**
- Public Service Commissioner** means the Public Service Commissioner appointed under section 42 of the Public Service Act 2020
- regulations** means regulations made under **section 242**
- SEBP employer** means— 5
- (a) a specified employer bargaining party; or
- (b) an employer represented by a specified employer bargaining party
- specified employer bargaining party** means—
- (a) the Chief of Defence Force appointed under section 8 of the Defence Act 1990: 10
- (b) the Chief Parliamentary Counsel holding that office under section 135 of the Legislation Act 2019:
- (c) the Commissioner of Police holding office under section 12 of the Policing Act 2008:
- ~~(d) the Director General (being the chief executive or acting chief executive of the Ministry of Health under the Public Service Act 2020):~~ 15
- (d) Health New Zealand:
- (e) the Public Service Commissioner
- union** has the same meaning as in section 5 of the Employment Relations Act 2000 20
- wages** has the same meaning as in section 5 of the Employment Relations Act 2000
- workplace** has the same meaning as in section 5 of the Employment Relations Act 2000.
- ~~(2) For the purposes of this Act, **coverage**— 25~~
- ~~(a) in relation to a fair pay agreement, means,—~~
- ~~(i) the employees who perform work to which the terms of the fair pay agreement apply; and~~
- ~~(ii) the employers of employees described in **subparagraph (i)**; and~~
- ~~(b) in relation to a proposed FPA, a proposed variation, a proposed renewal, or a proposed replacement, means— 30~~
- ~~(i) the employees who perform work to which the terms of the proposed FPA, the proposed variation, the proposed renewal, or the proposed replacement apply; and~~
- ~~(ii) the employers of the employees described in **subparagraph (i)** 35~~
- ~~(e) in relation to a proposed FPA, a proposed renewal, or a proposed replacement, is as approved by the chief executive when the chief executive approves initiating bargaining.~~

- (2) For the purposes of this Act, **coverage**,—
- (a) in relation to a proposed agreement, means the work or type of work (and, if applicable, the industry) to which the proposed agreement applies as specified,—
- (i) for a proposed FPA, in the chief executive’s notification under **section 34 or 102G**: 5
- (ii) for a proposed renewal or a proposed replacement, in the chief executive’s notification under **section 102G or 192**:
- (b) in relation to a proposed variation, means the work or type of work (and, if applicable, the industry) to which the fair pay agreement that is proposed to be varied applies, as specified in the fair pay agreement notice: 10
- (c) in relation to a fair pay agreement, means the work or type of work (and, if applicable, the industry) to which the fair pay agreement applies, as specified in the fair pay agreement notice.
- (3) ~~Regulations made to specify the employee default bargaining party must specify an organisation that—~~ 15
- (a) ~~represents unions; and~~
- (b) ~~is the most representative organisation of unions in New Zealand.~~
- (4) ~~Regulations made to specify the employer default bargaining party must specify an organisation that—~~ 20
- (a) ~~represents employers; and~~
- (b) ~~is the most representative organisation of employers in New Zealand.~~
- (3) Before recommending regulations that specify the employee default bargaining party or the employer default bargaining party, the Minister must be satisfied that,— 25
- (a) in the case of the employee default bargaining party, it is an organisation that—
- (i) represents unions; and
- (ii) is the most representative organisation of unions in New Zealand; and 30
- (b) in the case of the employer default bargaining party, it is an organisation that—
- (i) represents employers; and
- (ii) is the most representative organisation of employers in New Zealand. 35
- (5) Unless the context otherwise requires, any term or expression that is defined in the Employment Relations Act 2000 and used, but not defined, in this Act has the same meaning as in that Act.

- 6 Transitional, savings, and related provisions**  
The transitional, savings, and related provisions (if any) set out in **Schedule 1** have effect according to their terms.
- 7 Act binds the Crown**  
This Act binds the Crown. 5
- 8 No contracting out**  
The provisions of this Act have effect despite anything to the contrary in any contract, agreement, or other arrangement.  
Compare: 2000 No 24 s 238

## Part 2 10

### General principles and obligations

- 9 Object of this Part**  
The object of this Part is to establish that, ~~in relation to bargaining,~~ for the purposes of this Act,—
- (a) a covered employee may only be represented by an employee bargaining party; and 15
- (b) a covered employer may only be represented by an employer bargaining party; and
- (c) no person may unduly influence any other person in relation to joining or not joining a union or an employer association; and 20
- (d) the ~~specified~~ duty of good faith and related obligations apply to the relevant parties.

#### Subpart 1—Freedom of association

##### *Voluntary membership*

- 10 Voluntary membership of union or employer association 25**
- (1) A contract, an agreement, or any other arrangement between persons must not require an employee, for the purpose of bargaining, or for the purpose of an application made in accordance with section 228BA for a determination under section 228C,—
- (a) to become or remain a member of a union or a particular union; or 30
- (b) to stop being a member of a union or a particular union; or
- (c) not to become a member of a union or a particular union.
- (2) A contract, an agreement, or any other arrangement between persons must not require an employer, for the purpose of bargaining, or for the purpose of an

application made in accordance with **section 228BA** for a determination under **section 228C**,—

- (a) to become or remain a member of an employer association or a particular employer association; or
- (b) to stop being a member of an employer association or a particular employer association; or
- (c) not to become a member of an employer association or a particular employer association.

**11 Only employee bargaining party may represent covered employees' interests during bargaining** 10

(1) For the purposes of bargaining, or for the purpose of an application made in accordance with **section 228BA** for a determination under **section 228C**, only an employee bargaining party may represent the collective interests of covered employees.

(2) For the purposes of **subsection (1)**,— 15

- (a) ~~a~~ eligible union that is an employee bargaining party may represent ~~a covered employee's~~ covered employees' collective interests despite ~~the employee~~ some covered employees not being ~~a member~~ members of the union, or of any other union; and
- (b) ~~an~~ the employee default bargaining party may represent ~~a covered employee's~~ covered employees' collective interests despite ~~the employee~~ some covered employees not being ~~a member~~ members of the employee default bargaining party or a union. 20

**12 Only employer bargaining party may represent covered employers' interests during bargaining** 25

(1) For the purposes of bargaining, or for the purpose of an application made in accordance with **section 228BA** for a determination under **section 228C**, only an employer bargaining party may represent the collective interests of covered employers.

(2) For the purposes of **subsection (1)**,— 30

- (a) an eligible employer association that is an employer bargaining party may represent ~~a covered employer's~~ covered employers' collective interests despite ~~the employer~~ some covered employers not being ~~a member~~ members of the eligible employer association, or of any ~~other~~ employer association; and
- (b) ~~an~~ the employer default bargaining party may represent ~~a covered employer's~~ covered employers' collective interests despite ~~the employer~~ some covered employers not being ~~a member~~ members of the employer default bargaining party or an employer association. 35

*Prohibition on preference***13 Prohibition on preference: employees**

- (1) A fair pay agreement or any other contract, agreement, or arrangement must not confer on a person, because the person is or is not a member of a union or a particular union,— 5
- (a) any preference in obtaining or retaining employment; or
  - (b) any preference in relation to terms of employment (including terms relating to redundancy, fringe benefits, or opportunities for training, promotion, or transfer).
- (2) However, a fair pay agreement may provide that a union member payment may be paid to a covered employee who is a member of a union or a particular union, ~~an employee who —~~ 10
- ~~(a) is within the coverage of the fair pay agreement; and~~
  - ~~(b) is a member of a union or a particular union.~~
- (3) **Subsection (1)** is not breached because an employee's individual contract differs from those of other employees employed by the same employer. 15
- (4) For the purpose of **subsection (2)**, **union member payment** means a payment, agreed in a fair pay agreement, that—
- (a) an employer pays to each of its covered employees who ~~is~~ are a member of a union or of a particular union; and 20
    - ~~(i) within the coverage of the agreement; and~~
    - ~~(ii) a member of a union or of a particular union; and~~
  - (b) is a separate payment from the employer to its employee; and
  - (c) is not part of the employee's base wage; and
  - (d) is no more, in total, over the period ~~covered by~~ during which the fair pay agreement applies, than the total amount of the employee's union membership fees (for 1 union only) for ~~the that period covered by the fair pay agreement.~~ 25

**14 Prohibition on preference: employers**

- A fair pay agreement ~~or any other contract, agreement, or arrangement~~ must not confer any benefit or opportunity on an employer because the employer is or is not a member of an employer association or a particular employer association (for example, ~~an arrangement~~ a fair pay agreement must not offer an employer a more favourable ~~contract~~ term on the condition that the employer ~~not~~ join an employer association). 30  
35

**15 ~~Contracts~~ Fair pay agreements, contracts, agreements, or other arrangements inconsistent with section 13 or 14**

A fair pay agreement, contract, agreement, or another arrangement has no force or effect to the extent that it is inconsistent with **section 13 or 14**.

*Undue influence*

5

**16 Undue influence**

- (1) A person must not, for the purposes of bargaining, or for the purpose of an application made in accordance with section 228BA for a determination under section 228C, exert undue influence, directly or indirectly, on another person with the intention of inducing the other person— 10
- (a) to become or remain a member of a union, a particular union, an employer association, or a particular employer association; or
  - (b) to stop being a member of a union, a particular union, an employer association, or a particular employer association; or
  - (c) not to become a member of a union, a particular union, an employer association, or a particular employer association; or 15
  - (d) in the case of an individual who is authorised to act on behalf of employees or employers, not to act on their behalf or to stop acting on their behalf; or
  - (e) to resign from or leave any employment because the other person is or, as the case may be, is not a member of a union or a particular union. 20
- (2) **Subsection (1)** does not limit the application of section 11 of the Employment Relations Act 2000.
- (3) A person who contravenes **subsection (1)** is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**. 25

Subpart 2—~~Good faith obligations~~ Duty of good faith

**17 ~~General obligation~~ Duty of good faith**

- (1) The parties to the relationships in **subsection (2)**, when any of the activities listed in **subsection (3)** are being undertaken,— 30
- (a) must deal with each other in good faith; and
  - (b) without limiting **paragraph (a)**, must not, whether directly or indirectly, do anything—
    - (i) to mislead or deceive each other; or
    - (ii) that is likely to mislead or deceive each other.
- (2) The relationships are between— 35
- (a) an employer and an employee employed by the employer:

- (b) an employer and a union that is an employee bargaining party but not ~~an~~ the employee default bargaining party (a **union bargaining party**):
- (c) a union bargaining party and a member of the union bargaining party:
- (d) a union bargaining party and a member of another union bargaining party, where both union bargaining parties are bargaining for the same proposed agreement or FPA, proposed variation, ~~proposed renewal, or proposed replacement~~: 5
- (e) a union bargaining party and a member of another union bargaining party, where both union bargaining parties are bargaining parties ~~to~~ for the same fair pay agreement: 10
- (f) an employee bargaining party and another employee bargaining party, where both employee bargaining parties are bargaining for the same proposed agreement or FPA, proposed variation, ~~proposed renewal, or proposed replacement~~:
- (g) an employee bargaining party and another employee bargaining party, where both employee bargaining parties are bargaining parties ~~to~~ for the same fair pay agreement: 15
- (h) an employer bargaining party and another employer bargaining party, where both employer bargaining parties are bargaining for the same proposed agreement or FPA, proposed variation, ~~proposed renewal, or proposed replacement~~: 20
- (i) an employer bargaining party and another employer bargaining party, where both employer bargaining parties are bargaining parties ~~to~~ for the same fair pay agreement:
- (j) the employee bargaining parties on the employee bargaining side and the employer bargaining parties on the employer bargaining side, where both bargaining sides are bargaining for the same proposed FPA, agreement or proposed variation, ~~proposed renewal, or proposed replacement~~: 25
- (k) the employee bargaining parties on the employee bargaining side and the employer bargaining parties on the employer bargaining side, where both bargaining sides are bargaining parties ~~to~~ for the same fair pay agreement. 30
- (3) The activities are—
- (a) bargaining for—
- (i) a proposed FPA: 35
- (ii) a proposed variation:
- (iii) a proposed renewal:
- (iv) a proposed replacement:
- (b) any activity under or in relation to a fair pay agreement while the agreement is in force: 40



- (c) any activity relating to bargaining for—
- (i) a proposed FPA:
  - (ii) a proposed variation:
  - (iii) a proposed renewal:
  - (iv) a proposed replacement. 5
- (4) The duty of good faith in **subsection (1)**—
- (a) is wider in scope than the implied mutual obligations of trust and confidence; and
  - (b) requires the parties to be active and constructive in establishing and maintaining a productive relationship in which the parties are, among other things, responsive and communicative. 10
- (5) This section does not prevent an employer from communicating with the employer's employees during bargaining (including, for example, ~~the~~ in relation to an employer's proposals for ~~the~~ a proposed FPA) as long as communication is consistent with the ~~obligation~~ duty of good faith in **subsection (1)(a) and (b)**. 15

Compare: 2000 No 24 s 4

## 18 Good faith obligations between bargaining parties on same bargaining side

- (1) The good faith obligations set out in this section apply as part of (but do not limit) the ~~general obligation~~ duty of good faith in **section 17**. 20
- (2) The good faith obligations in **subsection (3)** apply to bargaining parties that—
- (a) are bargaining for the same proposed ~~FPA, proposed renewal, or proposed replacement~~ agreement; and 25
  - (b) are on the same bargaining side; and
  - ~~(e) have formed or joined the bargaining side within 3 months of the chief executive notifying approval of an application to initiate bargaining for the proposed FPA, the proposed renewal, or the proposed replacement.~~
  - (c) have formed or joined the bargaining side for the proposed agreement at the relevant point in time specified in **section 35, 45, 80K, 194, or 195** (as applicable). 30
- (3) The good faith obligations for the bargaining parties described in **subsection (2)** are, in accordance with **section 59**,—
- (a) to agree the inter-party side agreement ~~in accordance with **section 59(2)(a)**~~; and 35
  - (b) to appoint a bargaining side lead advocate for the bargaining side.

**19 Good faith obligations between bargaining parties on different bargaining sides**

- (1) The good faith obligations set out in this section apply as part of (but do not limit) the ~~general obligation duty~~ of good faith in **section 17**.
- (2) The good faith obligations in **subsection (3)** apply to bargaining parties that are bargaining for the same proposed ~~FPA, agreement or proposed variation, proposed renewal, or proposed replacement~~ but that are not on the same bargaining side. 5
- (3) The good faith obligations for the bargaining parties described in **subsection (2)** are,— 10
- (a) as soon as possible after the chief executive notifies approval of an application to initiate bargaining, ~~for the proposed FPA, the proposed variation, the proposed renewal, or the proposed replacement,~~ to use their best endeavours to enter into an arrangement that sets out a process for conducting the bargaining in an effective and efficient manner; and 15
- (b) from time to time, to meet with each other for the purpose of bargaining; and
- (c) to consider and respond to each proposal made by the other bargaining side; and
- ~~(d) to continue to bargain with the other bargaining side on any matter on which the bargaining sides have not reached agreement, even if either side considers that the bargaining has reached a deadlock on that, or any other, matter; and~~ 20
- (d) if the bargaining parties have come to a standstill or reached a deadlock about a matter, to continue to bargain (including doing the things specified in **paragraphs (b) and (c)** about any other matter on which they have not reached agreement; and 25
- (e) to use their best endeavours to agree the terms of the proposed ~~FPA, agreement or the proposed variation, the proposed renewal, or the proposed replacement~~ in an orderly, timely, and efficient manner; and 30
- (f) to recognise the role and authority of each person chosen to be a representative or an advocate for the purposes of bargaining; and
- (g) not to undermine, or do anything that is likely to undermine, the bargaining or the authority of another bargaining party or another bargaining side; and 35
- (h) during bargaining, to provide the other bargaining side, in accordance with ~~section 92~~ the requirements set out in **sections 92A and 92B**, with any information that—
- (i) the other bargaining side requests in accordance with **section 92(2)**; and 40

- (ii) is reasonably necessary to support or substantiate claims, or responses to claims, made for the purpose of the bargaining.
- (4) **Subsection (3)(b)** does not require the bargaining parties to continue to meet with each other about proposals that have been considered and responded to.

### **19A Further application of duty of good faith**

- (1) The duty of good faith set out in this section applies in addition to (but does not limit) the duty of good faith in **section 17**.
- (2) The parties to the following relationships must comply with the duty of good faith (see **section 17(1)**) when undertaking any activity that relates to an application to the Authority for a determination under **section 228C** (including any activity that relates to the process of the Authority deciding the terms of the determination):
- (a) an employer and an employee employed by the employer:
- (b) an employer and a union that is an employee bargaining party but not the employee default bargaining party (a **union bargaining party**):
- (c) a union bargaining party and a member of the union bargaining party:
- (d) a union bargaining party and a member of another union bargaining party, where both union bargaining parties are joint applicants for a determination for the same proposed agreement:
- (e) an employee bargaining party and another employee bargaining party, where both employee bargaining parties are joint applicants for a determination for the same proposed agreement:
- (f) an employer bargaining party and another employer bargaining party, where both employer bargaining parties are joint applicants for a determination for the same proposed agreement.

### **20 Penalty for breach of duty of good faith**

- ~~(1) An employer who fails to comply with the obligation of good faith in **section 17** by doing anything that is intended to persuade 1 or more of the employer's employees not to participate in initiating, bargaining for, or ratifying a proposed FPA, a proposed variation, a proposed renewal, or a proposed replacement is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**.~~
- (1) An employer is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196** if the employer fails to comply with—
- (a) the duty of good faith in **section 17** by doing anything that is intended to persuade 1 or more of the employer's employees not to participate in initiating, bargaining for, or ratifying a proposed agreement or a proposed variation; or

- (b) the duty of good faith in **section 19A** by doing anything that is intended to persuade 1 or more of the employer's employees not to participate in an activity that relates to an application to the Authority for a determination under **section 228C** (including any activity that relates to the process of the Authority deciding the terms of the determination). 5
- (2) A party who fails to comply with the ~~obligation~~ duty of good faith in **section 17** while bargaining for a proposed agreement or FPA, a proposed variation, ~~a proposed renewal, or a proposed replacement~~, is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196** if the failure to comply with the duty of good faith— 10
- (a) is deliberate, serious, and sustained; or
- (b) is intended to undermine the process of bargaining.
- (2A) A party who fails to comply with the duty of good faith in **section 19A** after a bargaining party applies to the Authority for a determination under **section 228C**, but before the Authority makes the determination, is liable to a penalty imposed by the Authority not exceeding the applicable amount in **section 196** if the failure— 15
- (a) is deliberate, serious, and sustained; or
- (b) is intended to undermine the process of applying for, or receiving, a determination under **section 228C**. 20
- (3) A party who fails to comply with the ~~obligation~~ duty of good faith in **section 17** with the intention of undermining a fair pay agreement, is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 197**.
- 21 Treating employee as independent contractor** 25
- (1) ~~The obligation set out in this section applies as part of the general obligation of good faith in **section 17**.~~
- (2) ~~An employer must not engage a person as an independent contractor if—~~
- (a) ~~the real nature of the relationship is that the person is the employer's employee; and~~ 30
- (b) ~~the employer engages the person as an independent contractor, rather than as an employee, to prevent the person from being within the coverage of a fair pay agreement.~~
- (3) ~~An employer who fails to comply with **subsection (2)** is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 197**.~~ 35
- (4) ~~For the purposes of **subsection (3)**, the presumption in **subsection (5)** applies if, in any matter before the Authority or the court, a person establishes that—~~

- (a) ~~the person's employer engaged the person as an independent contractor despite the real nature of the relationship being an employment relationship; and~~
- (b) ~~if the person had been treated as an employee, the person would have been within the coverage of a fair pay agreement.~~ 5
- (5) ~~The rebuttable presumption is that the employer engaged the person as an independent contractor for the purpose of preventing the person being within the coverage of a fair pay agreement.~~

### Subpart 3—General obligations

- 21 Engaging employee under contract for services** 10
- (1) An employer must not engage a person under a contract for services if—
- (a) the real nature of the relationship is that the person is the employer's employee; and
- (b) the employer engages the person under a contract for services, rather than as an employee, to prevent the person being, in relation to a fair pay agreement, a covered employee. 15
- (2) An employer who fails to comply with **subsection (1)** is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 197**.
- (3) For the purposes of **subsection (2)**, the presumption in **subsection (4)** applies if, in any matter before the Authority or the court, a person establishes that— 20
- (a) the person's employer engaged the person under a contract for services despite the real nature of the relationship being that the person is the employer's employee; and 25
- (b) if the person had been treated as the employer's employee, the person would have been, in relation to a fair pay agreement, a covered employee.
- (4) The rebuttable presumption is that the employer engaged the person under a contract for services for the purpose of preventing the person being, in relation to a fair pay agreement, a covered employee. 30
- 22 Obligations imposed on bargaining sides**
- (1) If this Act imposes an obligation on a bargaining side, each bargaining party on that bargaining side is responsible for ensuring that at least 1 bargaining party complies with the obligation on behalf of the bargaining side. 35
- (2) If a bargaining side fails to comply with an obligation imposed on the bargaining side by a provision of this Act, each bargaining party on the bargaining side may be liable for the bargaining side's failure, to the extent specified in the provision.

**23 Personal information**

- (1) ~~Personal information that is provided to a bargaining side for the purpose of bargaining under this Act (excluding contact details provided under **section 39, 101, 102, 141(3), 171(4), 172(2)(c), 173(4), or 193(8)**)—~~
- (a) ~~must be used only for the purposes of bargaining; and~~ 5
  - (b) ~~must not be disclosed to any person except in a form that does not identify the individual.~~
- (2) ~~Nothing in this Act limits the right of an individual to access or disclose information about them under the Privacy Act 2020 or any other Act (including the right to complain under Part 5 of the Privacy Act 2020 if personal information is collected, held, used, or disclosed contrary to this Act).~~ 10
- (3) ~~In this section, **personal information** has the same meaning as in section 7(1) of the Privacy Act 2020.~~

**24 Chief executive may collect personal information**

~~The chief executive may collect personal information under this Act for the following purposes only:~~ 15

- (a) ~~assessing whether an application to initiate bargaining has met the required tests for the chief executive to approve the application;~~
- (b) ~~verifying that a ratification vote complies with the requirements set out in this Act;~~ 20
- (c) ~~monitoring compliance with this Act.~~

**25 Strikes and lockouts**

- (1) Participation in a strike or lockout that relates to bargaining for a proposed ~~FPA, agreement or~~ a proposed variation, ~~a proposed renewal, or a proposed replacement~~ is unlawful, unless the strike or lockout is otherwise lawful under section 84 of the Employment Relations Act 2000 (lawful strikes and lockouts on grounds of safety or health). 25
- (2) In this section, **strike** and **lockout** have the meanings provided in Part 8 of the Employment Relations Act 2000.

**Part 3** 30

**Initiating bargaining for proposed FPA Preliminary requirements:  
initiating bargaining and forming bargaining sides**

**26 Overview**

- (1) Bargaining for a proposed FPA must be between—
- (a) an employee bargaining side; and 35
  - (b) an employer bargaining side.

- (2) A union that wishes to initiate bargaining for a proposed FPA must apply to the chief executive for approval to do so.
- (3) Once the chief executive has approved a union to initiate bargaining, a union that wishes to ~~join~~ be an additional bargaining party on the employee bargaining side, or an employer association that wishes to ~~form or join~~ be an employer bargaining party on an employer bargaining side, must apply to the chief executive for approval to do so. 5
- (4) Once a bargaining side is formed, it has obligations that include—
  - (a) ~~the requirement to comply with the duty of good faith obligations~~ specified in **Part 2**; and 10
  - (b) obligations relating to representation; and
  - ~~(c) the requirement to appoint a bargaining side lead advocate; and~~
  - (d) the requirement to ~~enter into~~ agree an inter-party side agreement under **section 59(2)(a)**; and
  - ~~(e) the requirement to appoint a bargaining side lead advocate under section 59(2)(b).~~ 15

**Guidance note**

This Part provides preliminary requirements for proposed FPAs. However,—

- (a) subpart 1 of Part 8 sets out the requirements for initiating bargaining for a proposed variation, including section 168, which applies some provisions in this Part to a proposed variation; and 20
- (b) subpart 2 of Part 8 sets out the requirements for initiating bargaining for a proposed renewal or a proposed replacement, including sections 191 to 195, which apply some provisions in this Part to a proposed renewal or a proposed replacement. 25

Subpart 1—Process for initiating bargaining and forming bargaining sides

**27 Limit on initiating bargaining**

Bargaining for a proposed FPA may be initiated only in accordance with this subpart. 30

*Union to apply for approval to initiate bargaining for proposed FPA*

**28 Criteria for union to initiate bargaining for proposed FPA**

- (1) A union may initiate bargaining for a proposed FPA if—
  - (a) the union is an eligible union; and
  - (b) in respect of the proposed FPA, ~~the chief executive is satisfied that~~ the union’s application meets one of the following initiation tests: 35

- (i) the representation test ~~for initiating bargaining~~ (see **section 29(1)**); or
- (ii) the public interest test ~~for initiating bargaining~~ (see ~~section 29(4)~~ **section 29A(1)**); and
- (c) the chief executive has notified, under **section 34**, approval of the union's application to initiate bargaining for the proposed FPA. 5
- (2) Despite **subsection (1)**, a union is not permitted to initiate bargaining if ~~the proposed FPA and a fair pay agreement have exactly the same coverage~~ all of the work or each type of work that would be within the coverage of the proposed FPA is already within the coverage of 1 fair pay agreement or 1 proposed FPA for which bargaining has already been initiated. 10
- 29 Tests for initiating bargaining: representation test**
- (1) For the purposes of **section 28(1)(b)(i)**, ~~the chief executive must be satisfied that~~ a union's application meets the representation test if the chief executive is satisfied that— 15
- (a) at least 1,000 ~~covered~~ employees who would be within the coverage of the proposed FPA support ~~initiating~~ the application to initiate bargaining for the proposed FPA; or
- (b) at least 10% of all ~~covered~~ employees who would be within the coverage of the proposed FPA support ~~initiating~~ the application to initiate bargaining for the proposed FPA. 20
- (2) A union that seeks to rely on the representation test must provide evidence to the chief executive that the relevant number of ~~covered~~ employees who would be within the coverage of the proposed FPA support initiating bargaining (see section 30A). 25
- (3) Demonstrating that an employee who would be within the coverage of the proposed FPA is a member of the union that is initiating bargaining is not, of itself, sufficient evidence that the employee supports initiating bargaining for the proposed FPA.
- (4) ~~For the purposes of section 28(1)(b)(ii), the chief executive must be satisfied that a union's application meets the public interest test if the employees within the coverage of the proposed FPA—~~ 30
- (a) ~~receive low pay for their work; or~~
- (b) ~~have little bargaining power in their employment; or~~
- (c) ~~have a lack of pay progression in their employment (for example, pay rates only increase to comply with minimum wage requirements); or~~ 35
- (d) ~~are not adequately paid, taking into account factors such as—~~
- (i) ~~working long or unsoocial hours (for example, working weekends, night shifts, or split shifts);~~



- (ii) ~~contractual uncertainty, including performing short-term seasonal work or working on an intermittent or irregular basis.~~
- (5) ~~A union's application for approval may, if it is made on the basis that it meets the public interest test under **subsection (4)**, include evidence of any of the following:~~ 5
- (a) ~~the coverage of the proposed FPA includes a high proportion of migrant employees:~~
- (b) ~~there is systemic exploitation of migrant workers who are or would be covered employees:~~
- (c) ~~most of the covered employees are employed on a temporary basis:~~ 10
- (d) ~~there is systemic failure to comply with minimum employment standards for the covered employees:~~
- (e) ~~a high proportion of the covered employees are employed by small-to-medium-sized employers:~~
- (f) ~~there is systemic health and safety issues for the covered employees.~~ 15
- (6) ~~**Subsection (4)** must be applied in accordance with any regulations, which may include 1 or more of the following:~~
- (a) ~~further details as to how to satisfy the criteria specified in **subsection (4)**:~~
- (b) ~~further details about the evidence that may be included, in accordance with **subsection (5)**, with an application that is made on the basis of meeting the public interest test.~~ 20
- (7) ~~For the purposes of this section, **small-to-medium-sized employer** means an employer who employs fewer than 20 employees at the beginning of the day on which the union submits the application to the chief executive.~~ 25

### 29A Test for initiating bargaining: public interest test

- (1) For the purposes of **section 28(1)(b)(ii)**, a union's application meets the public interest test if the chief executive is satisfied that a prescribed portion of employees who would be within the coverage of the proposed FPA—
- (a) receive low pay for their work; and 30
- (b) meet 1 or more of the following criteria:
- (i) they have little bargaining power in their employment:
- (ii) they have a lack of pay progression in their employment (for example, pay rates only increase to comply with minimum wage requirements): 35
- (iii) they are not adequately paid, taking into account factors such as—
- (A) working long or unsocial hours (for example, working weekends, night shifts, or split shifts):

- (B) contractual uncertainty, including performing short-term seasonal work or working on an intermittent or irregular basis.
- (2) A union’s application for approval may, if it is made on the basis that it meets the public interest test under **subsection (1)**, include evidence of any of the following: 5
- (a) the coverage of the proposed FPA includes a high proportion of migrant employees:
  - (b) there is systemic exploitation of migrant employees who are or would be within the coverage of the proposed FPA: 10
  - (c) most of the employees who would be within the coverage of the proposed FPA would be employed on a temporary basis:
  - (d) there is systemic failure to comply with minimum employment standards for employees who would be within the coverage of the proposed FPA:
  - (e) a high proportion of the employees who would be within the coverage of the proposed FPA would be employed by small-to-medium-sized employers: 15
  - (f) employees who would be within the coverage of the proposed FPA are, or have been, exposed to systemic health and safety issues when performing the work that would be within the coverage of the proposed FPA. 20
- (3) **Subsection (1)** must be applied in accordance with any regulations, which may specify 1 or more of the following:
- (a) the portion of employees that must, to satisfy the public interest test, meet the criteria specified in **subsection (1)(a) and (b)**: 25
  - (b) further details as to how the criteria specified in **subsection (1)(a) and (b)** may be satisfied:
  - (c) further details about the evidence that may be included, in accordance with **subsection (2)**, with an application that is made on the basis of meeting the public interest test. 30
- (4) For the purposes of this section, **small-to-medium-sized employer** means an employer who employs fewer than 20 employees at the beginning of the day on which the union submits the application to the chief executive.
- 30 Application for approval for union to initiate bargaining**
- (1) A union’s application to the chief executive for approval to initiate bargaining 35 for a proposed FPA must—
- (a) be in writing; and
  - (b) state the following details:
    - (i) the name of the union:

- (ii) the name of a primary contact person for the union;
- (iii) the email address of the primary contact person; and
- (c) specify the coverage of the proposed FPA (*see section 31*), including,—
- (i) for a proposed occupation-based agreement, a description of the work or the type of work that is intended to be within the coverage of the proposed FPA; or 5
- (ii) for a proposed industry-based agreement, a description of—
- (A) the industry or type of industry that is intended to be within the coverage of the proposed FPA; and 10
- (B) the occupation, including the work or the type of work, that is intended to be within the coverage of the proposed FPA; and
- (d) specify which initiation test the union’s application ~~meets~~ relies on; and
- (e) provide evidence of— 15
- (i) the applicant being an eligible union; and
- (ii) how the application meets the relevant initiation test; and
- (f) be signed by an authorised representative of the union; and
- (g) include any other information required by regulations.
- ~~(2) Evidence provided to demonstrate how the application meets the relevant initiation test must— 20~~
- ~~(a) be no more than 12 months old as at the date on which the union submits the application; and~~
- ~~(b) align with the coverage of the proposed FPA.~~
- (2) Evidence provided in support of an application must be provided in accordance with **section 30A**. 25
- (2A) In this section, **relevant initiation test** means the initiation test specified in the application (which must be the representation test under **section 29(1)** or the public interest test under **section 29A(1)**).
- (3) A union that intentionally or recklessly provides inaccurate information as part of an application is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**. 30
- 30A Evidence provided in support of application**
- (1) Evidence provided to demonstrate that an application under **section 30** meets— 35
- (a) the representation test under **section 29(1)** must—
- (i) align with, and be representative of, the coverage of the proposed FPA; and

- (ii) for each employee who would be within the coverage and that is claimed to support initiating bargaining for the proposed FPA, include the information specified in **subsection (2)**; and
- (iii) if the application is made, in accordance with **section 29(1)(b)**, on the basis that at least 10% of the employees who would be within the coverage of the proposed FPA support the application, specify the total number of employees who will be within the coverage of the proposed FPA; or 5
- (b) the public interest test under **section 29A(1)**, must—
- (i) align with, and be representative of, the coverage of the proposed FPA; and 10
- (ii) demonstrate that the relevant criteria listed in **section 29A(1)(a) and (b)** are current.
- (2) For the purposes of **subsection (1)(a)(ii)**, the information that must be provided for each employee that supports initiating bargaining is— 15
- (a) the employee's name; and
- (b) the employee's occupation; and
- (c) the name of the employee's employer; and
- (d) the date on which the employee agreed to support initiating bargaining; and 20
- (e) if the application is for an industry-based agreement, the industry in which the employee is employed.
- (3) Information provided under **subsection (2)** must be no more than 12 months old as at the date on which the union submits the application.
- 31 Coverage of proposed FPA** 25
- (1) The coverage of a proposed FPA must be described according to—
- (a) the occupation of the employees whom, including the work or the type of work, that the proposed FPA would cover (an **occupation-based agreement**); or
- 
- Example** 30
- ~~Coverage of occupation-based agreement~~*
- ~~A proposed FPA that would cover all commercial cleaners is an occupation-based agreement.~~
- 
- (b) the industry and the occupations, including the work or the type of work within that industry, of the employees whom that the proposed FPA 35

would cover ~~and the industry in which the covered employees are employed~~ (an industry-based agreement).

**Example**

*Coverage of industry based agreement*

A proposed FPA that would cover butchers and bakers in the supermarket and grocery industry is an industry based agreement. 5

- (2) An occupation-based agreement must apply to ~~all employees who are employed in the occupation covered by the agreement.~~
  - (a) all covered employees who are employed in the occupation covered by the agreement; and 10
  - (b) all covered employers in relation to the agreement.
- (3) An industry-based agreement must apply to ~~all employees who are employed in the occupation and industry covered by the agreement.~~
  - (a) all covered employees who are employed in the occupation and industry covered by the agreement; and 15
  - (b) all covered employers in relation to the agreement.
- (4) The coverage of a proposed FPA ~~must be specified with sufficient clarity so that all employees and employers are able to determine whether they are within the coverage of the proposed FPA.~~
  - (a) must be specified with sufficient clarity so that all employees and employers are able to determine whether they are within the coverage of the proposed FPA; and 20
  - (b) must be specified in accordance with any regulations; and
  - (c) must include any other information required by regulations.

*Chief executive assesses application for approval to initiate bargaining* 25

**32 Chief executive must assess application for approval to initiate bargaining**

- (1) ~~As soon as practicable after~~ After receiving a union’s application for approval to initiate bargaining for a proposed FPA, the chief executive must—
  - (a) assess the application; and
  - (b) notify the applicant in writing— 30
    - (i) ~~whether or not~~ the chief executive has approved the application; and
    - (ii) if the chief executive has approved the application, the coverage of the proposed FPA that the chief executive has approved.
- (2) The chief executive may require the applicant to provide additional information or evidence if the chief executive considers the application does not contain 35

- enough information for the chief executive to decide whether to approve the application.
- (3) If, after considering any additional information or evidence provided under **subsection (2)**; the chief executive considers that the application does not define the coverage of the proposed FPA with sufficient clarity, the chief executive must assist the union to define the coverage of the proposed FPA more clearly. 5
- (4) The chief executive must approve the application only if satisfied that the application meets the following requirements:
- (a) the application complies with the requirements in **section 30(1)**; and 10
- (b) based on the information provided in the application, any additional information or evidence provided under **subsection (2)**, and any submissions received under **section 33**,—
- (i) the coverage of the proposed FPA is defined with sufficient clarity (as required by **section 31(4)**); and 15
- (ii) the applicant has met one of the initiation tests for ~~the coverage of~~ the proposed FPA; and
- ~~(iii) the coverage of the proposed FPA is not exactly the same as the coverage of—~~
- ~~(A) a fair pay agreement; or~~ 20
- ~~(B) a proposed FPA for which bargaining has already been initiated.~~
- (iii) all of the work or each type of work that is within the coverage of the proposed FPA is not already within the coverage of 1 fair pay agreement or 1 proposed FPA for which bargaining has already been initiated. 25
- (5) The chief executive must decline an application if,—
- (a) after assisting the union under **subsection (3)**, the chief executive considers the application does not define the coverage of the proposed FPA with sufficient clarity; or 30
- (b) after considering any additional information or evidence provided under **subsection (2)**; and any submissions received under **section 33**, the chief executive is not satisfied that the application meets the requirements listed in **subsection (4)**.
- (6) If the chief executive declines an application, the chief executive must also, by written notice, advise the applicant of the reasons for declining the application. 35

### **32A Time frame for chief executive**

- (1) The chief executive must comply with **section 32(1)** as soon as is reasonably practicable.

- (2) This subsection and **subsection (1)** expire on the date that is 6 months after **section 32** comes into force.
- (3) The chief executive must comply with **section 32(1)**—
- (a) as soon as practicable; but
  - (b) no later than 30 working days after receiving— 5
    - (i) the application for approval; and
    - (ii) any additional information or evidence requested under **section 32(2)**.
- (4) However, the time frame in **subsection (3)(b)** is subject to the following:
- (a) if the chief executive invites public submissions under **section 33**, a working day between the date on which the chief executive invites submissions and the date by which the chief executive must receive any submissions is not a working day for the purposes of **subsection (3)(b)**: 10
  - (b) the chief executive may extend the 30-working-day period to 45 working days if satisfied that it is appropriate to do so in the circumstances. 15

### 33 Chief executive may invite submissions when considering application

- (1) When considering whether to approve an application for approval to initiate bargaining ~~that relies on one of the following initiation tests~~, the chief executive may invite public submissions on whether the application meets ~~the test:—~~ 20
- (aaa) the representation test specified in **section 29(1)(b)**; or
  - (a) the public interest test specified in ~~section 29(4)~~; **section 29A(1)**.
  - (b) ~~the representation test specified in **section 29(1)(b)**.~~
- (2) An invitation to make submissions must specify the date by which the chief executive must receive any submissions, which must be at least 20 working days, but no more than 30 working days, after the chief executive invites submissions. 25
- (3) The chief executive must consider any submissions received by the specified date before deciding whether to approve the application.
- (4) If the chief executive receives an application that includes personal information, the chief executive must not disclose that personal information to any other person, except in a form ~~in which the individual concerned is not identified~~ that does not identify the individual. 30

### 34 Chief executive to publicly notify decision

- (1) Within 5 working days after approving an application to initiate bargaining for a proposed FPA, the chief executive must publicly notify the following information: 35
- (a) the fact that the chief executive has approved the application:

- (b) the name of the applicant;
- (c) whether the application relied on the representation test or the public interest test for initiating bargaining (*see ~~section 29~~ **sections 29 and 29A***):
- (d) the reasons why the chief executive is satisfied that the application meets the public interest test or the representation test (as applicable):
- (e) the coverage of the proposed FPA.
- (2) The public notice issued under **subsection (1)** must also state—
- (a) ~~state~~ that each covered employee and each covered employer (as at the date on which the chief executive approved the application to initiate bargaining)— may be represented in the bargaining for the proposed FPA; and
- (i) ~~may be represented in the bargaining for the proposed FPA; and~~
- (ii) ~~unless the coverage of the proposed FPA changes during bargaining, will be bound by the fair pay agreement; and~~
- (aa) that, unless the coverage of the proposed FPA changes during bargaining, the fair pay agreement will apply to—
- (i) each employee who, in relation to the fair pay agreement, will be a covered employee; and
- (ii) each employer who, in relation to the fair pay agreement, will be a covered employer; and
- (b) ~~state~~ where to find a plain language explanation of the next steps for bargaining.
- (3) ~~If the chief executive approves an application to initiate bargaining for a proposed FPA with coverage that overlaps with the coverage of another proposed FPA or a fair pay agreement,—~~
- (a) ~~the chief executive must also comply with **sections 104, 108, and 111**; and~~
- (b) ~~**sections 105 to 111** apply.~~

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**Guidance note**

If the chief executive approves an application to initiate bargaining for a proposed FPA with coverage that overlaps with the coverage of another proposed FPA or a fair pay agreement, **sections 104 to 111** apply.

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*Formation of employee bargaining side*

- 35 Formation of employee bargaining side**
- (1) An employee bargaining side for a proposed FPA is formed 3 months after the date on which the chief executive notifies, under **section 34**, that the chief



executive has approved the application from an eligible union to initiate bargaining for the proposed FPA.

- (2) ~~There is no limit to the number of eligible unions that may join an employee bargaining side after it is formed.~~

*Initiating union must notify approval to initiate bargaining* 5

### 36 Initiating union to notify unions and employers of approval to initiate bargaining

- (1) ~~Within 15 working days after receiving notice that the chief executive has approved its application to initiate bargaining, an initiating union must—~~
- (a) ~~identify each other union that the initiating union considers is likely to have members who are covered employees, and notify it that the initiating union has received approval to initiate bargaining; and~~ 10
  - (b) ~~identify each employer that the initiating union considers is likely to be a covered employer, and notify it that the initiating union has received approval to initiate bargaining.~~ 15
- (1) Within 15 working days after receiving notice that the chief executive has approved its application to initiate bargaining, an initiating union must—
- (a) use its best endeavours to identify each other union that the initiating union considers is likely to have members who are covered employees, and notify it that the initiating union has received approval to initiate bargaining; and 20
  - (b) use its best endeavours to identify each employer that the initiating union considers is likely to be a covered employer, and—
    - (i) notify it that the initiating union has received approval to initiate bargaining; and 25
    - (ii) provide it with an email address to which the employer is required to send the employer’s covered employees’ contact details; and
  - (c) publish a notice—
    - (i) on an Internet site that is administered by or on behalf of the initiating union, publicly available, and free of charge; and 30
    - (ii) in the daily newspapers circulating in Auckland, Hamilton, Tauranga, Wellington, Christchurch, and Dunedin.
- (2) A notification under **subsection (1)(a) or (b)** must—
- (a) be in writing; and
  - (b) state where to find the notice issued by the chief executive under **section 34**; and 35
  - (c) include a statement for an employer to provide to each of its covered employees; and

- (d) include a form, approved and issued by the chief executive under **section 243**, that sets out the following information:
- (i) that an employer is required to provide contact details for each of the employer's covered employees to the initiating union, unless the employee elects not to have their contact details provided: 5
  - (ii) the process by which an employee who does not want their contact details to be provided to the initiating union can elect not to have their contact details provided:
  - (iii) the reason for providing the employee's contact details to the initiating union: 10
  - (iv) an explanation of to whom the initiating union is able to provide the employee's contact details:
  - (v) an explanation of the purposes for which the employee's contact details may be used:
  - (vi) the consequences of the employee electing not to have their contact details provided: 15
  - (vii) how an employee who has elected not to have their contact details provided can rescind that election so that the employer must provide the employee's contact details to the initiating union.
- (2A) A notice published— 20
- (a) under **subsection (1)(c)(i)** must—
    - (i) state that approval has been given to initiate bargaining for a proposed FPA; and
    - (ii) include the information specified in **subsection (2)(b), (c), and (d)**: 25
  - (b) under **subsection (1)(c)(ii)** must state—
    - (i) that approval has been given to initiate bargaining for a proposed FPA; and
    - (ii) where to find the notice issued by the chief executive under **section 34**; and 30
    - (iii) where to find the notice published under **subsection (1)(c)(i)**.
- (3) A statement provided under **subsection (2)(c)** must—
- (a) be in writing; and
  - (b) be drafted in plain language; and
  - (c) be drafted in such a way that the employer is able to provide it to their covered employees without needing to redraft it; and 35
  - (d) advise the covered employee about the proposed FPA, including at least the following information:

- (i) that the initiating union has been approved to initiate bargaining for a proposed FPA and that the employee is within the coverage of the proposed FPA:
  - (ii) the name of the initiating union:
  - (iii) how the proposed FPA could affect the employee and the work they do: 5
  - (iv) that, when bargaining for a proposed FPA, the initiating union and any other employee bargaining parties represent all employees within the coverage of the proposed FPA, including employees who are not members of the initiating union or of any other union: 10
  - (v) where to find further information about the proposed FPA and the bargaining process:
  - (vi) how to contact the initiating union to request any further information.
- 37 Employer to notify employees and unions of bargaining being initiated** 15
- (1) Within 15 working days after receiving notice from ~~a~~ an initiating union under **section 36**, a covered employer must ~~notify~~ use its best endeavours to identify each union that has a member who is a covered employee employed by the employer, and notify it—
- (a) that the chief executive has approved initiating bargaining for the proposed FPA; and 20
  - (b) where to find the notice issued by the chief executive under **section 34**.
- (2) As soon as possible, but no later than 30 working days after being advised (whether in accordance with this Act or otherwise) that the chief executive has approved initiating bargaining for the proposed FPA, a covered employer must provide each of its covered employees with a copy of the form provided under **section 36(2)(d)** and— 25
- (a) a copy of the statement provided under **section 36(2)(c)**; or
  - (b) if the employer has not received a statement from the union, the information required to be contained in that statement (*see section 36(3)(d)*) in the format required under **section 36(3)(a) and (b)**. 30
- (3) An employer must provide the information required by **subsection (2)** in writing and individually to each covered employee (for example, by emailing the information to each covered employee, but not by posting the information on a staff intranet). 35
- (4) If a union provides an employer with a statement under **section 36(2)(c)** and a form under **section 36(2)(d)**, the employer—
- (a) must not amend the wording of the statement or the form before providing it to the employer’s covered employees; but

- (b) may provide information to the covered employees that is additional to the information contained in the statement and the form.
- (5) An employer that intentionally or recklessly fails to comply with **subsection (2), (3), or (4)(a)** is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**. 5
- 38 Union to notify employers of bargaining being initiated**
- (1) Within 15 working days after being notified under ~~section 36(4)(a)~~ **section 36(1) or 37(1)**, a union that has members within the coverage of the proposed FPA must send a notice to each employer that is a party to a current collective agreement with the union, if the collective agreement covers employees who are within the coverage of the proposed FPA. 10
- (2) The notice to the employer must—
- (a) advise the employer that the chief executive has approved initiating bargaining for the proposed FPA; and
- (b) advise the employer where to find the notice issued by the chief executive under **section 34**; and 15
- (c) include the statement provided under **section 36(2)(c)**; and
- (d) include the form provided under **section 36(2)(d)**.
- (3) If a union provides an employer with a statement under **subsection (2)(c)** and a form under **subsection (2)(d)**, the union— 20
- (a) must not amend the wording of the statement or the form before providing it to the employer; but
- (b) may provide information to the employer that is additional to the information contained in the statement and the form.

*Employee contact details* 25

- 39 Employer to provide employee contact details to employee bargaining side**
- (1) Subject to **subsection (3)**, an employer who is advised (whether in accordance with this Act or otherwise) that the chief executive has approved initiating bargaining for a proposed FPA must provide the ~~following~~ contact details for each of the employer's covered employees to the initiating union (or, if applicable, to the ~~updated~~ updated contact address for the employee bargaining side provided under ~~section 99~~ **section 102B**) ~~and any other employee bargaining party for the proposed FPA:~~ 30
- (a) ~~the employee's name;~~
- (b) ~~the employee's job title;~~ 35
- (c) ~~the site at which the employee works predominantly;~~
- (d) ~~if the employee has an email address at work, that email address;~~

- (e) ~~if the employee does not have an email address at work but has a telephone number at work, that telephone number;~~
- (f) ~~if the employee does not have a telephone number or an email address at work, but has provided a personal email address to the employer, that personal email address.~~ 5
- (2) The employer must provide the contact details ~~as soon as is reasonably practicable after the date that is 20 working days after the employer provided the relevant information to its employees under **section 37(2)**; in an electronic format and—~~
- (a) as soon as practicable after the date that is 20 working days after the date on which the employer provides the relevant information to its employees under **section 37(2)**; but 10
- (b) no later than 30 working days after the date on which the employer provides the relevant information.
- (3) The employer must not provide the contact details of an employee who has elected, in accordance with **section 36(2)(d)(ii)**, not to have their contact details provided. 15
- (4) An employer who intentionally or recklessly fails to comply with this section is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**. 20
- 40 Use of employee contact details by initiating union or employee bargaining party**
- (1) ~~An initiating union or employee bargaining party that receives employees' contact details under **section 39, 101, 102, 141(3), 171(4), 172(2)(c), 173(4), or 193(8)** must not use the contact details for a purpose that is not related to the proposed FPA, the proposed variation, the proposed renewal, the proposed replacement, or the fair pay agreement.~~ 25
- (2) ~~However, **subsection (1)** does not apply to an employee's contact details that an initiating union or employee bargaining party receives if—~~
- (a) ~~the employee is or becomes a member of the initiating union or employee bargaining party; and~~ 30
- (b) ~~the contact details provided by the employee as part of being or becoming a member of the initiating union or the employee bargaining party match those provided under a section listed in **subsection (1)**.~~
- (3) ~~Any communication from an initiating union or employee bargaining party using the contact details received under **section 39, 101, 102, 141(3), 171(4), 172(2)(c), 173(4), or 193(8)**—~~ 35
- (a) ~~may, if the primary purpose of the communication is related to the proposed FPA, the proposed variation, the proposed renewal, the proposed~~

- ~~replacement, or the fair pay agreement, also provide supplementary information to the employee despite **subsection (1)**; and~~
- ~~(b) must advise the employee that they may elect not to receive any further communication from the initiating union or employee bargaining party, and how to do so.~~ 5
- ~~(4) Supplementary information provided under **subsection (3)(a)** may, without limitation, include information about how to join a union.~~
- 41 Storage of employee contact details**
- ~~(1) An initiating union or an employee bargaining party that receives employees' contact details under **section 39, 101, 102, 141(3), 171(4), 172(2)(c), 173(4), or 193(8)** must ensure that —~~ 10
- ~~(a) the contact details are stored separately from any other information held by the union; and~~
- ~~(b) access to the contact details is limited to only those employees of the union who need to use the contact details for a purpose set out in this Act (for example, to communicate with the employee about bargaining for a proposed FPA, or for the union to access the workplace to discuss a proposed FPA).~~ 15
- ~~(2) Nothing in this section limits an initiating union's or employee bargaining party's obligation to ensure the security of employees' contact details under the Privacy Act 2020.~~ 20

*Employer bargaining side*

- 42 Meaning of employer association**
- ~~In this Act, **employer association** means an association that —~~
- ~~(a) is an incorporated society registered under the Incorporated Societies Act 1908; and~~ 25
- ~~(b) has at least 1 member that is a covered employer; and~~
- ~~(c) has a purpose that enables the association to promote the collective work interests of covered employers for the purposes of —~~
- ~~(i) bargaining for a proposed FPA; and~~ 30
- ~~(ii) a fair pay agreement; and~~
- ~~(d) has rules that are democratic, not unreasonable, not unfairly discriminatory or unfairly prejudicial, and not contrary to any law; and~~
- ~~(e) is independent from, and is constituted and operates at arm's length from, any union or worker organisation.~~ 35

- 43 ~~Employer bargaining party must apply to form or join employer bargaining side~~ Employer association may apply to be employer bargaining party
- (1) If the chief executive notifies, under **section 34**, that the chief executive has approved ~~a~~ an eligible union's application to initiate bargaining for a proposed FPA, an ~~eligible~~ employer association that wishes to ~~form or join~~ be an employer bargaining party on the employer bargaining side for the proposed FPA must apply to the chief executive for approval to do so. 5
- (2) An application must—
- (a) be in writing; and 10
- (b) state the following details:
- (i) the name of the employer association;
- (ii) the name of a primary contact person for the employer association;
- (iii) the email address of the primary contact person; and 15
- (c) contain evidence that the employer association is an eligible employer association; and
- (d) be signed by an authorised representative of the employer association; and
- (e) include any other information required by regulations. 20
- (3) ~~An eligible~~ employer association may only ~~form or join~~ an apply to be an employer bargaining party on the employer bargaining side between—
- (a) the date on which the chief executive approves the initiation of bargaining for the proposed FPA; and
- (b) ~~the date on which the chief executive validates the proposed FPA under section 156:~~ 25
- (b) the earliest of the following dates:
- (i) the date on which the chief executive validates the proposed FPA under section 156:
- (ii) the date on which a bargaining party applies, in accordance with section 228BA, for a determination under section 228C in relation to the proposed FPA: 30
- (iii) the date on which bargaining for the proposed FPA is discontinued.
- 44 ~~Chief executive to assess application for approval to form or join employer bargaining side~~ be employer bargaining party 35
- (1) The chief executive may require an applicant for approval to ~~form or join~~ be an employer bargaining party on an employer bargaining side to provide further information or evidence if the chief executive considers the application does

not contain sufficient information for the chief executive to decide whether to approve the application.

- (2) The chief executive must, as soon as practicable,—
- (a) assess each application and,—
- (i) if satisfied that the application is from an eligible employer association, approve the application; or 5
- (ii) if not satisfied (after considering the application and any further information or evidence provided in response to a request under **subsection (1)**) that the application is from an eligible employer association, decline the application; and 10
- (b) notify the applicant of the chief executive’s decision.
- (3) If the chief executive declines an application, the chief executive must also, by written notice,— advise the employer association of the reasons for declining the application.
- ~~(a) advise the employer association of the reasons for declining the application; and 15~~
- ~~(b) advise the employer association how to make a new application that the chief executive would be able to approve.~~
- (4) If the chief executive declines an application, the employer association may make another application. 20

#### **44A Chief executive must notify decision to approve employer bargaining party**

- (1) Within 5 working days after approving an eligible employer association’s application to be an employer bargaining party, the chief executive must—
- (a) publicly notify that it has approved the application to be an employer bargaining party on the employer bargaining side (including the name of the employer association); and 25
- (b) notify each other employer bargaining party on the bargaining side that it has approved the application (including the name of the employer association).
- (2) A notice under **subsection (1)(a)** must state where to find the notice issued by the chief executive under **section 34**. 30

#### **45 Formation of employer bargaining side**

- (1) ~~An employer bargaining side for a proposed FPA is formed 3 months after the date on which the chief executive notifies, under **section 34**, that the chief executive has approved the application from an eligible union to initiate bargaining for the proposed FPA. 35~~
- (2) ~~There is no limit to the number of eligible employer associations that may join an employer bargaining side after it is formed.~~



- (3) ~~However, to form or join an employer bargaining side, an eligible employer association must have an application approved under **section 44**.~~

#### **45 Formation of employer bargaining side for proposed FPA**

- (1) If the chief executive publicly notifies, under **section 34**, that the chief executive has approved an eligible union's application to initiate bargaining for a proposed FPA, an employer bargaining side for the proposed FPA is formed on one of the following dates:
- (a) if, within 3 months of the chief executive's notification under **section 34**, the chief executive approves an eligible employer association's application to be an employer bargaining party on an employer bargaining side, the date that is 3 months after the date of the chief executive's notification under **section 34**: 10
  - (b) if (in accordance with **section 71A**) the employer default bargaining party elects to be an employer bargaining party for the proposed FPA, the date on which the employer default bargaining party notifies the chief executive of its election. 15
- (2) A specified employer bargaining party may be the only employer bargaining party on an employer bargaining side for a proposed FPA only if the proposed FPA—
- (a) covers an SEBP employer; and 20
  - (b) does not cover a non-SEBP employer.
- (3) There is no limit to the number of eligible employer associations that may be approved to be employer bargaining parties on an employer bargaining side.

#### **46 Entitlement and obligation to represent covered employers**

- (1) ~~When bargaining for a proposed FPA, an employer bargaining party for the proposed FPA is entitled to represent, and must use its best endeavours to represent, the collective interests of all covered employers, whether or not each employer is a member of an employer association.~~ 25
- (2) ~~To comply with **subsection (1)**, an employer bargaining party must, at least,—~~ 30
- (a) ~~provide regular updates about bargaining to all covered employers; and~~
  - (b) ~~give all covered employers the opportunity to provide feedback to the employer bargaining side in relation to the bargaining; and~~
  - (c) ~~consider, during bargaining, all feedback received from covered employers; and~~ 35
  - (d) ~~advise all covered employers of any ratification vote (see **section 143**); and~~

- (e) ~~consider whether all interest groups of covered employers are recognised and given the opportunity to provide feedback to the employer bargaining side in relation to bargaining; and~~
- (f) ~~if the proposed FPA covers employees of a private sector employer and the employer bargaining party is aware that the private sector employer regularly receives government funding to deliver public services, provide regular updates about bargaining to the department responsible for that funding.~~ 5
- (3) ~~An employer bargaining party must not, whether directly or indirectly, do anything to mislead or deceive or that is likely to mislead or deceive a covered employer.~~ 10
- (4) ~~In **subsection (2)(f)**, **department** has the meaning given in section 5 of the Public Service Act 2020.~~

#### 47 ~~Exceptions for specified employer bargaining party~~

~~Despite **section 46**, if a specified employer bargaining party is a bargaining party for a proposed FPA or a fair pay agreement,~~ 15

- (a) ~~the specified employer bargaining party must not represent the interests of any other covered employers; and~~
- (b) ~~another employer bargaining party that is a member of the same bargaining side for the proposed FPA or the fair pay agreement must not represent the interests of the specified employer bargaining party or of any employer that the specified employer bargaining party is representing.~~ 20

#### 48 ~~Obligation to ensure representation of Māori employers~~

~~Each employer bargaining party for a proposed FPA must use its best endeavours to ensure that Māori employers are represented effectively in the bargaining process, including by~~ 25

- (a) ~~seeking and considering feedback from representatives of Māori employers; and~~
- (b) ~~considering whether the bargaining side should include a member to represent the interests of Māori employers.~~ 30

*Other union may apply to ~~join~~ be additional employee bargaining-side party*

#### 49 ~~Other union may apply for approval to join be additional employee bargaining party on employee bargaining side~~

- (1) If the chief executive notifies, in accordance with **section 34**, that the chief executive has approved ~~a~~ an eligible union's application to initiate bargaining for a proposed FPA, a union (other than the eligible union that submitted the approved application) that wishes to ~~join~~ be an additional employee bargaining party on the employee bargaining side must apply to the chief executive for approval to do so. 35

- (2) A union may make an application only if it is an eligible union.
- (3) A union may only ~~form or join an~~ apply to be an employee bargaining party on the employee bargaining party side between—
- (a) the date on which the chief executive approves the initiation of bargaining for the proposed FPA under section 34; and 5
- (b) ~~the date on which the chief executive validates the proposed FPA under section 156.~~
- (b) the earliest of the following dates:
- (i) the date on which the chief executive validates the proposed FPA under section 156: 10
- (ii) the date on which a bargaining party applies, in accordance with section 228BA, for a determination under section 228C in relation to the proposed FPA:
- (iii) the date on which bargaining for the proposed FPA is discontinued. 15
- (4) There is no limit to the number of eligible unions that may be approved to be employee bargaining parties on an employee bargaining side.
- 50 Application for approval for union to ~~join employee bargaining side~~ be additional employee bargaining party**
- A union's application for approval to ~~join~~ be an additional employee bargaining party on the employee bargaining side for a proposed FPA must— 20
- (a) be in writing; and
- (b) state the following details:
- (i) the name of the union;
- (ii) the name of a primary contact person for the union; 25
- (iii) the email address of the primary contact person; and
- (c) contain evidence that the union is an eligible union; and
- (d) be signed by an authorised representative of the union; and
- (e) include any other information required by regulations.
- 51 Chief executive to assess application for approval to ~~join employee bargaining side~~ be additional employee bargaining party** 30
- (1) The chief executive must, as soon as practicable, ~~—~~ assess each application for approval to be an additional employee bargaining party on an employee bargaining side for a proposed FPA.
- (a) ~~assess each application for approval to join an employee bargaining side for a proposed FPA; and~~ 35
- (b) ~~notify the applicant of the chief executive's decision.~~

- (2) The chief executive may require a union to provide further information or evidence if the chief executive considers the application does not contain enough information for the chief executive to decide whether to approve the application.
- (3) The chief executive must approve the union ~~joining to be an additional employee bargaining party on the~~ employee bargaining side only if satisfied that the application complies with **section 50**. 5
- (4) The chief executive must decline an application if, after considering the application and any further information or evidence provided in response to a request made under **subsection (2)**, the chief executive is not satisfied that the application complies with **section 50**. 10
- (5) If the chief executive declines an application, the union may make another application.
- 52 Chief executive to notify decision on application for approval to ~~join employee bargaining side~~ be additional employee bargaining party** 15
- (1) As soon as practicable after receiving an application to ~~join be an additional employee bargaining party on an~~ employee bargaining side, the chief executive must, by written notice, advise the union whether its application has been approved or declined.
- (2) If the chief executive declines an application, the chief executive must also, by written notice, ~~— advise the union of the reasons for declining the application.~~ 20
- (a) ~~advise the union of the reasons for declining the application; and~~
- (b) ~~advise the union how to make a new application that the chief executive would be able to approve.~~
- (3) Within 5 working days ~~of~~ after approving an eligible union's application to be an additional employee bargaining party, the chief executive must ~~publicly notify —~~ 25
- (a) publicly notify that it has approved a union's the application to ~~join be an additional bargaining party on the~~ employee bargaining side (including the name of the union and where to find the notice issued by the chief executive under **section 34**); and 30
- (b) ~~the name of the union that it has approved.~~
- (c) notify each other employee bargaining party on the bargaining side that it has approved the application (including the name of the union).
- 53 Entitlement and obligation to represent covered employees** 35
- (1) ~~When bargaining for a proposed FPA, an employee bargaining party for the proposed FPA is entitled to represent, and must use its best endeavours to represent, the collective interests of all covered employees, whether or not each employee is a member of the union.~~

- (2) ~~To comply with **subsection (1)**, an employee bargaining side must, at least, —~~
- (a) ~~provide regular updates about the bargaining to all covered employees; and~~
  - (b) ~~give all covered employees the opportunity to provide feedback to the employee bargaining side in relation to the bargaining; and~~ 5
  - (c) ~~consider, during bargaining, all feedback received from covered employees; and~~
  - (d) ~~advise all covered employees of any ratification vote (see **section 143**); and~~
  - (e) ~~consider whether all interest groups of covered employees are recognised and given the opportunity to provide feedback to the employee bargaining side in relation to the bargaining.~~ 10
- (3) ~~An employee bargaining party must not, whether directly or indirectly, do anything to mislead or deceive or that is likely to mislead or deceive a covered employee.~~ 15
- (4) ~~A union's role as a member of an employee bargaining side is in addition to, and does not detract from, its right to represent its members' interests under section 18 of the Employment Relations Act 2000.~~

#### **54 Obligation to ensure representation of Māori employees**

~~Each employee bargaining party for a proposed FPA must use its best endeavours to ensure that Māori employees are represented effectively in the bargaining process, including by —~~ 20

- (a) ~~seeking and considering feedback from representatives of Māori employees; and~~
- (b) ~~considering whether the bargaining side should include a member to represent the interests of Māori employees.~~ 25

#### **55 Union may provide members' views to employee bargaining side**

~~If a union is not a bargaining party for a proposed FPA, but has members that are within the coverage of the proposed FPA, —~~

- (a) ~~the union may provide its members' views to the employee bargaining side; and~~ 30
- (b) ~~the employee bargaining side must take those views into account when bargaining for the proposed FPA.~~

## Subpart 2—General provisions for initiating bargaining

*Notification of bargaining parties***56 Notification of bargaining parties**

~~The chief executive must, 3 months after the date on which the chief executive publicly notifies approval of an eligible union's application to initiate bargaining for a proposed FPA, provide each bargaining party for the proposed FPA with the name of each other bargaining party for the proposed FPA.~~ 5

The chief executive must provide to each bargaining party for a proposed FPA the name of each other bargaining party for the proposed FPA on the first working day that is 3 months after the date on which the chief executive publicly notifies approval of an eligible union's application to initiate bargaining for the proposed FPA. 10

*Bargaining sides***57 Employee bargaining side**

- (1) The employee bargaining side for a proposed FPA consists of the following bargaining parties: 15
- (a) the eligible union that is approved under **section 32** to initiate bargaining for the proposed FPA; and
  - (b) any other eligible union that is approved under **section 51** ~~to join~~ be an additional employee bargaining party on the employee bargaining side; and 20
  - (c) any other eligible union that joins the bargaining side as a result of 2 proposed FPAs being consolidated in accordance with **section 107**; and
  - (d) the employee default bargaining party if it becomes a bargaining party under ~~subpart 3~~ subpart 2 of Part 3A. 25
- (2) The bargaining parties of an employee bargaining side are not able to prevent an additional eligible union that has been approved under **section 51** from joining the employee bargaining side.
- (3) An employee bargaining party that joins the employee bargaining side for a proposed FPA remains a bargaining party until— 30
- (a) bargaining for the proposed FPA is discontinued; or
  - (b) the bargaining party ceases to be a bargaining party in the circumstances described in **section 93**; or
  - (c) the chief executive issues a fair pay agreement notice in respect of the proposed FPA (see **section 156**) and the fair pay agreement subsequently expires. 35

**58 Employer bargaining side**

- (1) The employer bargaining side for a proposed FPA consists of the following parties:
- (a) each eligible employer association that is approved, under **section 44**, to ~~form or join an~~ be an employer bargaining party on the employer bargaining side for the proposed FPA; and 5
  - (b) any other eligible employer association that joins the bargaining side as a result of 2 proposed FPAs being consolidated in accordance with **section 107**; and
  - (ba) each specified employer bargaining party that has, in accordance with section 63, 65, or 66, become an employer bargaining party; and 10
  - (c) the employer default bargaining party if it becomes a bargaining party under ~~subpart 3~~ subpart 2 of Part 3A.
- (2) The bargaining parties of an employer bargaining side are not able to prevent an additional eligible employer association that has been approved under **section 44** from joining the employer bargaining side. 15
- (3) An employer bargaining party that joins the employer bargaining side for a proposed FPA remains a bargaining party until—
- (a) bargaining for the proposed FPA is discontinued; or
  - (b) the bargaining party ceases to be a bargaining party in the circumstances described in section 93; or 20
  - (c) the chief executive issues a fair pay agreement notice in respect of the proposed FPA (see section 156) and the fair pay agreement subsequently expires.

**59 Requirements for each bargaining side** 25

- ~~(1) Each bargaining side for a proposed FPA must comply with **subsection (2)** no later than 20 working days after the later of the following:~~
- ~~(a) the date that is 3 months after the date on which the chief executive publicly notified that the chief executive had approved a union's application to initiate bargaining for the proposed FPA; and~~ 30
  - ~~(b) the date on which the chief executive provided each bargaining party with the name of each other bargaining party in accordance with **section 56**.~~
- (1) Each bargaining side for a proposed FPA must comply with **subsection (2)** no later than 20 working days after the date on which the bargaining side is formed in accordance with **section 35, 45, or 80K** (as applicable). 35
- (2) Each bargaining side must—
- (a) agree an inter-party side agreement; and
  - (b) appoint a bargaining side lead advocate to—

- (i) represent the bargaining side in bargaining; and
  - (ii) chair the bargaining parties on the bargaining side, when bargaining for the proposed FPA; and
  - (iii) be the primary spokesperson for the bargaining side.
- (3) If, for any reason and at any time during bargaining, a bargaining side lead advocate stops performing that role, the bargaining side must appoint a new bargaining side lead advocate within 20 working days after the first bargaining side lead advocate stops performing that role. 5

#### **60 Inter-party side agreement**

- (1) An inter-party side agreement must include details of the process the bargaining side will follow to make decisions relating to bargaining for the proposed FPA. 10
- (2) As soon as practicable after the date by which a bargaining side must comply with **section 59(2)**, the bargaining side must provide the following information, in writing, to the chief executive: 15
- (a) a copy of the inter-party side agreement; and
  - (b) a copy of any amendment to the inter-party side agreement.

#### **61 When bargaining party subsequently joins bargaining side**

- If the chief executive approves ~~a~~ an eligible union or an eligible employer association to be a bargaining party to join on a bargaining side after the bargaining side has provided its inter-party side agreement to the chief executive, the bargaining side— 20
- (a) is not required to amend its inter-party side agreement; but
  - (b) must consider whether to amend the inter-party side agreement as a result of the bargaining party joining the bargaining side. 25

#### *Specified employer bargaining parties*

### **Part 3A**

#### **Specified employer bargaining parties and default bargaining parties**

##### Subpart 1—Specified employer bargaining parties 30

#### **62 Interpretation**

In **sections 63 to 66**,—

**Civil Staff** has the same meaning as in section 2(1) of the Defence Act 1990

~~**DHB** has the same meaning as in section 6(1) of the New Zealand Public Health and Disability Act 2000~~ 35



~~**Director General** means the chief executive or acting chief executive of the Ministry of Health under the Public Service Act 2020~~

**education service** has the same meaning as in section 10(7) of the Education and Training Act 2020, but excludes service in the employment of an institution 5

**institution** has the same meaning as in section 10(1) of the Education and Training Act 2020

**Police employee** has the same meaning as in section 4 of the Policing Act 2008

**public service agency** has the same meaning as in paragraph (a) of the definition of public service in section 10 of the Public Service Act 2020 10

**public service chief executive** has the same meaning as in section 5 of the Public Service Act 2020

**Secretary for Education** means the Secretary as defined in section 10(1) of the Education and Training Act 2020

**State enterprise** has the same meaning as in section 2 of the State-Owned Enterprises Act 1986 15

**State services** has the same meaning as in section 5 of the Public Service Act 2020.

**63 ~~Specified employer bargaining parties~~ Public Service Commissioner**

(1) The Public Service Commissioner is ~~a specified~~ an employer bargaining party for a proposed FPA, a proposed variation, a proposed renewal, or a proposed replacement if— 20

(a) ~~the chief executive has publicly notified, in accordance with **section 34**, that the chief executive has approved an application to initiate bargaining for a proposed FPA, a proposed variation, a proposed renewal, or a proposed replacement; and~~ 25

(b) ~~the coverage of the proposed FPA, the proposed variation, the proposed renewal, or the proposed replacement includes at least 1 employee of a public service agency or the education service.~~

(a) the coverage of a proposed agreement, a proposed variation, or a fair pay agreement includes at least 1 covered employee who is an employee of a public service agency or the education service; and 30

(b) in the case of a proposed agreement, the chief executive has publicly notified, in accordance with **section 34 or 192**, that the chief executive has approved an application to initiate bargaining for the proposed agreement. 35

(2) The Public Service Commissioner may, under clause 6 of Schedule 3 of the Public Service Act 2020, delegate the role of ~~specified~~ employer bargaining party to—

- (a) a public service chief executive of a department if at least 1 employee of the department is ~~within the coverage of a~~ covered employee in relation to the proposed ~~FPA agreement~~, the proposed variation, ~~the proposed renewal, or the proposed replacement~~ or the fair pay agreement:
- (b) the Secretary for Education if at least 1 employee of the education service is ~~within the coverage of a~~ covered employee in relation to the proposed ~~FPA agreement~~, the proposed variation, ~~the proposed renewal, or the proposed replacement~~ or the fair pay agreement. 5
- (3) The Public Service Commissioner must consult—
- (a) the chief executive of a public service agency when acting as an employer bargaining party on behalf of that chief executive; or 10
- (b) the Secretary for Education when acting as an employer bargaining party on behalf of an employer in the education service.
- (4) ~~The Director General is a specified employer bargaining party for a proposed FPA, a proposed variation, a proposed renewal, or a proposed replacement if—~~ 15
- (a) ~~the chief executive has publicly notified, in accordance with **section 34**, that the chief executive has approved an application to initiate bargaining for a proposed FPA, a proposed variation, a proposed renewal, or a proposed replacement; and~~
- (b) ~~the coverage of the proposed FPA, the proposed variation, the proposed renewal, or the proposed replacement includes at least 1 employee of a DHB.~~ 20
- (5) ~~The Director General—~~
- (a) ~~may delegate the role of specified employer bargaining party to the chief executive of Health New Zealand; or~~ 25
- (b) ~~must consult—~~
- (i) ~~the chief executive of a DHB when acting as an employer bargaining party on behalf of that DHB; and~~
- (ii) ~~the chief executive of Health New Zealand.~~
- (6) ~~If delegated the role of specified employer bargaining party under **subsection (5)**, the chief executive of Health New Zealand must consult the chief executive of a DHB when acting as an employer bargaining party on behalf of that DHB.~~ 30
- 64 Specified State employers**
- Section 65** applies to the following specified State employers in the specified circumstances: 35
- (a) the Chief of Defence Force (appointed under section 8 of the Defence Act 1990), in relation to a proposed FPA agreement, a proposed variation, ~~a proposed renewal, a proposed replacement~~, or a fair pay agree-

ment ~~that covers if~~ at least 1 member of the Civil Staff is a covered employee:

- (b) the Chief Parliamentary Counsel (holding that office under section 135 of the Legislation Act 2019), in relation to a proposed ~~FPA agreement, a proposed variation, a proposed renewal, a proposed replacement,~~ or a fair pay agreement ~~that covers if~~ at least 1 employee appointed under section 136 or 138 of the Legislation Act 2019 is a covered employee: 5
- (c) the Commissioner of Police (holding office under section 12 of the Policing Act 2008) in relation to a proposed ~~agreement FPA, a proposed variation, a proposed renewal, a proposed replacement,~~ or a fair pay agreement ~~if that covers~~ at least 1 Police employee: is a covered employee: 10
- (d) Health New Zealand, in relation to a proposed agreement, a proposed variation, or a fair pay agreement if at least 1 employee of Health New Zealand is a covered employee. 15

## 65 Options for specified State employer

- (1) An employer listed in **section 64** may be an employer bargaining party ~~for a proposed FPA, a proposed variation, a proposed renewal, or a proposed replacement if—~~
  - (a) ~~the chief executive has publicly notified, in accordance with **section 34**, that the chief executive has approved an application to initiate bargaining for the proposed FPA, the proposed variation, the proposed renewal, or the proposed replacement; and~~ 20
  - (b) the coverage of the proposed ~~FPA agreement, the proposed variation, the proposed renewal, or the proposed replacement~~ or the fair pay agreement ~~includes at least 1 covered employee of who is employed by the employer; and~~ 25
  - (c) in the case of a proposed agreement, the chief executive has publicly notified, in accordance with **section 34 or 192**, that the chief executive has approved an application to initiate bargaining for the proposed agreement. 30
- (2) An employer listed in **section 64** ~~—~~ may ask the Public Service Commissioner to act as an employer bargaining party on the employer's behalf, but the Public Service Commissioner is not obliged to act as an employer bargaining party if requested to do so. 35
  - (a) ~~may ask the Public Service Commissioner to act as an employer bargaining party on the employer's behalf; but~~
  - (b) ~~the Public Service Commissioner is not obliged to act as an employer bargaining party if requested to do so under **paragraph (a)**.~~
- (3) If an employer listed in ~~section 64~~ **section 64(a), (b), or (c)** acts as an employer bargaining party under **subsection (1)**, the employer must consult, 40

during bargaining, the Public Service Commissioner about the terms of the proposed ~~FPA agreement or the proposed variation.~~

- (4) If an employer listed in **section 64** decides not to act as an employer bargaining party and is not represented by the Public Service Commissioner, no other employer ~~association bargaining party~~ for the proposed ~~FPA agreement,~~ the proposed variation, ~~the proposed renewal, or the proposed replacement is required to~~ or the fair pay agreement may represent the employer's interests. 5

- (5) **Subsection (4)** applies despite ~~section 46~~ **section 92F**.

## 66 Other specified State employers

- (1) This section applies to— 10

- (a) a State enterprise:  
 (b) an employer in the State services, other than—  
 (i) an employer in the education service:  
 (ii) a chief executive of a public service agency\*;  
 (iii) ~~an employer that is a DHB.~~ 15

- (2) **Subsection (3)** applies to an employer described in **subsection (1)** if—

- (a) ~~the chief executive has publicly notified, in accordance with section 34, that the chief executive has approved an application to initiate bargaining for the proposed FPA, the proposed variation, the proposed renewal, or the proposed replacement; and~~ 20

- (b) the coverage of ~~the a proposed FPA, the agreement, a proposed variation, the proposed renewal, or the proposed replacement~~ or a fair pay agreement includes at least 1 covered employee ~~of who is employed by the employer;~~ and

- (c) in the case of a proposed agreement, the chief executive has publicly notified, in accordance with section 34 or 192, that the chief executive has approved an application to initiate bargaining for the proposed agreement. 25

- (3) An employer described in **subsection (1)** ~~may ask the Public Service Commissioner to act as an employer bargaining party on the employer's behalf, but the Public Service Commissioner is not obliged to act as an employer bargaining party if asked to do so.~~ 30

- (a) ~~may ask the Public Service Commissioner to act as an employer bargaining party on the employer's behalf; but~~

- (b) ~~the Public Service Commissioner is not obliged to act as an employer bargaining party if asked to do so under paragraph (a).~~ 35

- 67 ~~Rights, duties, and obligations of specified~~ Specified employer bargaining party parties**
- (1) ~~If a specified employer bargaining party acts as an employer bargaining party, it has all the rights, duties, and obligations of an employer bargaining party.~~
- (2) ~~**Subsection (1)** is subject to **section 47(1)**.~~ 5
- (1) Despite **section 92F**, if a specified employer bargaining party is a bargaining party for a proposed agreement, a proposed variation, or a fair pay agreement,—
- (a) the specified employer bargaining party must not represent the interests of any other covered employers; and 10
- (b) another employer bargaining party that is a member of the same bargaining side must not represent the interests of the SEBP employer.
- (3) ~~**Subsection (1)** applies~~ To avoid doubt, a specified employer bargaining party may, in accordance with **sections 63 to 66** be an employer bargaining party despite a specified employer bargaining party not otherwise being an eligible employer association and therefore not otherwise being eligible to join a bargaining side. 15
- 68 Specified employer bargaining party to notify chief executive**
- A specified employer bargaining party must notify the chief executive if it is an employer bargaining party for a proposed ~~FPA, a proposed variation, a proposed renewal, or a proposed replacement~~ agreement. 20
- 68A Chief executive must publicly notify if specified employer bargaining party is employer bargaining party**
- (1) Within 5 working days after the date on which a specified employer bargaining party notifies the chief executive that it is an employer bargaining party, the chief executive must publicly notify— 25
- (a) that a specified employer bargaining party is an employer bargaining party; and
- (b) the name of the specified employer bargaining party; and
- (c) the proposed agreement for which the specified employer bargaining party is a bargaining party. 30
- (2) A notice under **subsection (1)** must state where to find the notice issued by the chief executive under **section 34 or 192**.
- Subpart ~~32~~—Default bargaining parties
- 69 ~~Overview: when default bargaining party may be required~~** 35
- (1) ~~The circumstances in which a default bargaining party may be required include the following:~~

- (a) ~~no employer bargaining party forms an employer bargaining side;~~
- (b) ~~each bargaining party in a bargaining side ceases to be a bargaining party during bargaining;~~
- (c) ~~a proposed FPA, a proposed variation, a proposed renewal, or a proposed replacement covers employees who are employed by a relevant employer and other employees, but 1 or more specified employer bargaining parties are the only employer bargaining parties on the employer bargaining side.~~ 5
- (2) ~~In this subpart, **relevant employer** means an employer that is described in **section 63, 64, or 66.**~~ 10
- 69** **Overview: when default bargaining party may elect to be bargaining party**
- (1) The circumstances in which a default bargaining party may elect to be a bargaining party include the following:
- (a) an employee bargaining party initiates bargaining for a proposed agreement that covers a covered employer that is a non-SEBP employer, but no employer bargaining party (other than a specified employer bargaining party, if applicable) forms an employer bargaining side; 15
- (b) an employer bargaining side initiates bargaining for a proposed renewal or a proposed replacement, but no employee bargaining party forms an employee bargaining side; 20
- (c) a specified employer bargaining party initiates bargaining for a proposed renewal or a proposed replacement, and—
- (i) the proposed renewal or the proposed replacement covers a covered employer that is a non-SEBP employer; but
- (ii) no other employer bargaining party (other than another specified employer bargaining party) joins the employer bargaining side; 25
- (d) bargaining for a proposed agreement has commenced, but each bargaining party (other than a specified employer bargaining party, if applicable) on a bargaining side ceases to be a bargaining party;
- (e) a fair pay agreement is in force, and— 30
- (i) each bargaining party on the employee bargaining side ceases to be a bargaining party; or
- (ii) the agreement covers a covered employer that is a non-SEBP employer and each bargaining party (other than a specified employer bargaining party, if applicable) on the employer bargaining side ceases to be a bargaining party. 35
- (2) A default bargaining party may elect to be a bargaining party despite not otherwise being an eligible union or an eligible employer association (as applicable) and therefore not otherwise being eligible to join a bargaining side.

- 70 ~~Limit on employer default bargaining party being bargaining party~~**  
~~Despite anything to the contrary in this subpart, an employer default bargaining party is deemed to be, or may elect to be, an employer bargaining party for a proposed FPA, a proposed variation, a proposed renewal, or a proposed replacement only if the proposed FPA, the proposed variation, the proposed renewal, or the proposed replacement covers employees who are not employed by a relevant employer.~~ 5
- 70 Limit on employer default bargaining party electing to be bargaining party**  
Despite anything to the contrary in this subpart, the employer default bargaining party must not elect to be an employer bargaining party for a proposed agreement, a proposed variation, or a fair pay agreement unless the proposed agreement, the proposed variation, or the fair pay agreement covers a non-SEBP employer. 10
- 70A Chief executive’s notification: bargaining side not formed** 15
- (1) **Subsection (2) applies if the chief executive—**
- (a) has notified under **section 34** that the chief executive has approved an application to initiate bargaining for a proposed FPA that covers a covered employer that is a non-SEBP employer but, within 3 months of the chief executive’s notification, the chief executive has not approved an eligible employer association to be an employer bargaining party on an employer bargaining side under **section 44**; or 20
- (b) has notified under **section 192** that the chief executive has approved an application to initiate bargaining for a proposed renewal or a proposed replacement that covers a covered employer that is a non-SEBP employer but, within 2 months of the chief executive’s notification, the chief executive has not approved a bargaining party for the other bargaining side; or 25
- (c) has notified under **section 192** that the chief executive has approved a specified employer bargaining party’s application to initiate bargaining for a proposed renewal or a proposed replacement and— 30
- (i) the proposed renewal or the proposed replacement does not cover a covered employer that is a non-SEBP employer but, within 2 months of the chief executive’s notification, the chief executive has not approved an eligible union to be an employee bargaining party on an employee bargaining side; or 35
- (ii) the proposed renewal or proposed replacement covers a covered employer that is a non-SEBP employer but, within 2 months of the chief executive’s notification, the chief executive has not approved an eligible employer association to be an employer bargaining party on the employer bargaining side. 40

- (2) If this subsection applies, the chief executive must notify—
- (a) the bargaining party that the chief executive approved to initiate bargaining that the chief executive has not approved a bargaining party for the relevant bargaining side; and
- (b) the relevant default bargaining party— 5
- (i) that the chief executive has not approved a bargaining party for its bargaining side, and that the default bargaining party has 1 month in which it may elect to be a bargaining party for the proposed agreement; and
- (ii) whether a specified employer bargaining party is a bargaining party for the bargaining. 10
- 71 ~~**Chief executive to notify absence of bargaining party**~~ **Chief executive's notification: all bargaining parties on bargaining side cease to be bargaining parties**
- (1) **Subsection (2)** applies if the chief executive— 15
- (a) ~~grants approval under **section 94(2)** for a bargaining party for a proposed FPA, a proposed renewal, a proposed replacement, or a fair pay agreement to cease to be a bargaining party, with the result that there are no other bargaining parties on the bargaining side (**bargaining side A**) other than (in the case of an employer bargaining side) a specified employer bargaining party; or~~ 20
- (a) grants approval under **section 94(2)** for a bargaining party for a proposed agreement or a fair pay agreement to cease to be a bargaining party, with the result that—
- (i) there are no other bargaining parties on the bargaining side (**bargaining side A**); or 25
- (ii) in the case of an employer bargaining side for a proposed agreement or a fair pay agreement, there are no other bargaining parties other than, if applicable, a specified employer bargaining party; or
- (b) otherwise becomes aware, and has confirmed, that there is no longer a bargaining party on bargaining side A other than (in the case of an employer bargaining side for a proposed agreement or a fair pay agreement that covers a covered employer that is a non-SEBP employer, if applicable) a specified employer bargaining party. 30
- (2) If this subsection applies, the chief executive must notify— 35
- (a) the bargaining side lead advocate for the other bargaining side for the proposed ~~FPA, the proposed renewal, the proposed replacement, agreement~~ or the fair pay agreement (**bargaining side B**),—
- (i) if applicable, that the only bargaining party on bargaining side A is a specified employer bargaining party; or 40



- (ii) in all other cases, that there is no bargaining party on bargaining side A; and
- (aa) if applicable, the bargaining side lead advocate for bargaining side A that there is no longer a bargaining party on that side other than a specified employer bargaining party; and 5
- (b) the relevant default bargaining party that, in respect of the proposed ~~agreement FPA, the proposed renewal, the proposed replacement,~~ or the fair pay agreement, there is no bargaining party on bargaining side A and; ~~the default bargaining party must comply with its obligations under this subpart~~ may elect to be a bargaining party,— 10
- (i) in relation to a proposed agreement, no later than 1 month after the chief executive’s notification under this section; or
- (ii) in relation to a fair pay agreement, no later than the date on which the fair pay agreement expires.
- (3) ~~Subsection (4) applies if the chief executive —~~ 15
- (a) ~~has notified under section 34 that the chief executive has approved an application to initiate bargaining for a proposed FPA but, within 3 months of the chief executive’s notification, the chief executive has not approved an eligible employer association to form or join an employer bargaining side under section 44; or~~ 20
- (b) ~~has notified under section 192 that the chief executive has approved an application to initiate bargaining for a proposed renewal or a proposed replacement but, within 3 months of the chief executive’s notification, the chief executive has not approved a bargaining party for the other bargaining side (other than a specified employer bargaining party).~~ 25
- (4) ~~If this subsection applies, the chief executive must notify —~~
- (a) ~~the bargaining party that the chief executive approved to initiate bargaining that the chief executive has not approved a bargaining party for the other bargaining side (other than a specified employer bargaining party); and~~ 30
- (b) ~~the relevant default bargaining party —~~
- (i) ~~that the chief executive has not approved a bargaining party for the other bargaining side (other than a specified employer bargaining party), and that the default bargaining party is now the bargaining party for the proposed FPA; and~~ 35
- (ii) ~~whether a specified employer bargaining party is a bargaining party for the bargaining.~~
- 71A Default bargaining party elects to be bargaining party**
- (1) A default bargaining party elects to be a bargaining party by notifying the chief executive of its election— 40

- (a) in writing; and
- (b) either,—
  - (i) in relation to a proposed agreement, no later than 1 month after the chief executive’s notification to the default bargaining party under **section 70A(2)(b) or 71(2)(b)**; or 5
  - (ii) in relation to a fair pay agreement, no later than the date on which the fair pay agreement expires.
- (2) A default bargaining party that elects to be a bargaining party remains a bargaining party—
  - (a) despite another bargaining party joining the bargaining side on which the default bargaining party is a bargaining party; and 10
  - (b) until—
    - (i) the chief executive approves the default bargaining party ceasing to be a bargaining party under **section 94**; or
    - (ii) it ceases to be eligible to be a bargaining party under **section 95**; 15  
or
    - (iii) bargaining for the proposed agreement is discontinued; or
    - (iv) the chief executive issues a fair pay agreement notice in respect of the proposed FPA (*see* **section 156**) and the fair pay agreement subsequently expires. 20

*Default bargaining parties for proposed FPAs*

**72 Employer default bargaining party deemed to be employer bargaining party**

- (1) ~~The employer default bargaining party is deemed to be an employer bargaining party for a proposed FPA if—~~ 25
  - (a) ~~the chief executive has publicly notified, in accordance with **section 34**, that the chief executive has approved a union’s application to initiate bargaining for the proposed FPA; and~~
  - (b) ~~either,—~~
    - (i) ~~within 3 months of the chief executive’s notice of approval, an eligible employer association has not formed an employer bargaining side under **section 45**; or~~ 30
    - (ii) ~~during bargaining for the proposed FPA, all employer bargaining parties have ceased to be bargaining parties.~~
- (2) ~~However, the employer default bargaining party is not deemed to be the employer bargaining party if the proposed FPA only covers employees who are employed by—~~ 35
  - (a) ~~a specified employer bargaining party; or~~

- (b) ~~an employer described in **section 66** who is represented by the Public Service Commissioner.~~
- (3) ~~The employer default bargaining party must use its best endeavours to encourage an eligible employer association to form an employer bargaining side for the proposed FPA —~~ 5
- (a) ~~during the 3 months after the chief executive’s notice of approval; but~~
- (b) ~~only until an eligible employer association forms a bargaining side for the proposed FPA.~~
- (4) ~~Despite **subsection (1)**, if the chief executive approves an eligible employer association’s application to join the employer bargaining side for a proposed FPA for which the employer default bargaining party has been deemed to be an employer bargaining party from the date on which bargaining for the proposed FPA first started, —~~ 10
- (a) ~~the employer default bargaining party is no longer deemed to be an employer bargaining party; and~~ 15
- (b) ~~the eligible employer association becomes the employer bargaining side for the proposed FPA.~~
- (5) ~~However, in the circumstances described in **subsection (4)**, if the default bargaining party is deemed to be an employer bargaining party part way through the bargaining process for the proposed FPA, the default employer bargaining party continues to be the default employer bargaining party if the chief executive subsequently approves an eligible employer association’s application to join the employer bargaining side.~~ 20
- (6) ~~**Subsection (1)** applies despite the default employer bargaining party not otherwise being an eligible employer association and therefore not otherwise being eligible to join a bargaining side.~~ 25
- 73 Employee default bargaining party may elect to join bargaining**
- (1) ~~The employee default bargaining party may elect to be an employee bargaining party for a proposed FPA if, during bargaining for the proposed FPA, all the employee bargaining parties cease to be bargaining parties.~~ 30
- (2) ~~The employee default bargaining party elects to be an employee bargaining party by notifying the chief executive of its election —~~
- (a) ~~in writing; and~~
- (b) ~~within 1 month after receiving notification from the chief executive under **section 71(2)**.~~ 35
- (3) ~~If the employee default bargaining party elects to be an employee bargaining party, —~~
- (a) ~~it remains an employee bargaining party until bargaining for the proposed FPA stops; and~~

- (b) ~~if an employee bargaining party joins the employee bargaining side after the employee default bargaining party has elected to be an employee bargaining party, the employee default bargaining party remains on the employee bargaining side with the employee bargaining party.~~
- (4) ~~If the employee default bargaining party does not elect to be an employee bargaining party within 1 month after receiving notification from the chief executive under **section 71(2)**, bargaining for the proposed FPA stops.~~ 5

*Default bargaining parties for proposed variations*

**74 Default bargaining party may initiate bargaining for proposed variation**

~~If there is no other bargaining party on the relevant bargaining side (other than a specified bargaining party), a default bargaining party may, in accordance with **Part 8**,~~ 10

- (a) ~~request the other bargaining side's agreement to initiate bargaining for a proposed variation:~~
- (b) ~~agree to initiate bargaining for a proposed variation:~~ 15
- (c) ~~if both bargaining sides agree to initiate bargaining, bargain for the proposed variation.~~

**75 Default bargaining party may withdraw from bargaining for proposed variation**

~~A default bargaining party that is bargaining for a proposed variation may withdraw from bargaining at any time.~~ 20

*Default bargaining parties for proposed renewals or proposed replacements*

**76 Employer default bargaining party for proposed renewal or proposed replacement**

- (1) ~~The employer default bargaining party is deemed to be an employer bargaining party for a proposed renewal or a proposed replacement if —~~ 25
- (a) ~~the proposed renewal or the proposed replacement is initiated by the employee bargaining side or a specified employer bargaining party; and~~
- (b) ~~within 3 months of the chief executive's notice of approval, an eligible employer association has not formed an employer bargaining side to bargain for the proposed renewal or the proposed replacement.~~ 30
- (2) ~~However, the employer default bargaining party is not deemed to be the employer bargaining party if the proposed FPA only covers employees who are employed by —~~
- (a) ~~a specified employer bargaining party; or~~ 35
- (b) ~~an employer described in **section 66** who is represented by the Public Service Commissioner.~~

- (3) ~~The employer default bargaining party must use its best endeavours to encourage an eligible employer association to form or join an employer bargaining side for the proposed renewal or the proposed replacement—~~
- (a) ~~during the 3 months after the chief executive’s notice of approval to start bargaining for the proposed renewal or the proposed replacement (see **section 192**); but~~ 5
- (b) ~~only until an eligible employer association forms or joins the employer bargaining side.~~
- (4) ~~Despite **subsection (1)**, if the chief executive approves an eligible employer association’s application to join the employer bargaining side for the proposed renewal or the proposed replacement,—~~ 10
- (a) ~~the employer default bargaining party is no longer deemed to be an employer bargaining party unless it was deemed to be an employer bargaining party part way through the bargaining process for the proposed renewal or the proposed replacement; and~~ 15
- (b) ~~the eligible employer association becomes an employer bargaining party.~~
- (5) ~~**Subsection (1)** applies despite the default employer bargaining party not otherwise being an eligible employer association and therefore not otherwise being eligible to join a bargaining side.~~

Default bargaining parties for proposed agreements: when bargaining side not formed 20

**76 Employer default bargaining party for proposed agreement**

- (1) The employer default bargaining party may elect to be an employer bargaining party for a proposed FPA that covers a covered employer that is a non-SEBP employer if— 25
- (a) the employee bargaining side initiates bargaining for the proposed FPA; and
- (b) within 3 months of the chief executive’s notice of approval under **section 34**, an eligible employer association has not been approved to be an employer bargaining party on an employer bargaining side to bargain for the proposed FPA. 30
- (1A) The employer default bargaining party may elect to be an employer bargaining party for a proposed renewal or a proposed replacement that covers a covered employer that is a non-SEBP employer if—
- (a) the proposed renewal or the proposed replacement is initiated by the employee bargaining side or a specified employer bargaining party; and 35
- (b) within 2 months of the chief executive’s notice of approval under **section 192**, an eligible employer association has not been approved to be

- an employer bargaining party on an employer bargaining side to bargain for the proposed renewal or the proposed replacement.
- (2) If the employer default bargaining party does not elect to be an employer bargaining party for—
- (a) a proposed agreement that was initiated by the employee bargaining side, a bargaining party on the employee bargaining side may apply, in accordance with **section 228BA**, to the Authority for a determination under **section 228C**; or 5
- (b) a proposed renewal or a proposed replacement that was initiated by a specified employer bargaining party, the specified employer bargaining party may apply, in accordance with **section 228BA**, to the Authority for a determination under **section 228C**. 10
- 77 Employee default bargaining party for proposed renewal or proposed replacement**
- (1) The employee default bargaining party is deemed to be an employee bargaining party for a proposed renewal or a proposed replacement if— 15
- (a) an eligible employer association or a specified employer bargaining party initiates bargaining for the proposed renewal or the proposed replacement; and
- (b) within 3 months of the chief executive’s notice of approval, an eligible union has not formed an employee bargaining side to bargain for the proposed renewal or the proposed replacement. 20
- (2) The employee default bargaining party must use its best endeavours to encourage an eligible union to form or join an employee bargaining side for the proposed renewal or the proposed replacement— 25
- (a) during the 3 months after the chief executive’s notice of approval to start bargaining (see **section 192**); but
- (b) only until an eligible union forms or joins the bargaining side.
- (3) Despite **subsection (1)**, if the chief executive approves an eligible union’s application to join the employee bargaining side for the proposed renewal or the proposed replacement,— 30
- (a) the employee default bargaining party is no longer deemed to be an employee bargaining party unless it was deemed to be an employee bargaining party part way through bargaining for the proposed renewal or the proposed replacement; and 35
- (b) the eligible union becomes an employee bargaining party for the proposed renewal or the proposed replacement.
- (4) **Subsection (1)** applies despite the default employee bargaining party not otherwise being an eligible union and therefore not otherwise being eligible to join a bargaining side. 40

- 77 Employee default bargaining party for proposed renewal or proposed replacement**
- (1) The employee default bargaining party may elect to be an employee bargaining party for a proposed renewal or a proposed replacement if—
- (a) the employer bargaining side initiates bargaining for the proposed renewal or the proposed replacement; and 5
- (b) within 2 months of the chief executive’s notice of approval, an eligible union has not been approved to be an employee bargaining party on an employee bargaining side to bargain for the proposed renewal or the proposed replacement. 10
- (2) If the employee default bargaining party does not elect to be an employee bargaining party for the proposed renewal or the proposed replacement, a bargaining party on the employer bargaining side may apply, in accordance with **section 228BA**, to the Authority for a determination under **section 228C**.
- 78 ~~Default bargaining parties when bargaining for proposed renewal or proposed replacement initiated by employer bargaining party~~** 15
- (1) ~~**Subsections (2) and (3)** apply if an employer bargaining party (other than a specified employer bargaining party) initiates bargaining for a proposed renewal or a proposed replacement but, during bargaining,—~~
- (a) ~~every employee bargaining party on the employee bargaining side ceases to be a bargaining party for the proposed renewal or the proposed replacement; or~~ 20
- (b) ~~every employer bargaining party on the employer bargaining side (other than a specified employer bargaining party) ceases to be a bargaining party, and the fair pay agreement covers employees who are not employed by—~~ 25
- (i) ~~a specified employer bargaining party or~~
- (ii) ~~an employer who is, or may be, represented by a specified employer bargaining party.~~
- (2) ~~In the situation described in **subsection (1)(a)**,—~~ 30
- (a) ~~the employee default bargaining party is deemed to be an employee bargaining party for the proposed renewal or the proposed replacement; and~~
- (b) ~~if an employee bargaining party joins the employee bargaining side after the employee default bargaining party has been deemed to be an employee bargaining party, the employee default bargaining party remains on the employee bargaining side with the employee bargaining party.~~ 35
- (3) ~~In the situation described in **subsection (1)(b)**, if the fair pay agreement covers employees who are not employed by an employer described in **section 63, 64, or 66**, the employer default bargaining party may elect to be an~~ 40

- ~~employer bargaining party for the proposed renewal or the proposed replacement.~~
- (4) ~~The employer default bargaining party elects to be an employer bargaining party by notifying the chief executive of its election—~~
- (a) ~~in writing; and~~ 5
- (b) ~~within 1 month after receiving notification from the chief executive under **section 71(2)**.~~
- (5) ~~If the employer default bargaining party elects to be an employer bargaining party,—~~
- (a) ~~it remains a bargaining party until bargaining for the proposed renewal or the proposed replacement stops; and~~ 10
- (b) ~~if an employer bargaining party joins the employer bargaining side after the employer default bargaining party has elected to be an employer bargaining party, the employer default bargaining party remains on the employer bargaining side with the employer bargaining party.~~ 15
- (6) ~~If the employer default bargaining party does not elect to be an employer bargaining party within 1 month after receiving notification from the chief executive under **section 71(2)**, bargaining for the proposed renewal or the proposed replacement stops.~~

*Default bargaining parties for proposed agreement: when bargaining side ceases* 20

**77A Default bargaining parties when bargaining for proposed agreement initiated by employee bargaining party**

- (1) This section applies if an employee bargaining party initiates bargaining for a proposed agreement and, during bargaining,— 25
- (a) every employee bargaining party ceases to be a bargaining party for the proposed agreement; or
- (b) every employer bargaining party, other than a specified employer bargaining party, ceases to be a bargaining party for the proposed agreement, and the proposed agreement covers a covered employer that is a non-SEBP employer. 30
- (2) In the situation described in **subsection (1)(a)**,—
- (a) the employee default bargaining party may elect, in accordance with **section 71A**, to be an employee bargaining party for the proposed agreement; or 35
- (b) if the employee default bargaining party does not elect to be an employee bargaining party for the proposed agreement, bargaining for the proposed agreement is discontinued.
- (3) In the situation described in **subsection (1)(b)**,—



- (a) the employer default bargaining party may elect, in accordance with **section 71A**, to be an employer bargaining party for the proposed agreement; or
- (b) if the employer default bargaining party does not elect to be an employer bargaining party for the proposed agreement, a bargaining party on the employee bargaining side may apply, in accordance with **section 228BA**, to the Authority for a determination under **section 228C**.

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**78 Default bargaining parties when bargaining for proposed renewal or proposed replacement initiated by employer bargaining party**

- (1) This section applies if an employer bargaining party (other than a specified employer bargaining party) initiates bargaining for a proposed renewal or a proposed replacement but, during bargaining,—
  - (a) every employee bargaining party on the employee bargaining side ceases to be a bargaining party for the proposed renewal or the proposed replacement; or
  - (b) every employer bargaining party on the employer bargaining side (other than a specified employer bargaining party, if applicable) ceases to be a bargaining party, and the proposed renewal or the proposed replacement covers a covered employer that is a non-SEBP employer.
- (2) In the situation described in **subsection (1)(a)**,—
  - (a) the employee default bargaining party may elect to be an employee bargaining party for the proposed renewal or the proposed replacement; or
  - (b) if the employee default bargaining party does not elect to be an employee bargaining party for the proposed renewal or the proposed replacement, a bargaining party on the employer bargaining side (other than a specified employer bargaining party) may apply, in accordance with **section 228BA**, to the Authority for a determination under **section 228C**.
- (3) In the situation described in **subsection (1)(b)**,—
  - (a) the employer default bargaining party may elect, in accordance with **section 71A**, to be an employer bargaining party for the proposed renewal or the proposed replacement; or
  - (b) if the employer default bargaining party does not elect to be an employer bargaining party for the proposed renewal or the proposed replacement, bargaining for the proposed renewal or proposed replacement is discontinued.

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~~79 **Default bargaining parties when bargaining for proposed renewal or proposed replacement initiated by specified employer bargaining party**~~

- ~~(1) This section applies if a specified employer bargaining party initiates bargaining for a proposed renewal or a proposed replacement and, during bargaining,—~~ 5
  - ~~(a) every employee bargaining party ceases to be a bargaining party for the proposed renewal or the proposed replacement; or~~
  - ~~(b) every employer bargaining party, other than a specified employer bargaining party, ceases to be a bargaining party for the proposed renewal or the proposed replacement, and the fair pay agreement covers employees who are not employed by an employer who is, or may be, represented by a specified employer bargaining party.~~ 10
- ~~(2) In the situation described in **subsection (1)(a)**, the employee default bargaining party is deemed to be the employee bargaining party for the purpose of bargaining for the proposed renewal or the proposed replacement.~~ 15
- ~~(3) In the situation described in **subsection (1)(b)**, the employer default bargaining party is deemed to be the employer bargaining party for the purpose of bargaining for the proposed renewal or the proposed replacement.~~
- ~~(4) If the employer default bargaining party or the employee default bargaining party is deemed to be a bargaining party,—~~ 20
  - ~~(a) it remains a bargaining party until bargaining for the proposed renewal or the proposed replacement stops; and~~
  - ~~(b) if an employer bargaining party joins the employer bargaining side after the employer default bargaining party has been deemed to be an employer bargaining party, the employer default bargaining party remains on the employer bargaining side with the employer bargaining party; and~~ 25
  - ~~(c) if an employee bargaining party joins the employee bargaining side after the employee default bargaining party has been deemed to be an employee bargaining party, the employee default bargaining party remains on the employee bargaining side with the employee bargaining party.~~ 30

79 **Default bargaining parties when bargaining for proposed renewal or proposed replacement initiated by specified employer bargaining party**

- (1) This section applies if a specified employer bargaining party initiates bargaining for a proposed renewal or a proposed replacement and, during bargaining,— 35
  - (a) every employee bargaining party ceases to be a bargaining party for the proposed renewal or the proposed replacement; or

- (b) every employer bargaining party, other than a specified employer bargaining party, ceases to be a bargaining party for the proposed renewal or the proposed replacement and the proposed renewal or the proposed replacement covers a covered employer that is a non-SEBP employer.
  - (2) In the situation described in **subsection (1)(a)**,— 5
    - (a) the employee default bargaining party may elect, in accordance with **section 71A**, to be an employee bargaining party for the proposed renewal or the proposed replacement; or
    - (b) if the employee default bargaining party does not elect to be an employee bargaining party for the proposed renewal or the proposed replacement, the specified employer bargaining party may apply, in accordance with **section 228BA**, to the Authority for a determination under **section 228C**. 10
  - (3) In the situation described in **subsection (1)(b)**,—
    - (a) the employer default bargaining party may elect, in accordance with **section 71A**, to be an employer bargaining party for the proposed renewal or the proposed replacement; or 15
    - (b) if the employer default bargaining party does not elect to be an employer bargaining party for the proposed renewal or the proposed replacement, the specified employer bargaining party may apply, in accordance with **section 228BA**, to the Authority for a determination under **section 228C**. 20
- 80** ~~Default bargaining parties when bargaining for proposed renewal or proposed replacement initiated by employee bargaining party~~
- (1) ~~This section applies if an employee bargaining party for a fair pay agreement initiates bargaining for a proposed renewal or a proposed replacement and, during bargaining,—~~ 25
    - (a) ~~every employee bargaining party ceases to be a bargaining party for the proposed renewal or the proposed replacement; or~~
    - (b) ~~every employer bargaining party, other than a specified employer bargaining party, withdraws from bargaining for the proposed renewal or the proposed replacement, and the fair pay agreement covers employees who are not employed by a specified employer bargaining party.~~ 30
  - (2) ~~In the situation described in **subsection (1)(a)**, the employee default bargaining party may elect to be an employee bargaining party for the purpose of bargaining for the proposed renewal or the proposed replacement.~~ 35
  - (3) ~~In the situation described in **subsection (1)(b)**, the employer default bargaining party is deemed to be the employer bargaining party for the purpose of bargaining for the proposed renewal or the proposed replacement.~~

- (4) ~~The employee default bargaining party may elect to be an employee bargaining party by notifying the chief executive of its election—~~
- (a) ~~in writing; and~~
  - (b) ~~within 1 month after receiving notification from the chief executive under **section 74(2)**.~~ 5
- (5) ~~If the employee default bargaining party elects to be an employee bargaining party, or the employer default bargaining party is deemed to be an employer bargaining party,—~~
- (a) ~~it remains a bargaining party until bargaining for the proposed renewal or the proposed replacement stops; and~~ 10
  - (b) ~~if an employee bargaining party joins the employee bargaining side after the employee default bargaining party has elected to be an employee bargaining party, the employee default bargaining party remains on the employee bargaining side with the employee bargaining party; and~~
  - (c) ~~if an employer bargaining party joins the employer bargaining side after the employer default bargaining party has been deemed to be an employer bargaining party, the employer default bargaining party remains on the employer bargaining side with the employer bargaining party.~~ 15
- (6) ~~If the employee default bargaining party does not elect to be an employee bargaining party within 1 month after receiving notification from the chief executive under **section 74(2)**, bargaining for the proposed renewal or the proposed replacement stops.~~ 20

*Default bargaining party ceases to be bargaining party*

**80A** **Default bargaining party ceases to be bargaining party**

- (1) This section applies if the chief executive approves, under **section 94**, a default bargaining party ceasing to be a bargaining party for a proposed agreement. 25
- (2) If the default bargaining party ceases to be a bargaining party on the bargaining side that initiated bargaining for a proposed agreement that covers a covered employer that is a non-SEBP employer,— 30
- (a) if there is another bargaining party on the bargaining side (other than a specified employer bargaining party, if applicable), bargaining continues; or
  - (b) if there is no other bargaining party on the bargaining side (other than a specified employer bargaining party, if applicable), and bargaining for the proposed agreement was initiated by a bargaining party other than a specified employer bargaining party, bargaining is discontinued; or 35
  - (c) if there is no other bargaining party on the bargaining side (other than a specified employer bargaining party, if applicable) and bargaining for the

proposed renewal or proposed replacement was initiated by a specified employer bargaining party, the specified employer bargaining party may apply, in accordance with **section 228BA**, to the Authority for a determination under **section 228C**.

- (3) If the default bargaining party ceases to be a bargaining party on the bargaining side that did not initiate bargaining for a proposed agreement that covers a covered employer that is a non-SEBP employer,— 5
- (a) if there is another bargaining party on the bargaining side (other than a specified employer bargaining party, if applicable), bargaining continues; or 10
- (b) if there is no other bargaining party on the bargaining side, a bargaining party on the bargaining side that initiated bargaining may apply, in accordance with **section 228BA**, to the Authority for a determination under **section 228C**.
- (4) If the employee default bargaining party ceases to be a bargaining party for a proposed renewal or a proposed replacement that was initiated by a specified employer bargaining party, and that does not cover a covered employer that is a non-SEBP employer,— 15
- (a) if there is another bargaining party on the employee bargaining side, bargaining continues; or 20
- (b) if there is no other bargaining party on the employee bargaining side, the specified employee bargaining party may apply, in accordance with **section 228BA**, to the Authority for a determination under **section 228C**.

*Default bargaining parties for proposed variations*

- 80AB** Default bargaining party may initiate bargaining for proposed variation 25
- If there is no other bargaining party on the relevant bargaining side (other than a specified employer bargaining party, if applicable), the default bargaining party may,—
- (a) in accordance with **section 71A**, elect to be a bargaining party; and
- (b) in accordance with **Part 8**,— 30
- (i) request the other bargaining side's agreement to initiate bargaining for a proposed variation;
- (ii) agree to initiate bargaining for a proposed variation;
- (iii) if both bargaining sides agree to initiate bargaining, bargain for the proposed variation. 35

**80AC Default bargaining party may withdraw from bargaining for proposed variation**

A default bargaining party that is a bargaining party for a proposed variation may withdraw from bargaining for the proposed variation at any time, in which case **section 166(2)** applies.

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**Subpart 3—Consequences of default bargaining party not electing to be bargaining party**

**80C Default bargaining party does not elect to be bargaining party**

- (1) If a default bargaining party is eligible, under **subpart 2**, to elect to be a bargaining party on a bargaining side (**bargaining side A**) for a proposed agreement, but does not elect to be a bargaining party within the time frame specified in **section 71A(1)(b)**, the chief executive must provide notice to the bargaining side lead advocate for the opposing bargaining side (**bargaining side B**) that,— 10
- (a) if bargaining side B initiated bargaining for the proposed agreement, complies with **subsections (2) and (3)**; or 15
- (b) if bargaining side A initiated bargaining for the proposed agreement, complies with **subsections (2) and (4)**.
- (2) A notice to the bargaining side lead advocate for bargaining side B must specify that— 20
- (a) the default bargaining party did not elect to be a bargaining party on bargaining side A; and
- (b) as a consequence, there is no bargaining party on bargaining side A (other than any specified employer bargaining party if bargaining side A is a an employer bargaining side). 25
- (3) If bargaining side B initiated bargaining for the proposed agreement, the notice must also specify that—
- (a) a bargaining party on bargaining side B may, no later than 3 months after the date of the notice, apply, in accordance with **section 228BA**, to the Authority for a determination under **section 228C**; and 30
- (b) despite **paragraph (a)**, the Authority will not make a determination under **section 228C** if, before the bargaining party applies for the determination,—
- (i) the chief executive approves an application to be a bargaining party on bargaining side A; or 35
- (ii) the chief executive approves initiating bargaining for a proposed FPA in the same industry as the proposed agreement; and
- (c) if a bargaining party on bargaining side B does not apply, in accordance with **section 228BA**, to the Authority for a determination under **sec-**

tion 228C, bargaining for the proposed agreement is discontinued on the day after the date by which the application for the determination must be made.

- (4) If bargaining side A initiated bargaining for the proposed agreement, the notice must state that bargaining for the proposed agreement was discontinued on the day after the time frame specified in **section 71A(1)(b).** 5
- (5) However, if a specified employer bargaining party initiates bargaining for a proposed renewal or a proposed replacement,—
- (a) **subsections (1) to (4)** do not apply; and
- (b) **section 80CA** applies. 10

**80CA Default bargaining party does not elect to be bargaining party when bargaining initiated by specified employer bargaining party**

- (1) The chief executive must provide a notice to the bargaining side lead advocate if—
- (a) a specified employer bargaining party initiates bargaining for a proposed renewal or a proposed replacement; and 15
- (b) a default bargaining party is eligible under **subpart 2** to elect to be a bargaining party for the proposed renewal or the proposed replacement but does not make an election within the time frame specified in **section 71A(1)(b).** 20
- (2) A notice provided under **subsection (1)** must specify that—
- (a) the relevant default bargaining party did not elect to be a bargaining party; and
- (b) as a consequence, there is either no employee bargaining side or no other employer bargaining party; and 25
- (c) no later than 3 months after the date of the notice, the specified employer bargaining party may apply, in accordance with **section 228BA**, to the Authority for a determination under **section 228C**; and
- (d) despite **paragraph (c)**, the Authority will not make a determination under **section 228C** if, before the specified employer bargaining party applies for the determination,— 30
- (i) the chief executive approves an application to be a bargaining party on the bargaining side on which the default bargaining party was eligible to elect to be a bargaining party; or
- (ii) the chief executive approves initiating bargaining for a proposed FPA in the same industry as the proposed agreement; and 35
- (e) if a specified employer bargaining party does not apply, in accordance with **section 228BA**, to the Authority for a determination under **section 228C**, bargaining for the proposed renewal or the proposed

replacement is discontinued on the day after the date by which the application for the determination must be made.

**80CB Bargaining discontinued if bargaining party does not apply for determination**

Bargaining for a proposed agreement is discontinued on the day after the last day of the period specified in **section 228BA(3)** if— 5

- (a) a bargaining party may apply, in accordance with **section 228BA**, to the Authority for a determination under **section 228C**; but
- (b) the bargaining party does not apply for a determination by the last day of the period specified in **section 228BA(3)**. 10

**80D Chief executive to publicly notify that bargaining has been discontinued**

No later than 5 working days after a proposed agreement is discontinued in the circumstances described in **section 80C(3)(c) or (4) or 80CA(2)(e)**, the chief executive must publicly notify the following information:

- (a) the coverage of the proposed agreement: 15
- (b) the fact that bargaining for the proposed agreement has discontinued, and the reason why bargaining has discontinued:
- (c) the date on which bargaining for the proposed agreement was discontinued:
- (d) where to find the information that the chief executive publicly notified under **section 34 or 192** (as applicable). 20

*Subsequent formation of bargaining side*

**80K Subsequent period when bargaining side may be formed**

- (1) This section applies only if, in relation to a proposed agreement,—
  - (a) a default bargaining party is eligible, under **subpart 2**, to elect to be a bargaining party on a bargaining side for the proposed agreement, but has not yet elected to do so; or 25
  - (b) a bargaining party is entitled to apply, in accordance with **section 228BA**, for a determination under **section 228C**, but has not yet done so. 30
- (2) Despite **sections 35, 45, 194, and 195**, a bargaining side for the proposed agreement may form if the chief executive approves an application under **section 43 or 49** to be a bargaining party on a bargaining side for the proposed agreement until—
  - (a) a default bargaining party elects to be a bargaining party for the proposed agreement; or 35



- (b) a bargaining party applies, in accordance with **section 228BA**, for a determination under **section 228C** for the proposed agreement.
- (3) If the chief executive approves an application under **section 43 or 49** (as applicable) for the proposed agreement, the bargaining side for the proposed agreement is formed on the date of the chief executive's approval. 5

## Part 4

### FPA meetings and union access to workplaces

#### Subpart 1—FPA meetings

#### 81 Requirements for arranging FPA meeting

- (1) An employee bargaining party on an employee bargaining side for a proposed agreement ~~FPA, a proposed renewal, or a proposed replacement~~ may arrange an FPA meeting only if— 10
- (a) the chief executive has publicly notified, in accordance with **section 34 or 192**, that the chief executive has approved an application to initiate bargaining for the proposed agreement ~~FPA, the proposed renewal, or the proposed replacement~~; and 15
- (b) both bargaining sides for the proposed agreement ~~FPA, the proposed renewal, or the proposed replacement~~ have been formed; and
- (c) the employee bargaining party has received approval from the employee bargaining side to hold the meeting on behalf of the employee bargaining side. 20
- (2) An employee bargaining party may arrange an FPA meeting in relation to a proposed variation only if—
- (a) the employee bargaining party is a member of the employee bargaining side for the fair pay agreement; and 25
- (b) the employee bargaining party has received approval from the employee bargaining side to hold the meeting on behalf of the employee bargaining side.
- (3) Before holding an FPA meeting, the employee bargaining party must—
- (a) give at least 14 days' notice of the date and time of the meeting to each employer who has employees who are eligible to attend the meeting; and 30
- (b) make arrangements with each employer to ensure that the employer's business is maintained during the FPA meeting, including, where appropriate, an arrangement for sufficient employees to remain available during the meeting to enable the employer's operations to continue. 35

#### 82 Entitlement to attend FPA meetings

- (1) An employer must allow each covered employee ~~who~~—

- (a) ~~is within the coverage of a proposed FPA~~ to attend 2 FPA meetings in relation to ~~the~~ a proposed FPA; and
- (b) ~~is within the coverage of a fair pay agreement~~ to attend 1 FPA meeting in accordance with **subsection (3)** in relation to a proposed variation to ~~that~~ a fair pay agreement; and 5
- (c) ~~is within the coverage of a proposed renewal or a proposed replacement~~ to attend 2 FPA meetings in relation to ~~the~~ a proposed renewal or a the proposed replacement.
- (2) Each FPA meeting must—
- (a) last no longer than 2 hours; and 10
- (b) relate to the proposed FPA, agreement or the proposed variation, ~~the proposed renewal, or the proposed replacement~~ (as applicable); and
- (c) take place during bargaining for the proposed FPA, agreement or the proposed variation, ~~the proposed renewal, or the proposed replacement~~; and 15
- (d) be arranged in accordance with **section 81**.
- (3) ~~An employee who is within the coverage of~~ A covered employee in relation to a fair pay agreement is entitled to attend only 1 FPA meeting under **subsection (1)(b)** in respect of the fair pay agreement, regardless of the number of variations that are bargained for during the term of the agreement. 20
- (4) ~~An~~ A covered employee is entitled to attend an FPA meeting despite not being a member of—
- (a) the union that arranges the meeting; or
- (b) a union on the employee bargaining side; or
- (c) any other union. 25
- (5) ~~An~~ A covered employee's entitlement to attend an FPA meeting under this Act is in addition to any entitlement to attend a union meeting under section 26 of the Employment Relations Act 2000.
- (6) An employer who fails to comply with this section is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**. 30

### 83 Payment for attending FPA meeting

- (1) ~~If an employee is within the coverage of~~ The employer of a covered employee, in relation to a proposed FPA, agreement or a proposed variation, ~~a proposed renewal, or a proposed replacement~~ that will be discussed at an FPA meeting, ~~the employee's employer~~ must allow the employee to attend the meeting on ordinary pay, to the extent that the employee would otherwise be working for the employer during the meeting. 35

- (2) For the purposes of **subsection (1)**, the employee bargaining party that arranges the FPA meeting must—
- (a) supply to the employer a list of the employer’s employees who attended the meeting; and
  - (b) advise the employer of the duration of the meeting. 5
- (3) An employee must resume work as soon as practicable after attending an FPA meeting.
- (4) An employee who is absent from work for more than 2 hours to attend an FPA meeting is entitled to ordinary pay for a maximum of 2 hours.
- (5) An employer who fails to comply with this section is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**. 10

#### 84 Entitlement to attend additional FPA meeting

- (1) An employer must allow each covered employee who is within the coverage of a proposed ~~FPA, a proposed renewal, or a proposed replacement agreement~~ to attend 1 additional FPA meeting in relation to the proposed ~~FPA, the proposed renewal, or the proposed replacement agreement~~ if— 15
- (a) the employee has already attended 2 FPA meetings under **section 82(1)(a) or (c)** (as applicable); and
  - (b) in relation to the proposed ~~FPA, the proposed renewal, or the proposed replacement agreement~~, the result of either the first ratification vote of the covered employees, or the first ratification vote of the covered employers, is against ratification (*see subpart 2 of Part 7*). 20
- (2) The following sections apply to an FPA meeting held under this section, with all necessary modifications: 25
- (a) **section 81(1) and (3)**;
  - (b) **section 82(2), (4), (5), and (6)**;
  - (c) **section 83**.
- (3) An employer who fails to comply with this section is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**. 30

#### Subpart 2—Employee bargaining party may access workplaces

#### 85 Workplace does not include dwellinghouse

- (1) For the purposes of **sections 86 to 91**, workplace does not include a dwellinghouse. 35
- (2) In this section, **dwellinghouse** has the meaning given in section 5 of the Employment Relations Act 2000.

**86 Access to workplaces**

- (1) A representative of an employee bargaining party is entitled, in accordance with this subpart, to enter a workplace without the employer's consent if the primary purpose of entering the workplace is to discuss with a covered employee (or an employee who may be affected by) 1 or more of the following: 5
- (a) bargaining for a proposed FPA:
  - (b) bargaining for a proposed variation:
  - (c) bargaining for a proposed renewal:
  - (d) bargaining for a proposed replacement: 10
  - (e) a fair pay agreement.
- (2) A purpose for entering a workplace ~~is within the scope of~~ under **subsection (1)(a), (b), (c), or (d)** includes a purpose that if, for example, it relates to— 15
- (a) communicating to employees any progress in bargaining for the proposed agreement or FPA, the proposed variation, ~~the proposed renewal, or the proposed replacement~~; or
  - (b) seeking feedback from covered employees about any aspect of the proposed agreement or FPA, the proposed variation, ~~the proposed renewal, or the proposed replacement~~.
- (3) A purpose for entering a workplace ~~under is within the scope of~~ **subsection (1)(e)** includes a purpose that if, for example, it relates to— 20
- (a) communicating the terms of the fair pay agreement; or
  - (b) seeking information from covered employees about the implementation of the fair pay agreement; or
  - (c) seeking feedback from covered employees about key issues relating to the fair pay agreement; or 25
  - (d) identifying any issues relating to complying with the fair pay agreement or this Act; or
  - (e) seeking feedback from covered employees about renewing or replacing the fair pay agreement. 30
- ~~(4) A representative of an employee bargaining party may, under **subsection (1)**, enter a workplace to meet with an employee who is not a covered employee if, for example, a proposed amendment would exclude the employee from coverage.~~
- (5) However, the representative is entitled to enter a workplace in accordance with **subsection (1)** only if— 35
- (a) 1 or more employees at the workplace are covered employees (whether or not the employees are members of a union); and

- (b) the employee bargaining party is a bargaining party for the proposed FPA agreement, the proposed variation, ~~the proposed renewal, the proposed replacement,~~ or the fair pay agreement.
- (6) A discussion in a workplace between an employee and a representative of an employee bargaining party who is entitled under this subpart to enter the workplace for the purpose of the discussion— 5
- (a) must not exceed a reasonable duration; and
- (b) must not be treated as—
- (i) a union meeting under section 26 of the Employment Relations Act 2000; or 10
- (ii) an FPA meeting under **section 82 or 84** of this Act.
- (7) An employer must not deduct from an employee’s wages any amount in respect of the period during which the employee is engaged in a discussion referred to in **subsection (6)**.
- (8) In this section and **sections 87 to 91**, if a default employee bargaining party is a bargaining party for a proposed FPA agreement, a proposed variation, ~~a proposed renewal, a proposed replacement,~~ or a fair pay agreement, each reference to a representative of an employee bargaining party must be read as a reference to a representative of the default employee bargaining party. 15
- Compare: 2000 No 24 s 20 20
- 87 Conditions relating to access**
- (1) A representative of an employee bargaining party exercising the right to enter a workplace—
- (a) may do so only at reasonable times during any period when any covered employee is employed to work in the workplace; and 25
- (b) must do so in a reasonable way, having regard to normal business operations in the workplace; and
- (c) must comply with any existing reasonable procedures and requirements applying in respect of the workplace that relate to—
- (i) safety or health; or 30
- (ii) security.
- (2) A representative of an employee bargaining party who is exercising the right to enter a workplace must, at the time of the initial entry and, if requested by the employer, a representative of the employer, or a person in control of the workplace, at any time after entering the workplace,— 35
- (a) state the purpose of the entry; and
- (b) produce evidence of the representative’s identity and authority to represent the employee bargaining party.

- (3) If a representative of an employee bargaining party exercises the right to enter a workplace and is unable, despite reasonable efforts, to find the employer, a representative of the employer, or the person in control of the workplace, the representative of the employee bargaining party must leave in a prominent place in the workplace a written statement of— 5
- (a) the identity of the person who entered the premises; and
  - (b) the employee bargaining party that the person represents; and
  - (c) the date and time of entry; and
  - (d) the purpose or purposes of the entry.
- (4) Nothing in **subsections (1) to (3)** allows an employer, a representative of the employer, or the person in control of a workplace to unreasonably deny a representative of an employee bargaining party access to a workplace. 10
- ~~(5) A representative of an employee bargaining party who wilfully fails to comply with this section is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**.~~ 15

Compare: 2000 No 24 s 21

### **88 When access to workplaces may be denied**

- (1) A representative of an employee bargaining party may be denied access to a workplace if entry to the premises or any part of the premises might prejudice— 20
- (a) the security or defence of New Zealand; or
  - (b) the investigation or detection of offences.
- (2) A certificate given in accordance with **subsection (3)** is conclusive evidence that grounds exist under **subsection (1)** for denying entry to the premises or part of the premises. 25
- (3) A certificate is given in accordance with this subsection if—
- (a) it is given by the Attorney-General; and
  - (b) it certifies, in respect of the premises or part of the premises concerned, that permitting entry under **section 86** might prejudice— 30
    - (i) the security or defence of New Zealand; or
    - (ii) the investigation or detection of offences.

Compare: 2000 No 24 s 22

### **89 When access to workplaces may be denied on religious grounds**

- A representative of an employee bargaining party may be denied access to a workplace if— 35
- (a) all the employees employed in the workplace are employed by an employer who holds a current certificate of exemption issued under **section 90**; and

- (b) none of the employees employed in the workplace is a member of a union; and
- (c) there are no more than 20 employees employed to work in the workplace.

Compare: 2000 No 24 s 23

5

## 90 Issue of certificate of exemption

- (1) The chief executive may, for the purposes of **section 89**, issue a certificate of exemption to an employer who is an individual if the chief executive is satisfied that the employer is a practising member of a religious society or order whose doctrines or beliefs preclude membership of any organisation or body other than the religious society or order of which the employer is a member. 10
- (2) The chief executive may revoke a certificate of exemption if—
  - (a) the employer to whom it has been issued agrees; or
  - (b) it was issued in error; or
  - (c) the chief executive is satisfied that the employer has ceased to be a person eligible to be issued with the certificate. 15

Compare: 2000 No 24 s 24

## 91 Duties in relation to accessing workplace

- (1) A person must not—
  - (a) refuse to permit a representative of an employee bargaining party to enter a workplace; or 20
  - (b) obstruct a representative of an employee bargaining party from entering a workplace, or from doing anything reasonably necessary for, or incidental to, the purpose of entering the workplace; or
  - (c) wilfully fail to comply with **section 87**. 25

### (1A) Subsection (1) is subject to sections 88 and 89.

- (2) A person who fails, without lawful excuse, to comply with **subsection (1)** is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**.

Compare: 2000 No 24 s 25

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## Part 5 Bargaining

### Subpart 1—Good faith obligation to provide information

## 92 Providing information when bargaining

- (1) This section and **sections 92A and 92B** apply ~~applies~~ for the purposes of a request made under **section 19(3)(h)**. 35

- (2) During bargaining, a request under **section 19(3)(h)** from one bargaining side for information from the other bargaining side must—
- (a) be in writing; and
  - (b) specify the nature of the information requested in sufficient detail to enable the information to be identified; and 5
  - (c) specify the claim, or the response to a claim, in respect of which information to support or substantiate the claim, or the response, is requested; and
  - (d) specify a reasonable time within which the information must be provided. 10
- (3) ~~A bargaining side that receives a request for information must provide the requested information—~~
- ~~(a) directly to the bargaining side that requested the information; or~~
  - ~~(b) to an independent reviewer if the bargaining side providing the information reasonably considers that it should be treated as confidential information. 15~~
- (4) ~~A person must not act as an independent reviewer unless—~~
- ~~(a) appointed by mutual agreement of the employee bargaining side and the employer bargaining side; or~~
  - ~~(b) if the bargaining sides are unable to agree on who to appoint, following a determination from the Authority. 20~~
- (5) For the purposes of **subsection (4)**, ~~if the bargaining sides are unable to agree on whom to appoint as an independent reviewer, either bargaining side may apply to the Authority under **section 212** for a determination as to whom the bargaining sides should appoint. 25~~
- (6) ~~As soon as practicable after receiving information under **subsection (3)(b)**, an independent reviewer must—~~
- ~~(a) decide whether, and if so to what extent, the information should be treated as confidential; and~~
  - ~~(b) advise the bargaining sides of its decision. 30~~
- (7) ~~If an independent reviewer decides that information should be treated as confidential, the independent reviewer must—~~
- ~~(a) decide whether, and if so to what extent, the information supports or substantiates the claim, or the response to a claim, in respect of which the information is requested; and 35~~
  - ~~(b) advise the bargaining sides of its decision in a way that maintains the confidentiality of the information; and~~
  - ~~(c) answer any questions from the bargaining side that requested the information in a way that maintains the confidentiality of the information.~~



- (8) ~~Unless the employee bargaining side and the employer bargaining side agree, information provided under **subsection (3)(a)** and advice and answers provided under **subsections (5) and (6)**—~~
- ~~(a) must be used only for the purposes of the bargaining concerned; and~~
  - ~~(b) must be treated as confidential by the persons conducting the bargaining concerned; and~~
  - ~~(c) must not be disclosed by those persons to anyone else, including persons who would be bound by the proposed FPA to which the bargaining relates.~~
- (9) ~~This section does not limit or affect the Privacy Act 2020.~~
- (10) ~~Nothing in the Official Information Act 1982 (except section 6) enables an employer that is subject to that Act to withhold information that is requested under **section 19(3)(h)**.~~
- Compare: 1972 No 118 s 13ZC

**92A Bargaining side must provide requested information to requester or independent reviewer**

- (1) A bargaining side that receives a request for information under **section 19(3)(h)** must provide the requested information—
- (a) directly to the bargaining side that requested the information; or
  - (b) to an independent reviewer if the bargaining side providing the information reasonably considers that it should be treated as confidential information.
- (2) A person must not act as an independent reviewer unless—
- (a) appointed by mutual agreement of the employee bargaining side and the employer bargaining side; or
  - (b) appointed by the Authority making a determination, if the bargaining sides are unable to agree on whom to appoint.
- (3) For the purposes of **subsection (2)**, if the bargaining sides are unable to agree on whom to appoint as an independent reviewer, either bargaining side may apply to the Authority under **section 212** for a determination as to whom the bargaining sides should appoint.
- (4) As soon as practicable after receiving information under **subsection (1)(b)**, an independent reviewer must—
- (a) decide whether, and if so to what extent, the information should be treated as confidential; and
  - (b) advise the bargaining sides of its decision.
- (5) If an independent reviewer decides that information should be treated as confidential, the independent reviewer must—

- (a) decide whether, and if so to what extent, the information supports or substantiates the claim, or the response to a claim, in respect of which the information is requested; and
- (b) advise the bargaining sides of its decision in a way that maintains the confidentiality of the information; and 5
- (c) answer any questions from the bargaining side that requested the information in a way that maintains the confidentiality of the information.

### **92B Limits on use of information provided during bargaining**

- (1) Unless the employee bargaining side and the employer bargaining side agree, information provided under **section 92A(1)(a)** and advice and answers provided under **section 92A(4) and (5)**— 10
  - (a) must be used only for the purposes of the bargaining concerned; and
  - (b) must be treated as confidential by the persons conducting the bargaining concerned; and
  - (c) must not be disclosed by those persons to anyone else, including persons who would be covered employees or covered employers in relation to the proposed agreement or the proposed variation to which the bargaining relates. 15
- (2) Nothing in **section 92 or 92A** or in this section limits or affects the Privacy Act 2020. 20
- (3) Nothing in the Official Information Act 1982 (except section 6) enables an employer that is subject to that Act to withhold information that is requested under **section 19(3)(h)**.

### Subpart 1A—Representation

- 92C Entitlement and obligation to represent covered employees** 25
  - (1) When bargaining for a proposed FPA, an employee bargaining side for the proposed FPA is entitled to represent, and must use its best endeavours to represent, the collective interests of all covered employees, whether or not each employee is a member of a union.
  - (2) To comply with **subsection (1)**, an employee bargaining side must use its best endeavours to, at least,— 30
    - (a) provide regular updates about the bargaining to all covered employees; and
    - (b) give all covered employees the opportunity to provide feedback to the employee bargaining side in relation to the bargaining; and 35
    - (c) consider, during bargaining, all feedback received from covered employees; and

- (d) advise all covered employees of any ratification vote (see **section 143**); and
- (e) consider whether all interest groups of covered employees are recognised and given the opportunity to provide feedback to the employee bargaining side in relation to the bargaining. 5
- (3) An employee bargaining party must not, whether directly or indirectly, do anything—
- (a) to mislead or deceive a covered employee; or
- (b) that is likely to mislead or deceive a covered employee.
- (4) A union’s role as a member of an employee bargaining side is in addition to, and does not detract from, its right to represent its members’ interests under section 18 of the Employment Relations Act 2000. 10
- 92D** **Obligation to ensure representation of Māori employees**
- Each employee bargaining side for a proposed FPA must use its best endeavours to ensure that Māori employees are represented effectively in the bargaining process, including by— 15
- (a) seeking and considering feedback from representatives of Māori employees; and
- (b) considering whether the bargaining side should include a member to represent the interests of Māori employees. 20
- 92E** **Union may provide members’ views to employee bargaining side**
- If a union is not a bargaining party for a proposed FPA, but has members that are within the coverage of the proposed FPA,—
- (a) the union may provide its members’ views to the employee bargaining side; and 25
- (b) the employee bargaining side must take those views into account when bargaining for the proposed FPA.
- 92F** **Entitlement and obligation to represent covered employers**
- (1) When bargaining for a proposed FPA, the employer bargaining side for the proposed FPA is entitled to represent, and must use its best endeavours to represent, the collective interests of all covered employers, whether or not each employer is a member of an employer association. 30
- (2) To comply with **subsection (1)**, the employer bargaining side must use its best endeavours to, at least,—
- (a) provide regular updates about bargaining to all covered employers; and 35
- (b) give all covered employers the opportunity to provide feedback to the employer bargaining side in relation to the bargaining; and

- (c) consider, during bargaining, all feedback received from covered employers; and
- (d) advise all covered employers of any ratification vote (see **section 143**); and
- (e) consider whether all interest groups of covered employers are recognised and given the opportunity to provide feedback to the employer bargaining side in relation to bargaining; and 5
- (f) if the proposed FPA covers employees of a private sector employer and an employer bargaining party on the bargaining side is aware that the private sector employer regularly receives— 10
- (i) local government funding to deliver local government services, provide regular updates about bargaining to the local authority responsible for that funding;
- (ii) central government funding to deliver central government services, provide regular updates about bargaining to the department responsible for that funding. 15
- (2A) However, the employer bargaining side is not required to provide regular updates for the purposes of **subsection (2)(f)** if it does not know which local authority or department (as applicable) is responsible for the funding.
- (3) An employer bargaining party must not, whether directly or indirectly, do anything— 20
- (a) to mislead or deceive a covered employer; or
- (b) that is likely to mislead or deceive a covered employer.
- (4) In **subsection (2)(f)**—
- (a) **department** has the meaning given in section 5 of the Public Service Act 2020; 25
- (b) **local authority** has the meaning given in section 5 of the Local Government Act 2002.
- 92G** **Obligation to ensure representation of Māori employers**
- The employer bargaining side for a proposed FPA must use its best endeavours to ensure that Māori employers are represented effectively in the bargaining process, including by— 30
- (a) seeking and considering feedback from representatives of Māori employers; and
- (b) considering whether the bargaining side should include a member to represent the interests of Māori employers. 35

Subpart 2—~~Obligations during bargaining~~Ceasing to be bargaining party~~*Ceasing to be bargaining party*~~**93 When bargaining party ceases to be bargaining party**

A bargaining party ceases to be a bargaining party if—

- (a) the chief executive has approved the bargaining party ceasing to be a bargaining party by meeting one of the criteria in **section 94(1)**; or 5
- (b) the bargaining party is no longer eligible to be a bargaining party (*see section 95*).

**94 Bargaining party may apply to cease being bargaining party**

- (1) A bargaining party (including a default bargaining party) may apply to the chief executive for approval to cease being a bargaining party if— 10
  - (a) all other bargaining parties on the bargaining side agree that the bargaining party may cease to be a bargaining party; or
  - (b) it ceases to be a bargaining party in accordance with a process specified in the inter-party side agreement; or 15
  - (c) other than any specified employer bargaining party, it is the final bargaining party on the bargaining side.
- (2) A bargaining party that wishes to cease being a bargaining party must apply to the chief executive in writing for approval to cease being a bargaining party.
- (3) An application to the chief executive must include— 20
  - (a) details of the proposed ~~FPA agreement~~, the proposed variation, ~~the proposed renewal, the proposed replacement~~, or the fair pay agreement for which it is a bargaining party; and
  - (b) the reason for the bargaining party's application to cease being a bargaining party (which must be a criterion set out in **subsection (1)**); and 25
  - (c) whether there are any other bargaining parties remaining on the bargaining side for the proposed ~~FPA agreement~~, the proposed variation, ~~the proposed renewal, the proposed replacement~~, or the fair pay agreement; and
  - (d) whether any of the remaining bargaining parties is a specified employer bargaining party; and 30
  - (e) any other information required by regulations.
- (4) A bargaining party ceases to be a bargaining party on the date on which the chief executive approves the application.
- (5) ~~A bargaining party is not permitted to apply for approval to cease being a bargaining party if it is a specified employer bargaining party or a default bargaining party.~~ 35

- (5) A specified employer bargaining party is not permitted to apply for approval to cease being a bargaining party.

## 95 Bargaining party ceases to be eligible

- (1) ~~A bargaining party is no longer eligible to be a bargaining party if,—~~
- (a) ~~in the case of an employee bargaining party, it ceases to be an eligible union; or~~ 5
  - (b) ~~in the case of an employer bargaining party, it ceases to be an eligible employer association; or~~
  - (c) ~~in the case of a specified employer bargaining party, if coverage changes and the specified employer bargaining party no longer represents any covered employer; or~~ 10
  - (d) ~~in the case of a default bargaining party, if the default bargaining party is no longer deemed to be a bargaining party under **section 72, 76, or 77**, or if coverage changes and the default bargaining party no longer represents any covered employees or covered employers (as applicable).~~ 15
- (2) ~~A bargaining party (other than a default bargaining party or a specified employer bargaining party) must notify the chief executive that it is no longer eligible to be a bargaining party—~~
- (a) ~~as soon as practicable after it becomes aware that it will cease to be eligible; but~~ 20
  - (b) ~~no later than 5 working days after it ceases, or becomes aware that it has ceased, to be eligible.~~
- (1) A bargaining party is no longer eligible to be a bargaining party if,—
- (a) in the case of an employee bargaining party that is not a default bargaining party, it ceases to be an eligible union; or 25
  - (b) in the case of an employer bargaining party that is not a default bargaining party, it ceases to be an eligible employer association; or
  - (c) in the case of a specified employer bargaining party, the specified employer bargaining party no longer represents any covered employers; or 30
  - (d) in the case of a default bargaining party, the default bargaining party no longer represents any covered employees or covered employers (as applicable).
- (2) A bargaining party must notify the chief executive that it is no longer eligible to be a bargaining party— 35
- (a) as soon as practicable after it becomes aware that it will cease to be eligible; but
  - (b) no later than 5 working days after it ceases, or becomes aware that it has ceased, to be eligible.

- (3) A bargaining party's notification to the chief executive must include—
- (a) details of the proposed ~~FPA agreement~~, the proposed variation, ~~the proposed renewal, the proposed replacement~~, or the fair pay agreement for which it is a bargaining party; and
  - (b) the reason that the bargaining party is no longer eligible to be a bargaining party; and 5
  - (c) whether there are any other bargaining parties remaining on the bargaining side for the proposed ~~FPA agreement~~, the proposed variation, ~~the proposed renewal, the proposed replacement~~, or the fair pay agreement; and 10
  - (d) whether any of the remaining bargaining parties is a specified employer bargaining party.
- (4) A bargaining party ceases to be a bargaining party on the date on which it ceases to be eligible.

**96 Appointment of new bargaining side lead advocate 15**

If a bargaining side lead advocate for a proposed ~~FPA agreement~~, a proposed variation, or a fair pay agreement is a representative of a bargaining party that ceases to be a bargaining party for the proposed ~~FPA agreement, the proposed variation, or the fair pay agreement~~, the relevant bargaining side ~~for the proposed FPA~~ must appoint a new bargaining side lead advocate under **section 59**. 20

**97 Initiating union ceases to be bargaining party**

~~If the initiating union for bargaining for a fair pay agreement ceases to be a bargaining party, the employee bargaining side must provide the employer bargaining side with a new address to which employers must provide their employees' contact details under section 39.~~ 25

*Provision of information*

**98 Modification to requirement to provide employees' contact details**

~~An employer must provide its covered employee's contact details specified in section 39 to an employee bargaining party other than the initiating union if—~~ 30

- (a) ~~the employer is required under this subpart to provide those contact details to the initiating union but the initiating union is no longer an employee bargaining party; and~~
- (b) ~~the employee bargaining side has provided the employer with the address of the other employee bargaining party to which the employer must send the contact details.~~ 35

**99 ~~Employee bargaining side must update contact address~~**

- (1) ~~The employee bargaining side for a proposed FPA, a proposed renewal, or a proposed replacement must ensure that the employer bargaining side for the proposed renewal or the proposed replacement has a current contact address to which an employer must send its employees' contact details when required to do so under this subpart.~~ 5
- (2) ~~The employer bargaining side must ensure that it provides the current contact address provided under **subsection (1)** to each employer within 5 working days of receiving the address.~~

**100 ~~Obligation to submit further information if coverage changed during bargaining~~** 10

- (1) ~~This section applies when—~~
- (a) ~~the chief executive has publicly notified, in accordance with **section 34 or 192**, that it has approved an application to initiate bargaining for a proposed FPA, a proposed renewal, or a proposed replacement; and~~ 15
- (b) ~~bargaining has started and, as part of that bargaining, the bargaining sides have agreed to change the coverage of the proposed FPA, the proposed renewal, or the proposed replacement.~~
- (2) ~~The initiating party (or if that party has ceased to be a bargaining party, another bargaining party on the same bargaining side as the initiating party) must provide further evidence to the chief executive of how the proposed FPA, the proposed renewal, or the proposed replacement meets an initiation test in respect of the changed coverage if the application to initiate bargaining relied on 1 of the following initiation tests:~~ 20
- (a) ~~the representation test, on the basis that 10% of all covered employees support initiating bargaining (see **section 29(1)**); or~~ 25
- (b) ~~the public interest test (see **section 29(4)**).~~
- (3) ~~In the circumstances described in **subsection (1)**,—~~
- (a) ~~the initiating party (or if that party has ceased to be a bargaining party, another bargaining party on the same bargaining side as the initiating party) must apply to the chief executive for approval to continue bargaining with the changed coverage; and~~ 30
- (b) ~~the application must include evidence that the other bargaining side supports the changed coverage.~~
- (4) ~~As soon as practicable after receiving an application for approval, the chief executive must—~~ 35
- (a) ~~assess the application; and~~
- (b) ~~notify the applicant in writing—~~



- (i) ~~whether or not the chief executive has approved the application; and~~
- (ii) ~~if the chief executive has approved the application, the coverage of the proposed FPA, the proposed renewal, or the proposed replacement that the chief executive has approved.~~ 5
- (5) ~~The chief executive must approve the application only if satisfied that, on the basis of the information provided in the application, both bargaining parties have agreed to the changed coverage of the proposed FPA, the proposed renewal, or the proposed replacement, and that the changed coverage—~~
- (a) ~~is defined with sufficient clarity; and~~ 10
- (b) ~~is not the same as the coverage of—~~
- (i) ~~a fair pay agreement that is already in force; or~~
- (ii) ~~a proposed FPA for which bargaining has already been initiated; and~~
- (c) ~~meets 1 of the initiation tests specified in **section 29(1) or (4) or 190.**~~ 15
- (6) ~~The chief executive may require the applicant to provide further information or evidence if the chief executive considers that the application does not contain sufficient information to decide whether to approve the application.~~
- (7) ~~If, after considering any further information or evidence provided under **subsection (6)**, the chief executive considers that the application does not define the changed coverage with sufficient clarity, the chief executive must assist the applicant to define the changed coverage more clearly.~~ 20
- (8) ~~The chief executive must decline an application if, after considering any further information or evidence provided under **subsection (6)**, the chief executive is not satisfied that the application meets the requirements listed in **subsection (5).**~~ 25
- (9) ~~If the chief executive declines an application, the chief executive must also, by written notice, advise the applicant of the reasons for declining the application.~~
- 101 Provision of information: coverage changes or new employers identified**
- (1) ~~This section applies if,—~~ 30
- (a) ~~as a result of the coverage of a proposed FPA, a proposed renewal, or a proposed replacement changing during the bargaining process, an additional employee comes within the coverage of the proposed FPA, the proposed renewal, or the proposed replacement; or~~
- (b) ~~during bargaining, the employer bargaining side becomes aware of a new employer that employs 1 or more employees who are within the coverage of a proposed FPA, a proposed renewal, or a proposed replacement.~~ 35
- (2) ~~In the circumstances described in **subsection (1)**,—~~

- (a) ~~the employer bargaining side must provide a statement that complies with **section 36(3)** and the form required under **section 36(2)(d)** to each employer that has an employee described in **subsection (1)** (a newly covered employee); and~~
- (b) ~~an employer with a newly covered employee must,—~~ 5
- (i) ~~unless it has already done so in respect of the proposed FPA, the proposed renewal, or the proposed replacement, comply with each requirement in **section 37(1)**; and~~
- (ii) ~~no later than 30 working days after the change to the coverage or the new employer employing at least 1 covered employee (as applicable), comply with **section 37(2), (3), and (4)** in respect of each newly covered employee; and~~ 10
- (c) ~~an employer must provide the contact details of each newly covered employee (except for the details of an employee who elects not to have their contact details provided) to the employee bargaining side within 20 working days of providing the information required under **section 37(2)** to the employee.~~ 15
- (3) ~~The employer bargaining side must comply with **subsection (2)(a)** within 5 working days of,—~~
- (a) ~~in the circumstances described in **subsection (1)(a)**, the chief executive approving the changed coverage; or~~ 20
- (b) ~~in the circumstances described in **subsection (1)(b)**, the employer bargaining side becoming aware of the new employee.~~
- (4) ~~This section does not apply after the fair pay agreement has been validated.~~
- (5) ~~An employer that intentionally or recklessly fails to comply with **subsection (2)(b) or (c)** is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**.~~ 25
- 102 Provision of information: new employees within coverage**
- (1) ~~This section applies if, during bargaining, a new employee commences employment in a role that is within the coverage of the proposed FPA, the proposed renewal, or the proposed replacement.~~ 30
- (2) ~~In the circumstances described in **subsection (1)**,—~~
- (a) ~~an employer with a new employee described in **subsection (1)** must,—~~
- (i) ~~unless it has already done so in respect of the proposed FPA, the proposed renewal, or the proposed replacement, comply with each requirement in **section 37(1)**; and~~ 35
- (ii) ~~no later than 30 working days after the new employee commencing, comply with **section 37(2), (3), and (4)** in respect of the new employee; and~~

- (b) ~~an employer must provide the contact details of each new employee (except for the details of an employee who elects not to have their contact details provided) to the employee bargaining side within 90 days of providing the information required under **section 37(2)** to the employee.~~ 5
- (3) ~~This section does not apply after the fair pay agreement has been validated.~~
- (4) ~~An employer that intentionally or recklessly fails to comply with **subsection (2)(b) or (c)** is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**.~~

### Subpart 2A—Provision of information

 10

#### 102A Modification to requirement to provide employees' contact details

If an employer is required to provide its covered employees' contact details to the initiating union, but the employee bargaining side has, under **section 102B**, provided an email address of another employee bargaining party to which the employer must send the contact details, the employer must send the contact details to that email address. 15

#### 102B Employee bargaining side must update contact address

- (1) The employee bargaining side for a proposed agreement must ensure that the employer bargaining side for the proposed agreement has a current contact email address to which an employer must send its employees' contact details when required to do so under this subpart. 20
- (2) The employer bargaining side must ensure that it provides the current contact email address provided under **subsection (1)** to each covered employer that it is aware of, within 5 working days of receiving the email address.

#### 102C Provision of information: coverage changes or new employers identified

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- (1) This section applies if,—
- (a) as a result of the coverage of a proposed agreement changing during the bargaining process, an additional employee comes within the coverage of the proposed agreement; or
- (b) during bargaining, the employer bargaining side becomes aware of a new employer that employs 1 or more employees who are within the coverage of a proposed agreement. 30
- (2) In the circumstances described in **subsection (1)**,—
- (a) the employer bargaining side must provide a statement that complies with **section 36(3)** and the form required under **section 36(2)(d)** to each employer that has an employee described in **subsection (1)** (a newly covered employee); and 35
- (b) an employer with a newly covered employee must,—

- (i) unless it has already done so in respect of the proposed agreement, comply with each requirement in **section 37(1)**; and
- (ii) no later than 30 working days after the change to the coverage or the new employer employing at least 1 covered employee (as applicable), comply with **section 37(2), (3), and (4)** in respect of each newly covered employee; and 5
- (c) an employer must provide, in an electronic format, the contact details of each newly covered employee (except for the details of an employee who elects not to have their contact details provided) to the initiating union— 10
- (i) as soon as practicable after the date that is 20 working days after providing the information required under **section 37(2)** to the employee; but
- (ii) no later than 30 working days after providing the information.
- (3) The employer bargaining side must comply with **subsection (2)(a)** within 5 working days of,— 15
- (a) in the circumstances described in **subsection (1)(a)**, the date on which the chief executive approves the changed coverage; or
- (b) in the circumstances described in **subsection (1)(b)**, the date on which the employer bargaining side becomes aware of the new employee. 20
- (4) This section does not apply after the fair pay agreement has been validated.
- (5) An employer that intentionally or recklessly fails to comply with **subsection (2)(b) or (c)** is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**.
- 102D Provision of information: new employees within coverage** 25
- (1) This section applies if, during bargaining, a new employee commences employment in a role that is within the coverage of the proposed agreement.
- (2) In the circumstances described in **subsection (1)**,—
- (a) an employer with a new employee described in **subsection (1)** must,—
- (i) unless it has already done so in respect of the proposed agreement, comply with each requirement in **section 37(1)**; and 30
- (ii) no later than 30 working days after the new employee commences the employment, comply with **section 37(2), (3), and (4)** in respect of the new employee; and
- (b) an employer must provide, in an electronic format, the contact details of each new employee (except for the details of an employee who elects not to have their contact details provided) to the initiating union— 35
- (i) no earlier than 20 working days after providing the information required under **section 37(2)** to the employee; but

- (ii) no later than 60 working days after providing the information.
- (3) This section does not apply after the fair pay agreement has been validated.
- (4) An employer that intentionally or recklessly fails to comply with **subsection (2)** is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**.

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Subpart 3—Coverage change, coverage overlap, consolidation, and addition of occupation

*Coverage changed during bargaining*

**102E Bargaining party must apply for approval to bargain with changed coverage**

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- (1) This section applies when—
- (a) the chief executive has publicly notified, in accordance with **section 34 or 192**, that it has approved an application to initiate bargaining for a proposed agreement; and
- (b) bargaining has started and, as part of that bargaining, the bargaining sides have agreed to change the coverage of the proposed agreement.
- (2) In the circumstances described in **subsection (1)**,—
- (a) the initiating party (or if that party has ceased to be a bargaining party, another bargaining party on the same bargaining side as the initiating party) must apply to the chief executive for approval to continue bargaining with the changed coverage; and
- (b) the application must include evidence that the other bargaining side supports the changed coverage; and
- (c) the application must include further evidence of how the proposed agreement meets an initiation test in respect of the changed coverage if the application to initiate bargaining relied on 1 of the following initiation tests:
- (i) the representation test, on the basis that at least 10% of all employees who would be within the coverage of the proposed agreement support initiating bargaining (*see section 29*); or
- (ii) the public interest test (*see section 29A*).

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**102F Chief executive must assess application made under section 102E**

- (1) As soon as practicable after receiving an application for approval under **section 102E**, the chief executive must—
- (a) assess the application; and
- (b) notify the applicant in writing—
- (i) whether the chief executive has approved the application; and

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- (ii) if the chief executive has approved the application, the coverage of the proposed agreement that the chief executive has approved.
- (2) The chief executive may require the applicant to provide further information or evidence if the chief executive considers that the application does not contain sufficient information to decide whether to approve the application. 5
- (3) The chief executive must approve the application only if satisfied, on the basis of the information provided in the application and any further information or evidence provide under **subsection (2)**, that—
- (a) both bargaining parties have agreed to the changed coverage of the proposed agreement; and 10
- (b) the changed coverage is defined with sufficient clarity; and
- (c) all the covered employees in relation to the proposed agreement are not already covered employees in relation to 1 fair pay agreement or 1 proposed agreement for which bargaining has already been initiated; and
- (d) the proposed agreement, if its coverage is changed, meets 1 of the initiation tests specified in **section 29, 29A, or 190** (as applicable). 15
- (4) If, after considering any further information or evidence provided under **subsection (2)**, the chief executive considers that the application does not define the changed coverage with sufficient clarity, the chief executive must assist the applicant to define the changed coverage more clearly. 20
- (5) The chief executive must decline the application if, after assessing the application and considering any further information or evidence provided under **subsection (2)**, the chief executive is not satisfied that the application meets the requirements listed in **subsection (3)**.
- (6) If the chief executive declines an application, the chief executive must also, by written notice, advise the applicant of the reasons for declining the application. 25

#### **102G Chief executive to publicly notify changed coverage**

- (1) Within 5 working days after approving an application made under **section 102E** to change the coverage of a proposed agreement, the chief executive must publicly notify the following information: 30
- (a) the fact that the chief executive has approved the application;
- (b) the change to the coverage;
- (c) whether the application relied on the initiation test specified in **section 29, 29A, or 190**;
- (d) the reasons why the chief executive remains satisfied, despite the changed coverage, that the application meets the applicable initiation test; 35
- (e) where to find the notice issued by the chief executive under **section 34 or 192**.

- (2) The public notice issued under **subsection (1)** must also state—
- (a) that each covered employee and each covered employer (as at the date on which the chief executive approved the application to change coverage) may be represented in the bargaining for the proposed agreement; and 5
  - (b) that unless the coverage of the proposed agreement changes again during bargaining, the fair pay agreement will apply to—
    - (i) each employee who, in relation to the fair pay agreement, will be a covered employee; and
    - (ii) each employer who, in relation to the fair pay agreement, will be a covered employer; and 10
  - (c) where to find a plain language explanation of the next steps for bargaining.

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**Guidance note**

If the chief executive approves an application to change the coverage of a proposed agreement so that there is coverage overlap with another proposed FPA or a fair pay agreement,— 15

- (a) the chief executive must also comply with **section 104**; and
  - (b) **section 105** applies.
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*Coverage overlap between proposed agreement FPA and fair pay agreement* 20

**103 Application of sections 104 and 105**

**Sections 104 and 105** apply when—

- (a) the chief executive has publicly notified, in accordance with **section 34 or 192**, that the chief executive has approved—
  - (i) ~~a~~ an eligible union's application to initiate bargaining for a proposed FPA; or 25
  - (ii) an initiating party's application to initiate bargaining for a proposed renewal or a proposed replacement; and
- (b) there is coverage overlap between a fair pay agreement and the proposed ~~FPA, the proposed renewal, or the proposed replacement~~ agreement. 30

**104 Chief executive must notify initiating party of coverage overlap**

- (1) If the chief executive approves bargaining for a proposed ~~FPA, a proposed renewal, or a proposed replacement~~ agreement for which there is coverage overlap, the chief executive must notify the initiating party of the proposed ~~FPA, the proposed renewal, or the proposed replacement~~ agreement— 35
  - (a) that the coverage of the proposed ~~FPA, the proposed renewal, or the proposed replacement~~ agreement will result in coverage overlap; and

- (b) of the consequences of the coverage overlap (*see* **section 105**).
- (2) The initiating party must, after being notified of the coverage overlap under **subsection (1)**, notify—
- (a) ~~each any~~ employee bargaining party on the employee bargaining side; and
- (b) ~~each any~~ employer bargaining party on the employer bargaining side.

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### 105 Consequences of coverage overlap

The consequences of coverage overlap are that—

- (a) before the chief executive validates a proposed ~~agreement—FPA, proposed renewal, or a proposed replacement~~ under **section 156**, the Authority must, in accordance with **sections 135 and 138**,—
- (i) review the terms of the proposed ~~agreement—FPA, the proposed renewal, or the proposed replacement~~ and the fair pay agreement; and
- (ii) determine which agreement provides the better terms overall for the covered employees who are within the coverage of both agreements; and
- (b) depending on whether the Authority determines that the proposed ~~FPA, the proposed renewal, or the proposed replacement (as applicable)~~ agreement or the fair pay agreement provides the better terms overall, either **section 154 or 155** applies.

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#### *Consolidation of bargaining for fair pay agreements*

### 106 Application of sections 107 to 111

- (1) **Sections 107 to 111** apply when—
- (a) bargaining is taking place for a proposed industry-based agreement, or for a proposed renewal or a proposed replacement of an industry-based agreement (the **first proposed agreement**); and
- (b) the chief executive approves an application to initiate bargaining for a proposed industry-based agreement, or for a proposed renewal or a proposed replacement of an industry-based agreement, that covers an occupation group within the industry that the first proposed agreement covers (the **second proposed agreement**).
- (1A) However, if a bargaining party has applied, in accordance with **section 228BA**, to the Authority for a determination under **section 228C** for the first proposed agreement,—
- (a) **sections 107 to 110, and 111(1)** do not apply; and

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- (b) the bargaining sides for the second proposed agreement must bargain for the second proposed agreement separately from the first proposed agreement; and
- (c) the chief executive—
- (i) must not verify the later of the 2 proposed agreements to be submitted under **section 147** as a stand-alone fair pay agreement; but 5
- (ii) may verify the later proposed agreement, and validate it under **section 156**, in the form of an amendment that adds the later proposed agreement as a schedule of the fair pay agreement that is submitted for verification first. 10
- (2) In **sections 107 to 111**, ~~the terms **first proposed agreement** and **second proposed agreement** have the meanings given in **subsection (1)**:~~
- (a) **first proposed agreement** and **second proposed agreement** have the meanings given in **subsection (1)**; and 15
- (b) **the 2 proposed agreements** means both the first proposed agreement and the second proposed agreement.

### 107 When bargaining for fair pay agreements is consolidated

- (1) After the chief executive approves the application to initiate bargaining for the second proposed agreement,— 20
- ~~(a) if the chief executive approves the application to initiate bargaining for the second proposed agreement less than 6 months after the chief executive approved the application to initiate bargaining for the first proposed agreement, bargaining for the 2 agreements must be consolidated and **section 109** applies; or~~ 25
- (a) bargaining for the 2 proposed agreements must be consolidated, and **section 109** applies, if—
- (i) the chief executive approves the application to initiate bargaining for the second proposed agreement less than 6 months after the chief executive approved the application to initiate bargaining for the first proposed agreement; or 30
- (ii) the chief executive approves the application to initiate bargaining for the second proposed agreement 6 months or more after the chief executive approved the application to initiate bargaining for the first proposed agreement, and the bargaining side that initiated bargaining for the first proposed agreement is entitled to apply, in accordance with **section 228BA**, to the Authority for a determination under **section 228C** but has not yet done so; or 35
- (b) except as provided in **paragraph (a)(ii)**, if the chief executive approves the application to initiate bargaining for the second proposed agreement 40

6 months or more after the chief executive approved the application to initiate bargaining for the first proposed agreement, the bargaining sides for the first proposed agreement must decide whether bargaining for the 2 proposed agreements will be consolidated.

- (2) The bargaining sides for the first proposed agreement must notify the bargaining parties of the second proposed agreement whether the bargaining sides have decided to consolidate bargaining for the 2 proposed agreements, within 20 working days of the chief executive publicly notifying in accordance with **section 34** that the chief executive has approved the application to initiate bargaining for the second proposed agreement. 5
- (3) However, if the bargaining sides for the first proposed agreement do not notify the bargaining parties of the second proposed agreement within 20 working days of whether they have decided to consolidate bargaining for the 2 proposed agreements, ~~the bargaining sides for the first proposed agreement are deemed to have decided not to consolidate bargaining for the 2 agreements.~~ 10
- (a) the bargaining sides for the first proposed agreement are deemed to have decided not to consolidate bargaining for the 2 proposed agreements; 15  
and
- (b) **section 111** applies.

**108 Chief executive to notify parties** 20

- (1) When the chief executive publicly notifies, in accordance with **section 34**, that the chief executive has approved an application to initiate bargaining for a second proposed agreement, the chief executive must notify—
- (a) the initiating party that the employees within the coverage of the second proposed agreement would also be within the coverage of the first proposed agreement; and 25
- (b) the initiating party for the second proposed agreement whether or not 6 months or more have passed since the chief executive publicly notified the approval of the initiating party's application to initiate bargaining for the first proposed agreement; and 30
- (c) if the chief executive publicly notified the approval of the application to initiate bargaining for the first proposed agreement less than 6 months before notifying the approval of the application to initiate bargaining for the second proposed agreement, both bargaining sides for the first proposed agreement and the initiating party for the second proposed agreement that the 2 proposed agreements must be consolidated; and 35
- (d) if the chief executive publicly notified the approval of the application to initiate bargaining for the first proposed agreement 6 months or more before notifying the approval of the initiating party's application to initiate bargaining for the second proposed agreement, both bargaining sides for the first proposed agreement that they must— 40

- (i) decide whether to consolidate bargaining for the ~~first proposed agreement and the second proposed agreement~~ 2 proposed agreements; and
  - (ii) notify the initiating party for the second proposed agreement of that decision within 20 working days of the chief executive notifying the bargaining parties under **section 34**; and 5
  - (iii) notify the initiating party for the second proposed agreement that bargaining for the first proposed agreement has already been initiated, so that the bargaining sides for the first proposed agreement may decide to consolidate the bargaining for the 2 proposed agreements. 10
- (2) The chief executive's notification must explain the effects of—
- (a) consolidating bargaining (*see* **section 109**); and
  - (b) not consolidating bargaining (*see* **section 111**).

#### **109 Effect of decision to consolidate** 15

- (1) If a first proposed agreement and a second proposed agreement are consolidated into 1 ~~one~~ consolidated proposed agreement (the **consolidated proposed agreement**),—
- (a) the coverage of the consolidated proposed agreement is the coverage of the first proposed agreement, but extended to include the coverage of the second proposed agreement (unless both bargaining sides for each of the ~~first and second~~ 2 proposed agreements agree otherwise); and 20
  - ~~(b) the employee bargaining parties for the first proposed agreement and the second proposed agreement combine into one employee bargaining side for the consolidated proposed agreement; and~~ 25
  - ~~(c) the employer bargaining parties for the first proposed agreement and the second proposed agreement combine into one employer bargaining side for the consolidated proposed agreement (without the need to submit new applications under **Part 3**); and~~
  - (b) any employee bargaining parties for the first proposed agreement and any employee bargaining parties for the second proposed agreement combine into 1 employee bargaining side for the consolidated proposed agreement; and 30
  - (c) any employer bargaining parties for the first proposed agreement and any employer bargaining parties for the second proposed agreement combine into 1 employer bargaining side for the consolidated proposed agreement; and 35
  - (d) new bargaining parties may join the combined employee bargaining side or the combined employer bargaining side (as applicable); and

- (e) the obligations in **sections 36 to 44 39** (notification of initiating bargaining and provision of employee contact details) apply in relation to the consolidated proposed agreement; as though the chief executive had, on the consolidation date, publicly notified the approval of ~~an eligible~~ union's application to initiate bargaining for the consolidated proposed agreement. 5
- (2) Bargaining for the first proposed agreement may continue while the first proposed agreement and the second proposed agreement are in the process of being consolidated.
- (3) If 2 proposed agreements ~~a first proposed agreement and a second proposed agreement~~ are consolidated, the consolidation takes effect,— 10
- (a) if the chief executive notified the chief executive's approval to initiate bargaining for the second proposed agreement under **section 34** less than 6 months after the chief executive notified the chief executive's approval to initiate bargaining for the first proposed agreement under **section 34**, on the date on which the chief executive notifies the bargaining parties under **section 108(1)(c)**; or 15
- (b) on the date on which the bargaining sides for the first proposed agreement notify the initiating party for the second proposed agreement of the bargaining sides' decision to consolidate bargaining (under **section 108(1)(d)(ii)**). 20
- (4) No later than 5 working days after 2 proposed agreements are consolidated,—
- (a) the employee bargaining side for the first proposed agreement must provide a copy of its inter-party side agreement to the employee bargaining side for the second proposed agreement; and 25
- (b) the employer bargaining side for the first proposed agreement must provide a copy of its inter-party side agreement to the employer bargaining side for the second proposed agreement.
- 110 Bargaining party may request negotiation of inter-party side agreement**
- (1) When a bargaining side for a first proposed agreement and a bargaining side for a second proposed agreement combine into a bargaining side for a consolidated proposed agreement, a bargaining party on the bargaining side for the second proposed agreement may make a request to the bargaining side for the first proposed agreement that the combined bargaining side negotiate an inter-party side agreement for the combined bargaining side. 30 35
- (2) If a bargaining party decides to make a request referred to in **subsection (1)**,—
- (a) it must make the request within 20 working days of—
- (i) the date on which the chief executive provides notice under **section 108(1)(c)**; or 40

- (ii) the date on which a bargaining side ~~of~~ for the first proposed agreement notifies, under **section 108(1)(d)(ii)**, the initiating party of the second proposed agreement of the bargaining side's decision to consolidate bargaining for the agreements; and
- (b) the bargaining parties on the bargaining side for the consolidated proposed agreement must agree whether they will amend the inter-party side agreement, and if so, how. 5

### 111 Effect of decision not to consolidate

- (1) If the bargaining sides for the first proposed agreement decide not to consolidate bargaining for the ~~first proposed agreement with bargaining for the second proposed agreement~~ 2 proposed agreements (see **section 107(1)(b)**),— 10
  - (a) the bargaining sides for the second proposed agreement must bargain for the second proposed agreement separately from the bargaining for the first proposed agreement; and
  - (b) the chief executive— 15
    - (i) must not verify the later of the 2 proposed agreements ~~FPA~~s to be submitted under **section 147** as a stand-alone fair pay agreement; but
    - (ii) may verify the later proposed FPA, and validate it under **section 156**, in the form of an amendment that adds the later proposed FPA as a schedule of the fair pay agreement that is submitted for verification first. 20
- (2) Before validating a later proposed FPA as a schedule of an earlier fair pay agreement, the chief executive must—
  - (a) ~~assess~~ check the proposed FPA for coverage overlap in accordance with **section 151**; and 25
  - (b) be satisfied that the later proposed FPA—
    - (i) meets all of the requirements for a fair pay agreement; and
    - (ii) does not alter the terms of the fair pay agreement of which it is a schedule; and 30
    - (iii) has the same expiry date as the fair pay agreement of which it is a schedule.
- (3) For the purposes of **subsection (2)(b)(i)**, the chief executive may be satisfied that a later proposed FPA meets all of the requirements for a fair pay agreement despite it applying, contrary to **section 114(2)(a)**, for a period that is less than 3 years (as a result of complying with **subsection (2)(b)(iii)**). 35
- (4) If the chief executive is not satisfied that the later proposed FPA meets the requirements set out in **subsection (2)(b)**, the chief executive must, by written notice, advise the bargaining sides for the later proposed FPA of the reasons for not being satisfied. 40

*Addition of occupation to fair pay agreement***112 Proposed FPA that adds occupation to fair pay agreement**

- (1) This section applies if—
- (a) an industry-based agreement has been validated under **section 156** and is in force in an industry; and 5
  - (b) an initiating union initiates bargaining for an additional industry-based agreement that covers employees in 1 or more other occupations within the same industry.
- (2) In the circumstances described in **subsection (1)**, the chief executive—
- (a) must not validate the additional agreement as a stand-alone fair pay agreement under **section 156**; but 10
  - (b) may validate the additional agreement under **section 156** in the form of an amendment that adds the additional agreement as a schedule of the fair pay agreement that was in force earlier.
- (3) Before validating the additional agreement as a schedule of the earlier fair pay agreement, the chief executive must be satisfied that the additional agreement— 15
- (a) meets all of the requirements for a fair pay agreement; and
  - (b) does not alter the terms of the fair pay agreement of which it will become a schedule; and 20
  - (c) has the same expiry date as the fair pay agreement of which it will become a schedule.
- (4) For the purposes of **subsection (3)(a)**, the chief executive may be satisfied that the additional agreement meets all of the requirements for a fair pay agreement despite it applying, contrary to **section 114(2)(a)**, for a period that is less than 3 years (as a result of complying with **subsection (3)(c)**). 25
- (5) In this section and **section 113**, **additional agreement** means an additional industry-based agreement described in **subsection (1)(b)**.

**113 Chief executive to notify parties of existing fair pay agreement**

When ~~a~~ an initiating union initiates bargaining for an additional agreement ~~a~~ 30  
~~proposed FPA~~ in the circumstances set out in **section 112(1)**, the chief executive must—

- (a) notify the initiating union ~~that initiates bargaining~~ for the additional agreement—

  - (i) that a fair pay agreement has already been validated for the industry intended to be covered by the additional agreement; and 35

- (ii) that the additional agreement, once verified under **section 148**, will be validated as a schedule of the fair pay agreement that has already been validated under **section 156**; and
- (b) explain to the union that **section 112** applies and how **section 112** applies. 5

## Part 6 Content of fair pay agreements

### *Content of fair pay agreements*

#### 114 Mandatory content for each fair pay agreement

- (1) Each fair pay agreement must specify the following: 10
  - (a) the date on which the agreement comes into force:
  - (b) the coverage of the agreement (with sufficient clarity to determine ~~which class or classes of employees are~~ the work or type of work that is covered by the agreement):
  - ~~(e) the normal hours of work required of each class of employees covered by the agreement:~~ 15
  - (c) for each type of work covered by the agreement, and for each class of covered employees, the standard hours during which the minimum base wage rate is payable but penalty rates and overtime rates are not:
  - (d) the following details of wages to be paid to each class of covered ~~employees covered by the agreement~~: 20
    - (i) the minimum base wage rates, ~~and when the rates apply~~:
    - ~~(ii) whether the minimum base wage rates include or exclude the employer's contribution for superannuation (if any):~~
    - (iii) the rates of payment for any overtime worked, and when the rates apply: 25
    - (iv) penalty rates, and when the rates apply:
    - (v) in relation to minimum base wage rates, overtime rates, and penalty rates—
      - (A) the specified amount by which they must be adjusted; or 30
      - (B) the calculation that must be used to adjust them:
  - (da) the arrangements for training and development of covered employees:
  - (db) the leave entitlements of covered employees:
  - (e) the governance arrangements that will apply, in addition to the requirements set out in this Act, to the bargaining sides when the agreement is in force: 35

- (f) the process for each bargaining side to engage with the other bargaining side if a bargaining side requests agreement to bargain for a proposed variation or if bargaining to vary the agreement in accordance with **Part 8:**
- (g) the date on which the agreement expires. 5
- (2) For the purpose of determining the dates required under **subsection (1)(a) and (g)**,—
- (a) a fair pay agreement must apply for a period that is no less than 3 years, but no more than 5 years; and
- (b) a fair pay agreement must specify— 10
- (i) 1 commencement date, which must apply to each provision in the fair pay agreement; and
- (ii) 1 date on which it expires, which must apply to each provision in the fair pay agreement.
- (3) Despite **subsection (1)(d)**, a fair pay agreement may, in relation to minimum entitlement provisions (as defined in section 5 of the Employment Relations Act 2000), state that the minimum entitlements in the Minimum Wage Act 1983 and the Holidays Act 2003 apply without specifying the minimum entitlement in the agreement. 15
- (4) For the purpose of **subsection (1)(d)**, if the minimum base wage rates specified in a fair pay agreement include a starting-out rate of wages or a training rate of wages, the rates must be set in accordance with the requirements in sections 4A and 4B of the Minimum Wage Act 1983, except that the rates are specified in the agreement and not prescribed by Order in Council. 20
- (5) The mandatory content listed in **subsection (1)** must— 25
- (a) be specified in the form required in regulations; and
- (b) include all details required in regulations.
- (6) **Subsection (2)(b)(i)** is subject to the bargaining sides approving an employer's application for delayed commencement under **section 129**.
- 115 Topics that bargaining sides must discuss** 30
- (1) When bargaining for a proposed agreement ~~FPA, a proposed renewal, or a proposed replacement~~, the bargaining sides must discuss whether the proposed agreement ~~FPA, the proposed renewal, or the proposed replacement~~ will specify the following topics:
- (a) the objectives of the proposed agreement ~~FPA, the proposed renewal, or the proposed replacement (as applicable)~~; 35
- (b) health and safety requirements;
- ~~(c) arrangements relating to training and development;~~
- (d) arrangements relating to flexible working;



- (e) ~~leave entitlements;~~
- (f) arrangements relating to any redundancy.
- (2) A fair pay agreement is not required to include a provision that relates to a topic listed in **subsection (1)**, but may include such a provision if—
- (a) the bargaining parties to the proposed ~~agreement FPA, the proposed renewal, or the proposed replacement~~ agree to include it; or 5
- (b) the Authority determines under **section 214** that the proposed ~~agreement FPA, the proposed renewal, or the proposed replacement~~ must include such a provision.
- (3) ~~If a term that relates to the topic in **subsection (1)(e)** is included in a fair pay agreement, it must—~~ 10
- (a) ~~be specified in the form required in regulations; and~~
- (b) ~~include all details required in regulations.~~

#### 116 Limit on what fair pay agreement may include

- (1) The bargaining parties to a proposed ~~FPA, a proposed renewal, or a proposed replacement~~ agreement or a proposed variation may agree to include a term that is not related to mandatory content listed in **section 114** or a topic listed in **section 115**. 15
- (2) However, any term of a fair pay agreement that does not relate to the employment of covered employees, that is contrary to law, or that is inconsistent with this Act is void and has no application. 20

#### *Minimum entitlement provisions*

#### 117 Minimum entitlement provisions

A term of a fair pay agreement that relates to 1 or more of the following topics is, in relation to a covered employee, a minimum entitlement provision for the purposes of the Employment Relations Act 2000: 25

- (a) minimum base wage rates;
- (b) ~~how minimum base wage rates, overtime rates, or penalty rates may be adjusted by applying a calculation or a specified amount;~~
- (c) increases to the minimum entitlements provided under the Holidays Act 2003: 30
- (d) payment for any increases to the minimum entitlements provided under the Holidays Act 2003;
- (e) overtime rates ~~of payment for any overtime worked;~~
- (f) penalty rates. 35

#### 118 How minimum entitlement provisions must be expressed

A minimum entitlement provision in a fair pay agreement must—

- (a) be expressed as either—
  - (i) a specified amount; or
  - (ii) a method of calculating the rate of the entitlement; and
- (b) be specified in the form required in regulations; and
- (c) include all details required in regulations. 5

### 119 How minimum entitlement provisions relate to other legislation

- (1) A minimum entitlement provision in a fair pay agreement must not be contrary to a provision of, or an entitlement under, any of the following Acts:
  - (a) the Holidays Act 2003:
  - (b) the Minimum Wage Act 1983: 10
  - (c) the Wages Protection Act 1983.
- (2) However, if a minimum entitlement provision in a fair pay agreement provides a level of entitlement that is below the level required under an Act listed in **subsection (1)**,—
  - (a) the level of entitlement in the fair pay agreement does not apply; and 15
  - (b) the level of entitlement in the relevant listed Act applies.
- (3) If a fair pay agreement provides a minimum base wage rate that is higher than the minimum wage payable under the Minimum Wage Act 1983, the Acts listed in **subsection (1)** apply as if the minimum base wage rate provided under the fair pay agreement were the minimum wage provided under the Minimum Wage Act 1983. 20
- (4) If a fair pay agreement provides a leave entitlement that is higher than the leave entitlement under the Holidays Act 2003, the Acts listed in **subsection (1)** apply as if the leave entitlement provided under the fair pay agreement were the leave entitlement provided under the Holidays Act 2003. 25

#### Example

##### *Relationship between minimum entitlement and entitlement under fair pay agreement*

If the Minimum Wage Act 1983 sets the minimum wage for adult employees to be \$20 per hour, and a fair pay agreement provides that the minimum base wage rate for a covered—~~an~~ employee ~~covered by the agreement~~ is \$21 per hour, the employee is entitled to be paid the minimum base wage rate of \$21 per hour. 30

However, if the minimum wage under the Minimum Wage Act 1983 subsequently increases to \$22 per hour, an adult covered employee ~~covered by the fair pay agreement~~ is entitled to receive \$22 per hour, despite the agreement still providing a minimum base wage rate of \$21 per hour. 35

*Minimum wage rates***120 Minimum wage exemption permits**

- (1) If a Labour Inspector issues, under section 8 of the Minimum Wage Act 1983, a minimum wage exemption permit to ~~an a covered~~ employee in relation to ~~who is within the coverage of~~ a fair pay agreement, the rate from which the permit exempts the employee is the higher of— 5
- (a) the minimum rate of wages prescribed under the Minimum Wage Act 1983;
  - (b) the relevant minimum base wage rate set under the fair pay agreement.
- (2) However, **subsection (3)** applies if— 10
- (a) an employee was issued, before the date on which this Act came into force, with a minimum wage exemption permit under section 8 of the Minimum Wage Act 1983; and
  - (b) the employee is a covered employee in relation to ~~within the coverage of~~ a fair pay agreement; and 15
  - (c) the fair pay agreement sets a minimum base wage rate that is equal to or greater than the minimum adult wage rate set under section 4 of the Minimum Wage Act 1983.
- (3) In the circumstances described in **subsection (2)** and while the permit remains in force,— 20
- (a) if the permit is expressed as a percentage of the minimum adult wage rate set under section 4 of the Minimum Wage Act 1983, the rate of wages must be calculated by applying that percentage to the minimum base wage rate set in the fair pay agreement; or
  - (b) in all other cases, the rate of wages stated in the permit is the minimum rate of wages payable to the employee for the purpose of the Minimum Wage Act 1983 and the fair pay agreement. 25

**121 Differing minimum wage rates**

- (1) Subject to ~~subsections (2) and (4)~~ **section 121A(1) and (3) and 121B**, a fair pay agreement may, in addition to specifying a minimum base wage rate payable to covered employees, also specify— 30
- (a) a starting-out rate of wages; and
  - (b) a training rate of wages.
- ~~(2) A fair pay agreement may specify a starting out rate of wages if the rate—~~
- ~~(a) is payable only to an employee described in section 4A(1) of the Minimum Wage Act 1983; and~~ 35
  - ~~(b) is not less than 80% of the minimum base wage rate that is specified in the agreement and that would otherwise be payable to the employee.~~

- ~~(3) If a fair pay agreement specifies a starting-out rate of wages by reference to a factor specified in section 4A(1)(c)(i) or (ii), or both, of the Minimum Wage Act 1983, an employer of a covered employee to whom the rate applies—~~
- ~~(a) may pay the employee in accordance with that rate only until the earlier of—~~ 5
- ~~(i) the date on which the employee has completed 6 months' continuous employment (or any shorter period of continuous employment specified in the fair pay agreement) with any employer or the employee's current employer (as the case requires);~~
- ~~(ii) the day before the date on which the employee ceases to satisfy one or both of the criteria in section 4A(1)(a) and (b) of the Minimum Wage Act 1983; and~~ 10
- ~~(b) then must pay the employee no less than the minimum base wage rate specified in the fair pay agreement.~~
- ~~(4) To avoid doubt, if more than 1 starting out rate specified in a fair pay agreement applies to an employee, only the higher or highest rate applies.~~ 15
- ~~(5) In **subsection (3), continuous employment**, in relation to a covered employee,—~~
- ~~(a) means a continuous period of employment starting on the employee's first day of work; and~~ 20
- ~~(b) includes any employment undertaken by the employee before—~~
- ~~(i) the employee turns 16;~~
- ~~(ii) the commencement of this Act.~~
- ~~(6) A fair pay agreement may specify a minimum training rate only if the rate—~~
- ~~(a) is payable only to an employee described in section 4B(1) of the Minimum Wage Act 1983; and~~ 25
- ~~(b) is not less than 80% of the minimum base wage rate that is specified in the fair pay agreement and that would otherwise be payable to the employee.~~
- (7) The minimum base wage rates payable under a fair pay agreement are not payable to— 30
- (a) an employee who is receiving a starting-out rate of wages specified under the fair pay agreement;
- (b) an employee who is receiving a training rate of wages specified under the fair pay agreement: 35
- (c) an employee who has been issued a minimum wage exemption permit under section 8 of the Minimum Wage Act 1983.

### **121A Differing minimum wage rates: starting-out rate**

- (1) A fair pay agreement may specify a starting-out rate of wages if the rate—**

- (a) is payable only to an employee described in section 4A(1) of the Minimum Wage Act 1983; and
- (b) is not less than 80% of the minimum base wage rate that is specified in the agreement and that would otherwise be payable to the employee.
- (2) If a fair pay agreement specifies a starting-out rate of wages by reference to a factor specified in section 4A(1)(c)(i) or (ii), or both, of the Minimum Wage Act 1983, an employer of a covered employee to whom the rate applies— 5
- (a) may pay the employee in accordance with that rate only until the earlier of—
- (i) the date on which the employee has completed 6 months' continuous employment (or any shorter period of continuous employment specified in the fair pay agreement) with any employer or the employee's current employer (as the case requires); 10
- (ii) the day before the date on which the employee ceases to satisfy one or both of the criteria in section 4A(1)(a) and (b) of the Minimum Wage Act 1983; and 15
- (b) after the date determined under **paragraph (a)**, must pay the employee no less than the minimum base wage rate specified in the fair pay agreement.
- (3) To avoid doubt, if more than 1 starting-out rate specified in a fair pay agreement applies to an employee, only the higher or highest rate applies. 20
- (4) In **subsection (2)**, **continuous employment**, in relation to a covered employee,—
- (a) means a continuous period of employment starting on the employee's first day of work; and 25
- (b) includes any employment undertaken by the employee before—
- (i) the employee turns 16;
- (ii) the commencement of this Act.

### **121B Differing minimum wage rates: training rate**

- A fair pay agreement may specify a minimum training rate only if the rate— 30
- (a) is payable only to an employee described in section 4B(1) of the Minimum Wage Act 1983; and
- (b) is not less than 80% of the minimum base wage rate that is specified in the fair pay agreement and that would otherwise be payable to the employee. 35

*Differentiation of application and entitlement***122 Fair pay agreement may include differentiation**

- (1) Subject to **sections 13, 123, 125, and 126**, a fair pay agreement may include terms that apply to a class of covered employees that are different from the terms that apply to another class of covered employees covered by ~~who are within the coverage of~~ the same fair pay agreement. 5
- (2) Despite **subsection (1)**, a fair pay agreement must not include a term that applies differently to different classes of covered employees if the term relates to any of the following: 10
- (a) the objectives of the agreement:
  - (b) the date from which the agreement applies:
  - (c) the coverage of the agreement:
  - (d) the process for amending the agreement:
  - (e) the date on which the agreement expires.

**123 Fair pay agreement may include district variation for some provisions** 15

- (1) A fair pay agreement may include terms that apply to employees in a district that are different from the terms that apply to employees in another district.
- (2) **Subsection (1)** applies only to a term of a fair pay agreement that relates to any of the following: 20
- (a) the minimum base wage rates and when the rates apply:
  - (b) the process by which minimum base wage rates, overtime rates, or penalty rates may be adjusted:
  - ~~(e) the normal hours of work required of each employee covered by the agreement:~~
  - (c) for each type of work covered by the agreement, and for each class of covered employees, the standard hours during which the minimum base wage rate is payable, but penalty rates and overtime rates are not: 25
  - ~~(d) whether the base wage rate includes or excludes the employer's contribution for superannuation (if any):~~
  - (e) rates of payment for any overtime worked, and when the rates apply: 30
  - (f) penalty rates, and when they apply:
  - (g) leave entitlements:
  - (h) arrangements relating to any redundancy:
  - (i) arrangements relating to training and development ~~arrangements:~~
  - (j) health and safety requirements: 35
  - (k) arrangements relating to ~~for~~ flexible working.

- (3) **Subsection (1)** does not apply to a term of a fair pay agreement that relates to—
- (a) the objectives of the agreement; or
  - (b) the date from which the agreement applies; or
  - (c) the coverage of the agreement; or 5
  - (d) the process for each bargaining side to engage with the other bargaining side if a bargaining side requests agreement to bargain for a proposed variation or if bargaining to vary the agreement in accordance with **Part 8**; or
  - (e) the date on which the agreement expires; or 10
  - (f) the governance arrangements that will apply to the bargaining sides when the fair pay agreement applies.
- (4) A term that is included in a fair pay agreement in accordance with this section must—
- (a) be specified in the form required in regulations; and 15
  - (b) include all details required in regulations.

#### 124 Application of fair pay agreement with district variation

- (1) This section applies if a fair pay agreement includes terms that apply to a specific district.
- ~~(2) A covered employee is bound by the terms that apply in the district in which the employee works for the majority of the time that the employee is performing the work covered by the fair pay agreement.~~ 20
- (2) The terms of a fair pay agreement that apply in a specific district apply to a covered employee who works in the district for the majority of the time that the covered employee is performing the work covered by the fair pay agreement. 25
- (3) An employer and employee may agree which district's terms apply to the employee, but such an agreement is not binding and is not conclusive evidence of which district's terms apply in the circumstances.

#### 125 Permitted differentiation in minimum entitlement provision

- A fair pay agreement may include a minimum entitlement provision that applies differently to an employee or class of employees, but only if the difference is based on— 30
- (a) the district in which the employee or class of employee is employed (for example, terms may differ depending on whether the employee is employed in a role or occupation in the South Taranaki district or in the same role or occupation in the Whanganui district); or 35

- (b) the occupation of the employee or class of employee (for example, if an agreement applies to all hospital employees, the terms may differ depending on whether an employee is employed as a nurse or a cook); or
- (c) the role of the employee or class of employee within an occupation (for example if an agreement applies to all sales staff, the terms may differ depending on whether an employee is employed as an assistant sales consultant, a senior sales consultant, or a sales manager). 5

## 126 Prohibited differentiation

**Section 125** does not authorise a fair pay agreement to include a term that is contrary to any other law, for example— 10

- (a) the Employment Relations Act 2000 (*see* sections 103, 104, 105, and 106 of that Act);
- (b) the Equal Pay Act 1972;
- (c) the Human Rights Act 1993 (*see* sections 21 to 35 of that Act).

*Delayed commencement of term in fair pay agreement* 15

## 127 When delayed commencement can be considered

- (1) This section and **sections 128 and 129** apply—
  - (a) after the bargaining sides for a proposed agreement FPA, ~~a proposed renewal, or a proposed replacement~~ have agreed that bargaining is complete; but 20
  - (b) before the bargaining sides jointly submit the proposed agreement FPA, ~~the proposed renewal, or the proposed replacement~~ to the Authority for a compliance assessment under **section 132**.
- (2) This section and **sections 128 and 129** apply to a proposed agreement FPA, ~~a proposed renewal, or a proposed replacement~~ only if the bargaining sides for the proposed agreement FPA, ~~the proposed renewal, or the proposed replacement~~ agree— 25
  - (a) to consider applications from employers that wish to delay the commencement date of 1 or more terms of the proposed agreement FPA, ~~the proposed renewal, or the proposed replacement~~ for the employer; and 30
  - (b) a process by which an employer may apply for the commencement date of 1 or more terms of the proposed agreement FPA, ~~the proposed renewal, or the proposed replacement~~ to be delayed for the employer.

### Guidance note

**Sections 127 to 129** do not apply to a proposed variation because **section 169(3)(a)** provides that a variation is not permitted to relate to a term that specifies the date from which the fair pay agreement applies. 35



**128 Topics to which delayed commencement can relate**

An employer may apply for the commencement date of a term to be delayed for the employer if the term relates to 1 or more of the following topics:

- (a) minimum base wage rates, and when the rates apply:
- (b) how minimum base wage rates, overtime rates, or penalty rates may be adjusted by applying a calculation or a specified amount: 5
- ~~(c) whether the minimum base wage rate includes or excludes the employer's contribution for superannuation (if any):~~
- (d) rates of payment for any overtime worked, and when the rates apply:
- (e) penalty rates, and when they apply: 10
- (f) leave entitlements.

**129 Delayed commencement provision**

- (1) The bargaining sides must approve an employer's application for delayed commencement of 1 or more terms only if satisfied that—
  - (a) declining the employer's application would result in a less favourable overall outcome for the employer's employees than approving the application; and 15
  - (b) delaying commencement of the term or terms will allow the employer to arrange its business so that applying the proposed agreement ~~FPA, the proposed renewal, or the proposed replacement~~ will no longer result in a less favourable outcome for the employer's employees. 20
- (2) A delay to the commencement of 1 or more terms of a proposed agreement ~~FPA, a proposed renewal, or a proposed replacement~~ must be for less than 12 months.
- (3) If the bargaining sides approve an employer's application, the proposed agreement ~~FPA, the proposed renewal, or the proposed replacement~~ must be amended so that the commencement term specifies— 25
  - (a) for each term to which the approval relates,—
    - (i) the name of the employer; and
    - (ii) the date on which the term will commence for the employer; and 30
  - (b) the commencement date for the remainder of the proposed agreement ~~FPA, the proposed renewal, or the proposed replacement~~.

**Part 7****Finalisation of proposed agreement****130 Overview** 35

- (1) This Part sets out the process to bring a proposed agreement into force either—

- (a) after the bargaining process is completed, in which case **subparts 1 to 5** must be followed; or
  - (b) after the Authority has determined the terms of the proposed agreement, in which case **subparts 4 and 5** must be followed.
- (2) **Subpart 1** provides that the Authority must complete a compliance assessment and decide whether to approve a proposed agreement. 5
- (3) **Subpart 2** provides that a proposed agreement must be ratified.
- (4) **Subpart 3** provides that the chief executive must verify that a proposed agreement has been ratified.
- (5) **Subpart 4** requires the chief executive to ~~assess~~ check whether there is any coverage overlap between a proposed agreement and any fair pay agreement. 10
- (6) **Subpart 5** provides that the chief executive must issue a notice to bring a proposed agreement into force.

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**Guidance note**

This Part does not relate to proposed variations because **sections 174 to 179** set out the requirements for finalising a proposed variation. 15

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~~131~~ **Meaning of proposed agreement**

~~In this Part, **proposed agreement** means a proposed FPA, a proposed renewal, or a proposed replacement.~~

Subpart 1—Compliance assessment 20

**132 Bargaining sides to submit proposed agreement for compliance assessment**

- (1) When the bargaining sides for a proposed agreement agree that bargaining for the proposed agreement is complete, the bargaining side lead advocate for each bargaining side must—
- (a) jointly submit the proposed agreement to the Authority for a compliance assessment; and 25
  - (b) ensure that they submit the proposed agreement in the form prescribed in regulations.
- (2) A bargaining side lead advocate must not submit the proposed agreement for a compliance assessment unless— 30
- (a) the bargaining side lead advocate is satisfied that—
    - (i) both bargaining sides have agreed to the wording of the proposed agreement; and
    - (ii) the wording of the proposed agreement is in the form prescribed in any regulations; and 35
  - (b) the proposed agreement—
    - (i) is in writing; and

- (ii) is signed by the bargaining side lead advocate ~~for~~ of each bargaining side.

### 133 Authority to assess proposed agreement for compliance

- (1) The Authority must assess a proposed agreement that is submitted to the Authority, and must approve the proposed agreement only if— 5
- (a) it is satisfied that the terms of the proposed agreement comply with—
- (i) the requirements of this Act; and
- (ii) employment standards (as defined in section 5 of the Employment Relations Act 2000); and
- (iii) any other relevant employment law requirements; and 10
- (b) it has not identified any terms that are contrary to any other law.
- (2) There is no right of appeal from the Authority's decision whether or not to approve a proposed agreement.
- (3) However, despite the Authority approving a proposed agreement, a term of the proposed agreement may still be legally challenged on the basis that it is contrary to any other law. 15

### 134 Consequences if Authority does not approve proposed agreement

- (1) If the Authority does not approve a proposed agreement, it must advise the bargaining sides for the proposed agreement—
- (a) that it has not approved the proposed agreement; and 20
- (b) of the reasons for not approving the proposed agreement, including details of which part or parts of the proposed agreement do not comply with the requirements in **section 133**; and
- (c) that the bargaining sides may resubmit the proposed agreement for another compliance assessment, once the bargaining sides are satisfied that they have addressed the reasons for the Authority not approving the proposed agreement. 25
- (2) The bargaining sides may resubmit the proposed agreement as many times as necessary until the Authority approves the proposed agreement.

### 135 Authority to ~~check~~ assess whether coverage overlap exists 30

- (1) The Authority must, when a proposed agreement is submitted for a compliance assessment, ~~check~~ assess whether there is coverage overlap between the proposed agreement and ~~a~~ any fair pay agreement.
- (2) The Authority must, after fixing the terms of a proposed agreement under **section 218 or 228C**, ~~check~~ assess if there is coverage overlap between the proposed agreement ~~(including the terms fixed by the Authority)~~ and any fair pay agreement. 35

- (3) If the Authority decides that there is coverage overlap, it must determine which agreement provides the better terms overall.
- (4) ~~For the purpose of this section, the coverage of 2 agreements overlap if 1 or more employees are within the coverage of the proposed agreement and the fair pay agreement in respect of the same work.~~ 5
- 136 Time frame for Authority to assess proposed agreement**
- (1) The Authority must ~~consider~~ assess whether there is coverage overlap and notify the bargaining sides for a proposed agreement whether or not it has approved the proposed agreement—
- (a) as soon as ~~is reasonably~~ practicable after it receives the proposed agreement; but 10
- (b) no later than 20 working days after it receives the proposed agreement.
- (2) If the Authority approves the proposed agreement but also considers that there is coverage overlap, it must notify the bargaining sides for the proposed agreement that the Authority has provisionally approved the proposed agreement, subject to determining which agreement provides the better terms overall. 15
- (3) However, the Authority may advise the bargaining sides later than the date specified in **subsection (1)** if the Chief of the Authority decides that exceptional circumstances exist.
- 137 Time frame for Authority to determine which agreement provides better terms overall** 20
- (1) The Authority must notify the bargaining sides for a proposed agreement which agreement provides the better terms overall—
- (a) as soon as ~~is reasonably~~ practicable after it receives the proposed agreement; but 25
- (b) no later than 20 working days after it notifies the bargaining sides that it has provisionally approved the proposed agreement under **section 136(2)**.
- (2) However, the Authority may advise the bargaining sides later than the date specified in **subsection (1)** if the Chief of the Authority decides that exceptional circumstances exist. 30
- 138 How Authority determines which agreement provides better terms overall**
- (1) To determine whether the proposed agreement or the fair pay agreement provides the better terms overall, the Authority must—
- (a) consider only those terms that apply to the covered employees who are within the coverage of both agreements (the **overlapping terms**); and 35
- (b) assess which agreement's overlapping terms, when considered overall, provide the better terms for the majority of the covered employees who are within the coverage of both agreements.

- (2) The Authority’s determination that an agreement provides better terms overall does not mean that each of its overlapping terms is better than each of the overlapping terms of the other agreement.

### 139 Consequences of Authority’s determination

- (1) If a fair pay agreement (**agreement A**) and a proposed agreement (**agreement B**) have coverage overlap and, as a result, the Authority determines which agreement has the better terms overall, **subsections (2) and (3)** set out the consequences for the coverage of each agreement. 5
- (2) If the Authority determines that agreement A provides better terms overall,—
- (a) the Authority must advise both bargaining sides for agreement B— 10
- (i) of the need to change the coverage of agreement B; and
- (ii) of the requirements set out in **paragraphs (b) to (f)**; and
- (b) the bargaining sides for agreement B must amend the coverage of agreement B to remove the ~~employees who are~~ work that is within the coverage of both agreement A and agreement B; and 15
- (c) each employee who, as a result of **paragraph (b)**, is no longer within the coverage of agreement B—
- (i) is not entitled to vote in the ratification process for agreement B; and
- (ii) remains a covered employee within the coverage of agreement A; 20
- (d) each employer who, as a result of **paragraph (b)**, no longer employs ~~an~~ a covered employee who is within the coverage of agreement B—
- (i) is not entitled to vote in the ratification process for agreement B; and 25
- (ii) remains a covered employer within the coverage of agreement A; and
- (e) the employee bargaining side for agreement B must use its best endeavours to advise each employee who, as a result of **paragraph (b)**, is no longer within the coverage of agreement B (other than an employee who has elected, in accordance with **section 36(2)(d)(ii)**, not to have their contact details provided) that the employee is not entitled to vote in the ratification process for agreement B; and 30
- (f) the employer bargaining side for agreement B must use its best endeavours to advise each employer who, as a result of **paragraph (b)**, no longer employs an employee who is within the coverage of agreement B that the employer is not entitled to vote in the ratification process for agreement B. 35
- (3) If the Authority determines that agreement B provides better terms overall,—

- (a) the Authority must advise both bargaining sides for agreement B—
- (i) that the proposed coverage of agreement B remains as proposed; and
  - (ii) of the requirements set out in **paragraphs (b) to (h)**; and
- (b) the Authority must advise both bargaining sides for agreement A— 5
- (i) that it has determined that agreement B provides better terms overall; and
  - (ii) of the requirements set out in **paragraphs (c) and (d)**; and
- (c) each covered employee who is within the coverage of agreement B is entitled to vote in the ratification process, despite also being a covered employee within the coverage of agreement A; and 10
- (d) each covered employer ~~of an employee who is within the coverage of in relation to~~ agreement B is entitled to vote in the ratification process, despite ~~the employee~~ also being a covered employer in relation to ~~within the coverage of~~ agreement A; and 15
- (e) on the date on which agreement B comes into force, the work that is employees who are within the coverage of both agreement A and agreement B will be removed from the coverage of agreement A; and
- (f) the employee bargaining side for agreement B must use its best endeavours to advise each covered employee who is within the coverage of both agreement A and agreement B (other than an employee who has elected, in accordance with **section 36(2)(d)(ii)**, not to have their contact details provided) that— 20
- (i) the Authority has determined that agreement B provides better terms overall; and 25
  - (ii) as a result of the determination, the employee is entitled to vote in the ratification process for agreement B; and
  - (iii) if agreement B is ~~ratified~~ validated, the employee would no longer be a covered employee within the coverage of ~~covered by~~ agreement A but would be a covered employee within the coverage of ~~covered by~~ agreement B; and 30
- (g) the employer bargaining side for agreement B must use its best endeavours to advise each covered employer in relation to ~~that employs an employee who is within the coverage of~~ both agreement A and agreement B that— 35
- (i) the Authority has determined that agreement B provides better terms overall; and
  - (ii) as a result of the determination, the covered employer is entitled to vote in the ratification process for agreement B; and

- (iii) if agreement B is ~~is ratified~~ validated, the covered employer's employees who were within the coverage of both agreement A and agreement B would no longer be covered employees in relation to ~~covered by~~ agreement A but would be covered employees in relation to ~~covered by~~ agreement B; and 5
- (h) if the chief executive ~~verifies the ratification process and ratification vote for~~ validates Agreement B, agreement B (in accordance with ~~subpart 3~~ subpart 5), the chief executive must also amend agreement A to remove the work or type of work that is ~~employees who are~~ within the coverage of both agreement A and agreement B; from the coverage of agreement A. 10

### Subpart 2—Ratification

#### 140 Approved proposed agreement to be ratified

- (1) This subpart applies in relation to a proposed agreement if the Authority— 15
- (a) has approved the proposed agreement under **section 133**; and
- (b) has ~~checked~~ assessed, under **section 135**, if there is coverage overlap between the proposed agreement and a fair pay agreement and, if so, determined which agreement provides the better terms overall.
- (2) Before the bargaining side lead advocates for each bargaining party for the proposed agreement jointly submit the proposed agreement to the chief executive for verification, it must be ratified in accordance with— 20
- (a) this subpart; and
- (b) the ratification process set by the relevant bargaining side.

#### 141 Provision of information prior to ratification

- (1) No later than 5 working days after the Authority has approved a proposed agreement under **section 133** or 5 working days after the Authority has notified the bargaining sides of its determination under **section 137**,— 25
- (a) the employee bargaining side must use its best endeavours to notify all covered employees (other than employees who have elected, in accordance with **section 36(2)(d)(ii)**, not to have their contact details provided to the initiating union) that a ratification vote will soon be held; and 30
- (b) the employer bargaining side must use its best endeavours to notify all covered employers that a ratification vote will soon be held.
- (2) No later than 15 working days after being notified under **subsection (1)(b)**, each covered employer must— 35
- (a) advise each of its covered employees—
- (i) that a ratification vote for the proposed agreement will soon be held; and

- (ii) that a previous election not to have their contact details provided to the employee bargaining side does not apply for the purposes of this section; and
- (iii) that the employee may, within 5 working days of being advised, elect not to have their details provided under this section by completing and returning the form provided by the employer under **paragraph (b)**; and 5
- (iv) of the name and contact details of the initiating union or the name and updated contact address of the employee bargaining side if provided to the employer under ~~section 99~~ **section 102B**; and 10
- (b) provide a form, approved and issued by the chief executive under **section 243** that sets out the following information:
- (i) that an employer is required to provide contact details for each of the employer's covered employees to the employee bargaining side, unless the employee elects not to have their contact details provided; and 15
- (ii) the process by which an employee who does not want their contact details to be provided to the employee bargaining side can elect not to have their contact details provided; and
- (iii) the name of the employee bargaining side; and 20
- (iv) the reason for providing the employee's contact details to the employee bargaining side; and
- (v) an explanation of to whom the employee bargaining side is able to provide the employee's contact details; and
- (vi) an explanation of the purposes for which the employee's contact details may be used; and 25
- (vii) the consequences of the employee electing not to have their contact details provided; and
- (viii) how an employee who has elected not to have their contact details provided can rescind that election so that the employer must provide the employee's contact details to the employee bargaining side; ~~and~~ 30
- (ix) how to determine whether the employee is entitled to vote in the ratification vote.
- (3) The employer must provide the contact details specified in ~~section 39(1)(a)~~ ~~to (f)~~ about of each of its covered employees to the email address provided by the employee bargaining side, except for the details for those employees who, after receiving the form required under **subsection (2)(b)**, have elected not to have their contact details provided. 35



- (4) The employer must provide the contact details to the employee bargaining side ~~no later than 10 working days after the date on which the employer complies with **subsection (2)**.~~—
- (a) in an electronic format; and
- (b) no later than 10 working days after the date on which the employer complies with **subsection (2)**. 5
- (5) At least 5 working days before the covered employees and covered employers vote whether to ratify a proposed agreement,—
- (a) the employee bargaining side must ensure that all covered employees for whom the bargaining side has contact details have access to— 10
- (i) a copy of the proposed agreement; and
- (ii) a plain language summary of the proposed agreement; and
- (b) the employer bargaining side must ensure that all covered employers that the bargaining side is aware of have access to—
- (i) a copy of the proposed agreement; and 15
- (ii) a plain language summary of the proposed agreement.
- (6) An employer who intentionally or recklessly fails to comply with **subsection (2), (3), or (4)** is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**.
- 142 Time frame for holding ratification vote** 20
- (1) ~~When setting the date on which covered employees will vote whether to ratify a proposed agreement, the employee bargaining side must set a date that is at least 40 working days after the date on which the Authority notifies the bargaining sides—~~
- (a) ~~that it has approved the proposed agreement under **section 136(1)**; or~~ 25
- (b) ~~of the outcome of the coverage overlap assessment under **section 137**.~~
- (2) ~~When setting the date on which covered employers will vote whether to ratify a proposed agreement, the employer bargaining side must set a date that is at least 10 working days after the date on which the Authority notifies the bargaining sides—~~ 30
- (a) ~~that it has approved the proposed agreement under **section 136(1)**; or~~
- (b) ~~of the outcome of the coverage overlap assessment under **section 137**.~~
- (1) The employee bargaining side must, when setting the date on which covered employees will vote whether to ratify a proposed agreement, ensure that the vote takes place— 35
- (a) as soon as practicable; but
- (b) on a date that is at least 40 working days after the date on which the Authority notifies the bargaining sides—

- (i) that it has approved the proposed agreement under **section 136(1)**; or
- (ii) of the outcome of the coverage overlap assessment under **section 137**.
- (2) The employer bargaining side must, when setting the date on which covered employers will vote whether to ratify a proposed agreement, ensure that the vote takes place— 5
- (a) as soon as practicable; but
- (b) on a date that is at least 10 working days after the date on which the Authority notifies the bargaining sides— 10
- (i) that it has approved the proposed agreement under **section 136(1)**; or
- (ii) of the outcome of the coverage overlap assessment under **section 137**.
- 143 Bargaining sides to notify of ratification vote** 15
- (1) At least 10 working days before the date on which a ratification vote for a proposed agreement is to take place,—
- (a) the employee bargaining side must provide the information set out in **subsection (3)** to each covered employee for whom the bargaining side has contact details; and 20
- (b) the employer bargaining side must use its best endeavours to provide the information set out in **subsection (3)** to each covered employer.
- (2) The bargaining side must provide the information—
- (a) in writing; and
- (b) to each covered employee or each covered employer (as applicable) individually (for example, it could be emailed to all covered employees, but could not be posted on a staff Intranet page). 25
- (3) The following information must be provided:
- (a) advice that the recipient of the information ~~is~~ may be entitled to vote for or against ratifying the proposed agreement; and 30
- (aa) how the employee or employer can determine whether they are entitled, in accordance with **section 143A**, to vote in the ratification vote; and
- (b) the first date on which the recipient is able to cast their vote; and
- (c) the final date by which the recipient may cast their vote; and
- (d) the methods by which the recipient is able to cast their vote; and 35
- (e) the consequences of the ratification vote for the proposed agreement.

- (4) For the purpose of **subsection (3)(d)**, at least one method for casting a vote must enable the recipient to vote other than at the recipient's workplace (for example, postal voting or online voting).

#### **143A Entitlement to vote in ratification vote**

- (1) An employee is entitled to vote in a ratification vote if, when the ratification vote takes place, the employee considers that, if the proposed agreement is validated under **section 156**,— 5
- (a) the employee will perform work or a type of work that will be within the coverage of the fair pay agreement; and
- (b) 25% or more of the work that the employee performs will be within the coverage of the fair pay agreement. 10
- (2) For the purposes of determining whether an employee is entitled to vote in a ratification vote,—
- (a) if 25% or more of the employee's work will be within the coverage of the fair pay agreement, but the employee's work is within the coverage of another fair pay agreement, the employee is entitled to vote only if the proposed agreement covers a greater portion of the employee's work than the other fair pay agreement; and 15
- (b) the percentage of the work that the employee works must be assessed based on the work the employee has performed during a reasonable period prior to the date of the assessment, taking into account the employee's particular circumstances. 20
- (3) An employer is entitled to vote if, when the ratification vote takes place, the employer considers that, if the proposed agreement is validated under **section 156**, the employer will employ at least 1 employee who will be a covered employee in relation to the fair pay agreement. 25

#### **144 Ratification process**

- (1) For a proposed agreement to be ratified, there must be—
- (a) a vote of the covered employees; and
- (b) a vote of the covered employers. 30
- (2) For the purpose of **subsection (1)(a)**,—
- (a) each covered employee who is entitled to vote is entitled to 1 vote;
- (b) the covered employees ratify the proposed agreement if more than half of the employees who vote, vote in favour of ratification.
- (3) For the purpose of **subsection (1)(b)**,— 35
- (a) a covered employer who has—
- (i) fewer than 21 employees who the employer considers are entitled to vote ~~within the coverage of the proposed agreement~~ is entitled

to the number of votes set out in the second column of **Schedule 2** that is opposite the number of the employer's covered employees (and who are entitled to vote) set out in the first column:

- (ii) 21 or more employees who the employer considers are entitled to vote ~~within the coverage of the proposed agreement~~ is entitled to 1 vote for each of ~~the employer's~~ those employees ~~who are within the coverage of the agreement~~ (for example, if a covered employer has 25 employees who the employer considers are entitled to vote ~~within the coverage of the proposed agreement~~, the employer has 25 votes):

- (b) the covered employers ratify the proposed agreement if more than half of the votes from those employers are in favour of ratification.

#### 145 Notification of outcome of ratification vote

- ~~(1) As soon as is reasonably practicable after a bargaining side completes its ratification vote for a proposed agreement, it must inform the other bargaining side for the proposed agreement of the outcome of the ratification vote.~~ 15

- (1) A bargaining side must, no later than 5 working days after the results of its ratification vote are finalised, inform the other bargaining side for the proposed agreement of the outcome of the ratification vote. 20

- (2) If the results of both the ratification vote of the covered employees and the ratification vote of the covered employers are in favour of ratification, each bargaining side must submit evidence of the results of its ratification vote to the chief executive under **section 147**.

- (3) If the result of the ratification vote of the covered employees or the ratification vote of the covered employers is against ratification,— 25

- (a) if the ratification vote is the first ratification vote for the proposed agreement, the bargaining sides must restart bargaining for the proposed agreement; or

- (b) if the ratification vote is the second ratification vote for the proposed agreement, the bargaining side lead advocate for either bargaining side may apply to the Authority for a determination to fix the terms of the proposed agreement. 30

#### 146 Obligation to keep records of ratification

- (1) Each bargaining side for a proposed agreement must keep records of— 35

- (a) the process followed to vote on whether to ratify the proposed agreement; and

- (b) the votes cast on whether to ratify the proposed agreement.

- (2) A bargaining side must ensure that its records are adequate to demonstrate that— 40

- (a) the bargaining side held the ratification vote in accordance with this Act and any process agreed by the bargaining side; and
- (b) each vote was cast by a person who was eligible to vote.

### Subpart 3—Verification

- 147 Bargaining sides must submit evidence of ratification for verification** 5
- (1) **Subsection (2)** applies if—
- (a) each bargaining side for a proposed agreement has completed a ratification vote, including counting all eligible votes; and
  - (b) the ratification vote of each bargaining side is in favour of ratifying the proposed agreement. 10
- (2) Each bargaining side for the proposed agreement must, as soon as ~~is reasonably~~ practicable, submit—
- (a) evidence of the following to the chief executive:
    - (i) the ratification process followed; and
    - (ii) the results of the ratification vote; and 15
    - (iii) if the bargaining side is an employer bargaining side, ~~the number of covered employees employed by each employer who voted, and the number of votes cast by each covered employer; and~~
      - (A) for each employer who voted, the number of the employer's employees who the employer considers to be entitled to vote under **section 143A**; and 20
      - (B) the number of votes cast by each employer; and
  - (b) a statutory declaration to the chief executive that the bargaining side held its ratification vote in accordance with a process agreed by the bargaining side; and 25
  - (c) a copy of the proposed agreement, which must include the title of the proposed agreement.
- 148 Chief executive to verify ratification**
- (1) The chief executive must, after receiving the evidence submitted under **section 147** from both bargaining sides for a proposed agreement, verify the proposed agreement if satisfied that— 30
- (a) each bargaining side has followed the ratification process—
    - (i) required under this Act; and
    - (ii) agreed by the bargaining parties on the bargaining side; and
  - (b) each vote was cast by a person who was eligible-entitled to vote; and 35
  - (c) each covered employer cast the number of votes determined under **section 144(3)**; and

- (d) the result of each ratification vote is to ratify the proposed agreement.
- (2) The chief executive may, if not satisfied that a bargaining side has submitted sufficient evidence to enable the chief executive to decide whether to verify the proposed agreement, require the bargaining side to provide further evidence (for example, further evidence that each employer or employee who voted in the ratification vote was ~~eligible~~ entitled to vote). 5
- (3) A bargaining side, if required to provide further evidence, must provide the evidence in writing and as soon as ~~is reasonably~~ practicable.
- (4) Before deciding whether to verify a proposed agreement, the chief executive must ~~remove any inaccurate information from the evidence provided by a bargaining side, and decide whether to verify the proposed agreement based on the remaining evidence. —~~ 10
- (a) not take into account any evidence provided by a bargaining side, if the chief executive reasonably believes that evidence to be inaccurate; and
- (b) decide whether to verify the proposed agreement based on the remaining evidence. 15
- (4A) For the purposes of **subsection (1)**, the chief executive is not required to consider each vote cast, but may be satisfied by considering a sample of votes cast.
- (5) The chief executive must decide whether to verify a proposed agreement by the later of— 20
- (a) 20 working days after the date on which the chief executive receives the evidence required under **section 147** from both bargaining sides for the proposed agreement; and
- (b) 20 working days after the date on which the chief executive receives any further evidence required to be provided under **subsection (2)**. 25

#### 149 Consequences if chief executive declines to verify ratification

- (1) If the chief executive declines to verify a proposed agreement, the chief executive must require 1 or both bargaining sides to undertake the ratification process again, in accordance with— 30
- (a) this Act; and
- (b) the ratification process agreed by the bargaining parties on the relevant bargaining side.
- (2) If required to undertake the ratification process again, a bargaining side must resubmit the evidence required under **section 147** to the chief executive for verification. 35
- (3) If a bargaining side resubmits evidence for verification, the chief executive must consider the evidence in accordance with this subpart.

**150 Penalty for providing inaccurate information**

- (1) A bargaining party that intentionally or recklessly provides inaccurate information to the chief executive under this subpart is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**.
- (2) A covered employer is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196** if the employer intentionally or recklessly provides the employer bargaining side for a proposed agreement with inaccurate information about—
- (a) the number of covered employees that the employer employs;
  - (b) the number of votes that the employer is entitled to cast or has cast.

Subpart 4—~~Chief executive's assessment of~~ executive to check for overlapping coverage

**151 Chief executive to ~~assess~~ check whether coverage overlap exists**

- (1) The chief executive must, after verifying a proposed agreement under **section 148** but before issuing a fair pay agreement notice under **section 156**, ~~assess~~ check whether there ~~is~~ may be coverage overlap between the proposed agreement and any fair pay agreement.
- (2) If the chief executive concludes that there is no coverage overlap, the chief executive may validate the proposed agreement in accordance with **subpart 5**.

**152 Consequences if coverage overlap may exists** 20

If the chief executive concludes that there ~~is~~ may be coverage overlap between a proposed agreement and a fair pay agreement, the chief executive must advise the bargaining parties for the proposed agreement that—

- (a) the chief executive has concluded that there ~~is~~ may be coverage overlap between the proposed agreement and the fair pay agreement; and
- (b) the bargaining side lead advocate for each bargaining side must submit the proposed agreement to the Authority for the Authority to ~~determine, in accordance with section 138, whether the proposed agreement or the fair pay agreement provides the better terms overall.~~ make the determinations specified in section 153(1).

**153 Authority to make determinations relating to coverage overlap ~~determine which agreement provides better terms overall~~**

- (1) The Authority must, when a proposed agreement is submitted under **section 152**, ~~determine, in accordance with section 138, whether the proposed agreement or the fair pay agreement provides the better terms overall.~~
- (a) whether there is coverage overlap between the proposed agreement and the fair pay agreement; and

- (b) if it determines that there is coverage overlap, in accordance with **section 138**, whether the proposed agreement or the fair pay agreement provides the better terms overall.
- (2) The Authority must make its determination ~~in accordance with the time frame specified in **section 137**.~~ 5
- (a) under **subsection (1)(a)** no later than 10 working days after the proposed agreement is submitted; or
- (b) under **subsection (1)(b)** in accordance with the time frame specified in **section 137**.
- 154 Consequences of Authority’s determination: proposed agreement provides better terms overall** 10
- (1) If the Authority determines, in accordance with **section 153(1)** that the proposed agreement provides better terms overall than the fair pay agreement, the Authority must notify the chief executive of that fact.
- (2) After being notified under **subsection (1)**, the chief executive— 15
- (a) must notify the bargaining sides for the proposed agreement and the fair pay agreement that—
- (i) the Authority has determined that the proposed agreement provides the better terms overall; and
- (ii) as a result of that determination, the chief executive will amend the coverage of the fair pay agreement so that the work or type of work that is ~~employees who were~~ within the coverage of the proposed agreement and the fair pay agreement will only be ~~covered by~~ within the coverage of the proposed agreement when it is validated; and 20
- (b) must issue a fair pay agreement notice that amends the coverage of the fair pay agreement so that it no longer covers the work or type of work that is ~~any employees who are~~ covered by the proposed agreement; and
- (c) after amending the coverage of the fair pay agreement, may validate the proposed agreement in accordance with **subpart 5**. 30
- (3) The employee bargaining side for the proposed agreement must inform each covered employee who is also a covered employee in relation to ~~covered by~~ the fair pay agreement—
- (a) that the Authority has determined that the proposed agreement provides better terms overall than the fair pay agreement; and 35
- (b) of the consequences of that determination.
- (4) The employer bargaining side for the proposed agreement must inform each covered employer that is also a covered employer in relation to ~~under~~ the fair pay agreement—



- (a) that the Authority has determined that the proposed agreement provides better terms overall than the fair pay agreement; and
  - (b) of the consequences of that determination.
- (5) For the purposes of **subsection (2)(a)-and, (b), and (c)**, the date on which the coverage of the fair pay agreement is amended must be the same date as the date on which the proposed agreement is validated and comes into force. 5

**155 Consequences of Authority’s determination: fair pay agreement provides better terms overall**

- (1) If the Authority determines, in accordance with **section 153(1)** that the fair pay agreement provides better terms overall than the proposed agreement, the Authority must notify the chief executive of that fact. 10
- (2) After being notified under **subsection (1)**, the chief executive—
  - (a) must notify the bargaining sides for the proposed agreement that—
    - (i) the Authority has determined that the fair pay agreement provides the better terms overall; and 15
    - (ii) as a result of that determination, the chief executive will amend the coverage of the proposed agreement so that it no longer covers the work or type of work that is ~~any employees who are~~ covered by the fair pay agreement; and
  - (b) must amend the coverage of the proposed agreement so that it no longer covers the work or type of work that is ~~any employees who are~~ covered by the fair pay agreement; and 20
  - (c) after amending the coverage of the proposed agreement, may validate the proposed agreement in accordance with **subpart 5**.
- (3) The employee bargaining side for the proposed agreement must inform each covered employee who is also a covered employee under the fair pay agreement— 25
  - (a) that the Authority has determined that the fair pay agreement provides better terms overall than the proposed agreement; and
  - (b) of the consequences of that determination. 30
- (4) The employer bargaining side for the proposed agreement must inform each covered employer that is also a covered employer under the fair pay agreement—
  - (a) that the Authority has determined that the fair pay agreement provides better terms than the proposed agreement; and 35
  - (b) of the consequences of that determination.

## Subpart 5—Issuing fair pay agreement notice

*Chief executive to issue fair pay agreement notice***156 Chief executive ~~may to~~ issue fair pay agreement notice**

- (1) ~~The Subject to **subsection (2)**, the chief executive may, in accordance with this subpart, must, if satisfied that it complies with this Act,—~~ 5
- (a) validate the terms of a ~~fair pay proposed~~ agreement by issuing a fair pay agreement notice in accordance with this subpart; or
- (b) for the purpose of **section 139 or 154**, validate a variation of a fair pay agreement by issuing a fair pay agreement notice that amends the coverage of a fair pay agreement in accordance with this subpart. 10
- (2) ~~However, the~~ The chief executive must not issue a fair pay agreement notice unless—
- (a) the chief executive—
- (i) has verified the ratification process and ratification vote for the proposed agreement in accordance with **subpart 3**; and 15
- (ii) has ~~assessed~~ checked whether there is coverage overlap between the proposed agreement and any other fair pay agreement; and
- (iii) is satisfied that the chief executive and the Authority have complied with the requirements of **subpart 4**; or
- (b) the Authority has fixed the terms of the proposed agreement in accordance with **section 218 or 228C**. 20
- (2A) If the chief executive is not satisfied that the requirements of **subpart 4** have been complied with, the chief executive must, by written notice, advise the bargaining sides for the proposed agreement of the reasons for not being satisfied.
- (3) A notice issued under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 25

**157 Form and content of notice**

- (1) Each notice issued under **section 156(1)(a)** must set out the terms of a fair pay agreement, which must be in the form prescribed by any regulations and,—
- (a) for the purpose of **section 156(2)(a)**, must be the terms that were ratified by the ratification vote that the chief executive verified under **subpart 3**; or 30
- (b) for the purpose of **section 156(2)(b)**, must be the terms determined by the Authority.
- (2) However, a notice issued under **section 156(1)(b)** to amend the coverage of a fair pay agreement— 35
- (a) is not required to set out the terms of the fair pay agreement; but

(b) must be in the form prescribed in regulations.

### 158 Notification to bargaining sides

(1) If the chief executive issues a notice under **section 156(1)(a)**, the chief executive must notify each bargaining side for the fair pay agreement that the chief executive has issued the notice. 5

(2) If the chief executive issues a notice under **section 156(1)(b)**, the chief executive must notify each bargaining side for the fair pay agreement that the chief executive has issued the notice to amend the coverage of the fair pay agreement.

### 159 Chief executive may make editorial changes

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(1) The chief executive may make the following changes to a fair pay agreement that the chief executive has validated under **section 156**:

~~(a) language that indicates or could be taken to indicate a particular gender may be changed to gender neutral language:~~

(b) a reference to the name or title of a body, an office, a person, a place, or a thing that has been changed may be replaced with a reference to the name or title as changed: 15

(c) a reference to a body, an office, a person, a place, or a thing that has been replaced by another body, office, person, place, or thing may be changed to a reference to the replacement body, office, person, place, or thing: 20

~~(d) unnecessary referential words may be omitted:~~

(e) changes may be made to words in the Māori language (te reo Māori) to reflect current orthographic conventions:

~~(f) punctuation may be changed or omitted, or new punctuation inserted, so as to be consistent with current drafting practice:~~ 25

~~(g) conjunctives and disjunctives may be inserted, omitted, or changed so as to be consistent with current drafting practice:~~

~~(h) changes may be made to the way numbers, dates, times, quantities, measurements, and similar matters, ideas, or concepts are referred to or expressed so as to be consistent with current drafting practice:~~ 30

(i) obvious errors of the following kinds may be corrected:

(i) typographical and clerical errors:

(ii) grammatical and spelling errors, and errors of punctuation:

(iii) errors in numbering, cross-referencing, and alphabetical ordering: 35

(iv) any other errors of a similar nature:

(j) changes may be made that are purely consequential on any other change authorised by this section:

- (k) changes may be made to the format of a fair pay agreement so that the format is easier to read or use.
- (2) This section does not permit the chief executive to change the effect of a fair pay agreement.

*Application and effect of fair pay agreement*

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**160 Application of notice and fair pay agreement**

- (1) A notice issued under **section 156** comes into force on the later of—
- (a) the date set out in the fair pay agreement as the date on which the agreement comes into force (excluding any delayed commencement approved under **section 129**); and 10
- (b) the date on which the chief executive issues the notice.
- (2) From the date on which the notice comes into force, a fair pay agreement specified in the notice ~~binds~~ applies to—
- (a) each covered employee who is within the coverage of the agreement (whether or not the employee is a union member); and 15
- (b) each covered employer that employs at least 1 employee described in **paragraph (a)**.
- (3) After the date on which the notice comes into force, a fair pay agreement also ~~binds~~ applies to—
- (a) an employee who was not within the coverage of the fair pay agreement on the date on which the notice came into force ~~commencement date~~ but who subsequently becomes a covered employee ~~commences employment in a role that is within the coverage of the agreement~~, in which case the agreement applies to ~~binds~~ the employee from the date on which the employee becomes a covered employee ~~commences the employment~~: 20 25
- (b) an employer who on the date on which the notice came into force ~~commencement date~~ did not employ any covered employees, but who subsequently employs an employee who is a covered employee in relation to the fair pay agreement, in which case the agreement applies to the employer from the date on which the employee becomes a covered employee ~~employer commences to employ the covered employee~~: 30
- (c) a covered employer who has a delayed commencement date specified for 1 or more terms in the fair pay agreement, in which case each term of the agreement applies to the covered employer and the employer's covered employees from the relevant date specified in the fair pay agreement for that employer. 35
- (4) However, if, after the date on which the notice comes into force ~~commencement date~~,—

- (a) an employee ceases to be a covered employee ~~employed in a role that is within the coverage of the agreement~~, the agreement ceases to ~~cover~~ apply to the employee from the date on which they cease to be a covered employee ~~employed within the coverage of the agreement~~;
- (b) an employer ceases to employ any covered employees, the fair pay agreement ceases to ~~cover~~ apply to the employer from the date on which they cease to employ any covered employees. 5

### **160A Threshold to be covered employee for fair pay agreement**

- (1) An employee meets the threshold to be a covered employee in relation to a fair pay agreement if— 10
- (a) the employee performs work or a type of work that is within the coverage of the fair pay agreement; and
- (b) 25% or more of the work that the employee performs is within the coverage of the fair pay agreement.
- (2) For the purposes of determining whether an employee meets the threshold,— 15
- (a) if 2 or more fair pay agreements cover 25% or more of the work that the employee performs, the employee is a covered employee only in relation to the fair pay agreement that covers the greater percentage of the work that the employee performs; and
- (b) the percentage of the work that the employee performs must be assessed based on the work the employee has performed during a reasonable period prior to the date of the assessment, taking into account the employee's particular circumstances. 20

### **161** Obligation to comply with fair pay agreement

- (1) ~~A party to a fair pay agreement must comply with each term of the fair pay agreement.~~ 25
- (1) Subject to **section 162**, a covered employee in relation to a fair pay agreement is entitled to receive from their employer at least the employment terms specified in the fair pay agreement.
- (2) Subject to **subsection (3A)**, a ~~A~~ failure by a covered employer to comply with **subsection (1)** ~~a term of a fair pay agreement~~ is deemed to be a breach of this Act. 30
- (3) ~~A party to~~ Subject to **subsection (3A)**, a covered employer for a fair pay agreement that fails to comply with the fair pay agreement is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 197**, but is not liable to a penalty under the Employment Relations Act 2000.— 35
- (a) is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 197**; but

- (b) is not liable to a penalty under section 134 of the Employment Relations Act 2000 in respect of the same failure to comply with the fair pay agreement.
- (3A) A covered employer in relation to a fair pay agreement that fails to comply with a minimum entitlement provision that, in accordance with **section 119(2)**, provides a level of entitlement that is below the level required under an Act listed in **section 119(1)**,— 5
- (a) is not liable to a penalty under this Act in relation to that failure; but
- (b) is liable to a penalty under the relevant Act listed in **section 119(1)**.
- (3B) A bargaining party for a fair pay agreement must comply with any obligations imposed on the bargaining party by the fair pay agreement. 10
- (3C) A failure by a bargaining party to comply with **subsection (3B)** is deemed to be a breach of this Act.
- (3D) A bargaining party that fails to comply with a fair pay agreement is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 197**. 15
- (4) A person who incites, instigates, aids, or abets any breach of a fair pay agreement is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 197**, but is not liable to a penalty under the Employment Relations Act 2000. 20
- 162 Effect of fair pay agreement on employment agreements**
- (1) To the extent that a fair pay agreement provides a term that is more favourable to a covered employee than a corresponding term in the employee's employment agreement (whether the employment agreement is agreed before or after the date on which the fair pay agreement comes into force),— 25
- (a) the term of the fair pay agreement prevails; and
- (b) the corresponding term in the employee's employment agreement is deemed, from the date on which the fair pay agreement ~~covers~~ applies to the employee, to have been amended accordingly.
- (2) However, **subsection (1)** does not prevent an employer and a covered employee from agreeing a term in an employment agreement that is more favourable to the employee than the corresponding term provided in the fair pay agreement (in which case the term in the employment agreement prevails). 30
- 163 Relationship between fair pay agreements and collective agreements**
- (1) Entering into, or bargaining for, a collective agreement in accordance with the collective bargaining provisions of the Employment Relations Act 2000 does not prevent the initiation of bargaining, or bargaining, for a proposed agreement or a proposed variation that would ~~cover either~~ apply to a party to the collective agreement. 35

- (2) The existence of bargaining for a proposed agreement or a proposed variation, or the existence of a fair pay agreement ~~between an employer and a union, in relation to which an employer is a covered employer,~~ is not a genuine reason for failing to conclude collective bargaining between the employer and a union representing the employer's employees for the purposes of section 33 of the Employment Relations Act 2000. 5
- (3) ~~However, if a covered employee is also covered by a collective agreement under the Employment Relations Act 2000,—~~
- (a) ~~if a term of the collective agreement is more favourable to the covered employee than a corresponding term in the fair pay agreement, the term of the collective agreement applies and the corresponding term of the fair pay agreement does not apply; or~~ 10
- (b) ~~if a term of the collective agreement is less favourable to the covered employee than a corresponding term in the fair pay agreement, the term of the fair pay agreement applies and the corresponding term of the collective agreement does not apply.~~ 15

## Part 8

### Variation, renewal, and replacement of fair pay agreements

#### Subpart 1—Variation

- 164 Application** 20
- (1) This subpart applies if— one of the bargaining sides for a fair pay agreement proposes that the fair pay agreement is varied.
- (a) ~~the chief executive has issued a fair pay agreement notice under **section 456** in relation to a fair pay agreement; but~~
- (b) ~~1 or both of the bargaining sides for the fair pay agreement proposes that the agreement is varied.~~ 25
- (2) A fair pay agreement may be varied only in accordance with—
- (a) the process set out in this ~~subpart~~ Act; and
- (b) the terms of the fair pay agreement that specify how the agreement may be varied (subject to **section 116(2)**). 30
- (3) ~~In accordance with **section 416(2)**, if there is any inconsistency, in relation to how to vary a fair pay agreement, between this subpart and the terms of the fair pay agreement, the process set out in this subpart prevails.~~
- 165 Who may propose agreement to bargain for proposed variation**
- A ~~proposal~~ request for agreement to bargain for a proposed variation may be made only by— 35

- (a) a ~~bargaining side that consists of each~~ bargaining party that is a member of a the bargaining side for the fair pay agreement on the date on which the ~~proposal request~~ is made; or
- (b) if permitted by section 80AB there are ~~no bargaining parties on that date~~, the relevant default bargaining party.

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### 166 Agreement required before bargaining for proposed variation may start

- (1) If a bargaining side requests agreement to bargain for a variation of a fair pay agreement, bargaining for the proposed variation may start only if both bargaining sides ~~that bargained~~ for the fair pay agreement agree to do so.
- (2) If ~~a either~~ bargaining side ~~that has agreed to bargain~~ for a proposed variation of ~~a fair pay agreement~~ withdraws its agreement at any stage of the bargaining, the bargaining for the proposed variation ~~must stop~~ is discontinued.

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### 167 Notification requirements relating to agreement to bargain for proposed variation

- (1) If, in accordance with **section 166(1)**, both bargaining sides for a fair pay agreement agree to bargain for a variation to the fair pay agreement, the bargaining side lead advocates for each bargaining side must jointly notify the chief executive of that agreement.
- (2) The bargaining side lead advocate for a bargaining side that withdraws its agreement to bargain for a proposed variation must notify the following parties of the bargaining side's withdrawal:
- (a) the chief executive; and
- (b) the bargaining side lead advocate ~~for~~ of the other bargaining side.
- (3) If either bargaining side withdraws its agreement to bargain for a proposed variation,—
- (a) the employee bargaining side must notify all employees for whom it has contact details and who are covered employees in relation to ~~covered by~~ the fair pay agreement that bargaining for the proposed variation has ~~stopped~~ been discontinued; and
- (b) the employer bargaining side must notify all employers that it considers ~~may be covered employers in relation to~~ ~~knows to be covered by~~ the fair pay agreement that bargaining for the proposed variation has ~~stopped~~ been discontinued.

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### 168 Ability to join bargaining side during bargaining for proposed variation

- (1) A new bargaining party may join a bargaining side at any time after bargaining for a proposed variation has started if it makes an application and the application is approved in accordance with the following sections (with all necessary modifications):

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- (a) **sections 49(2) and 50 to 52** (for an employee bargaining party joining the employee bargaining side); or
  - (b) **sections 43(2) and 44** (for an employer bargaining party joining the employer bargaining side).
- (2) If a bargaining party joins a bargaining side after bargaining for a proposed variation has started, **section 61** applies. 5
- (3) During bargaining for a proposed variation,—
- (a) ~~sections 53 to 55 and 57, 92C, 92D, and 92E~~ apply to the employee bargaining side with all necessary modifications; and
  - (b) ~~sections 46 to 48 and 58, 67, 92F, and 92G~~ apply to the employer bargaining side with all necessary modifications. 10

### 169 Limitations on requesting variations

- (1) A bargaining party must not request agreement to bargain for a variation of a fair pay agreement—
- (a) before the fair pay agreement has commenced: 15
  - (b) after a bargaining party has requested that the fair pay agreement be renewed (*see* **section 183**):
  - (c) if the bargaining sides for the fair pay agreement are bargaining to renew the agreement:
  - (d) after the agreement has expired. 20
- (2) If bargaining for a proposed variation ~~of a fair pay agreement~~ has not been completed by the date on which the fair pay agreement expires, bargaining for the proposed variation ~~must stop~~ is discontinued on that date.
- (3) A variation of a fair pay agreement ~~can~~ may relate to any term of the agreement, except for a term that specifies— 25
- (a) the date from which the fair pay agreement applies; or
  - (b) the coverage of the agreement; or
  - (c) the date on which the agreement expires.

### 170 Notice to employers of agreement to bargain for proposed variation

- (1) If the bargaining sides for a fair pay agreement agree to bargain for a proposed variation, the employer bargaining side must provide written notice, to each employer that it ~~knows to~~ considers may have at least 1 covered employee, that bargaining for the proposed variation has started. 30
- (2) A bargaining party on the employer bargaining side must comply with **sub-section (1)** no later than 15 working days after the bargaining sides agree to bargain for the proposed variation. 35

**170A Employee bargaining side must update contact address**

(1) The employee bargaining side for a proposed variation must ensure that the employer bargaining side for the proposed variation has a current contact email address to which an employer must send its employees' contact details when required to do so under this subpart. 5

(2) The employer bargaining side must ensure that it provides the current contact email address provided under **subsection (1)** to each covered employer that it is aware of, within 5 working days after receiving the email address.

**171 Obligations to provide information relating to proposed variation**

(1) Within 10 working days of the bargaining sides for a fair pay agreement agreeing to bargain for a proposed variation, the employee bargaining side must provide the employer bargaining side with— 10

- (a) the information listed in **subsection (6)** (the **information**); and
- (b) the email address to which an employer must provide its employees' contact details under **subsection (4)** (the **address**); and 15
- (c) a form, approved and issued by the chief executive under **section 243**, that sets out the same information as that listed in **section 141(2)(b)**.

(2) The employer bargaining side—

- (a) must, within 5 working days of receiving the information, the address, and the form from the employee bargaining side, provide them to each employer that it ~~knows to~~ considers may employ at least 1 covered employee; but 20
- (b) must not amend the wording of the information, the address, or the form before providing it to an employer.

(3) Each employer that receives the information, the address, and the form— 25

- (a) must, within 15 working days of receiving them, provide them to each of its covered employees; but
- (b) must not amend the wording of the information, the address, or the form before providing them to a covered employee.

(4) After providing the information, the address, and the form to its covered employees, each employer must provide, in an electronic format, each covered employee's contact details ~~(listed in **section 39(1)(a) to (f)**)~~ to the address provided by the employee bargaining side, except for the contact details of an employee who has elected not to have their details provided. 30

(5) An employer must comply with **subsection (4)** no earlier than 5 working days after the date on which it provides the information to its covered employees, but no later than 10 working days after that date. 35

(6) The information is—

- (a) that the employee bargaining side and the employer bargaining side have agreed to bargain for a proposed variation ~~of the fair pay agreement~~; and
  - (b) how the proposed variation could affect the terms of employment of each covered employee; and
  - (c) that the employee bargaining side represents all covered employees, whether the employee is a member of a union or not; and 5
  - (d) how each covered employee will be able to participate in the process of bargaining for the proposed variation; and
  - (e) the address to which the employer is required to send the covered employee's contact details; and 10
  - (f) where a covered employee can access further relevant information; and
  - (g) who, on the employee bargaining side, a covered employee can contact for further relevant information.
- (7) An employer who intentionally or recklessly fails to comply with **subsection (3), (4), or (5)** is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**. 15

#### 172 Employer must provide information to new employee

- (1) This section applies in relation to a ~~new~~ covered employee who commences employment—
- (a) in a role that is within the coverage of a fair pay agreement; and 20
  - (b) during the bargaining process for a proposed variation of the fair pay agreement.
- (2) The employer of ~~an~~ a covered employee described in **subsection (1)**—
- (a) must, within 15 working days of the ~~new~~ employee commencing employment in the role, provide the employee with— 25
    - (i) the information specified in **section 171(6)**; and
    - (ii) the form specified in **section 171(1)(c)**; and
  - (b) must not amend the wording of the information or the form before providing the information and the form to the employee ~~employer~~; and
  - (c) must, unless the employee elects not to have their contact details provided, provide the employee's contact details ~~(listed in **section 39(1)(a) to (f)**)~~, in an electronic format, to the employee bargaining side ~~(unless the employee elects not to have their contact details provided)~~. 30
    - (i) the email address provided by the employer bargaining side under **section 171(2)(a)**; or 35
    - (ii) if the employee bargaining party has provided the employer with the email address of another employee bargaining party to which the employer must send the contact details, to that address.

- (3) An employer must comply with **subsection (2)(b)(c)** ~~within 60 working days of the new employee commencing employment in the role.~~ —
- (a) no earlier than 5 working days after providing the information required under **subsection (2)(a)** to the employee; but
- (b) no later than 60 working days after providing the information. 5
- (4) An employer who intentionally or recklessly fails to comply with this section is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**.
- 173 Employer bargaining side must provide information to new employer**
- (1) If, after the bargaining sides for a fair pay agreement have agreed to bargain for a variation of the fair pay agreement, the employer bargaining side becomes aware of a new employer that ~~employs~~ may employ 1 or more covered employees, it must provide the new employer with— 10
- (a) the information listed in **section 171(6)**; and
- (b) the form specified in **section 171(1)(c)**; and 15
- (c) the email address to which the employer must provide its employees' contact details under **subsection (4)**.
- (2) The employer bargaining side must comply with **subsection (1)** within 5 working days of becoming aware of the new employer.
- (3) A new employer that receives the information and the form under **subsection (1)**— 20
- (a) must, within 15 working days of receiving the information and the form, provide the information and the form to each of its covered employees; but
- (b) must not amend the wording of the information or the form before providing the information and the form to a covered employee. 25
- (4) After providing the information and the form to its covered employees, a new employer must provide, in an electronic format, each covered employee's contact details ~~(listed in **section 39(1)(a) to (f)**)~~ to the email address provided by the employee bargaining side, except for the contact details of an employee who has elected not to have their contact details provided. 30
- (5) A new employer must comply with **subsection (4)** no earlier than 5 working days after the date on which it provides the information and the form to its covered employees, but no later than 10 working days after that date.
- (6) An employer who intentionally or recklessly fails to comply with this section is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**. 35

**174 Procedure for finalising variation**

When bargaining for a proposed variation ~~of a fair pay agreement~~ is complete, the process for finalising the variation ~~is as follows~~ to complete the following steps in the order given:

- (a) ~~first,~~ the bargaining side lead advocates for each bargaining side must jointly submit the proposed variation to the Authority for a compliance assessment, and **sections 132 to 136** apply with all necessary modifications: 5
- (b) ~~second,~~ if the Authority approves the proposed variation under **section 133**, the proposed variation must be ratified in accordance with the requirements set out in **sections 175 and 177:** 10
- (c) ~~third,~~ if the proposed variation is ratified by both bargaining sides for the proposed variation, the bargaining side lead advocate for each bargaining side must submit the proposed variation to the chief executive for verification of ratification, in accordance with **sections 147, 148, 149(3), and 150**, with all necessary modifications: 15
- (d) ~~fourth,~~ if the chief executive verifies ratification, the chief executive may set the terms of the variation by issuing a notice in accordance with **sections 178 and 179.**

**175 Process for ratifying proposed variation** 20

- (1) This section applies when the Authority has approved a proposed variation under **section 133** (as that section applies in accordance with **section 174(a)**).
- (2) Before the bargaining side lead advocates for each bargaining party for the proposed variation jointly submit the proposed variation to the chief executive for verification, the proposed variation must be ratified in accordance with— 25
  - (a) this section and **section 176**; and
  - (b) the ratification process set by the relevant bargaining side.
- (3) No later than 5 working days after the Authority has approved the proposed variation under **section 133**,— 30
  - (a) the employee bargaining side must use its best endeavours to notify all covered employees (other than employees who have elected not to have their contact details provided to the employee bargaining side) that a ratification vote will soon be held; and
  - (b) the employer bargaining side must use its best endeavours to notify all covered employers that a ratification vote will soon be held. 35
- (4) No later than 15 working days after being notified under **subsection (3)(b)**, each covered employer must advise each of its covered employees that a ratification vote for the proposed variation will soon be held.

- (5) At least 5 working days before the covered employees and covered employers vote whether to ratify the proposed variation,—
- (a) the employee bargaining side must ensure that all covered employees for whom the bargaining side has contact details have access to—
    - (i) a copy of the proposed variation; and 5
    - (ii) a plain language summary of the proposed variation; and
  - (b) the employer bargaining side must ensure that all covered employers that the bargaining side is aware of have access to—
    - (i) a copy of the proposed variation; and
    - (ii) a plain language summary of the proposed variation. 10
- (6) An employer who intentionally or recklessly fails to comply with **subsection (4)** is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**.

#### **176 Further requirements for ratifying proposed variation**

- (1) When setting the date on which the covered employees or covered employers will vote whether to ratify a proposed variation, the relevant bargaining side must set a date that is at least 10 working days after the date on which the Authority approved the proposed variation under **section 133**. 15
- (2) The requirement to notify covered employees and covered employers of the ratification vote, as set out in **section 143**, applies with all necessary modifications. 20
- (3) The process for holding the ratification vote is as set out in **section 144** with all necessary modifications.
- (4) As soon as ~~is reasonably~~ practicable after a bargaining side completes its ratification vote for a proposed variation, it must inform the other bargaining side for the proposed variation of the outcome of the ratification vote. 25
- (5) If the results of both the ratification vote of the covered employees and the ratification vote of the covered employers are in favour of ratification, each bargaining side must submit evidence of the results of its ratification vote to the chief executive, and **section 147** applies with all necessary modifications. 30
- (6) The requirement to keep records of the ratification vote are as set out in **section 146**, with all necessary modifications.

#### **177 Ratification of proposed variation to agreement attached as schedule**

- (1) This section applies when a proposed variation is to a fair pay agreement that has another fair pay agreement attached as a schedule (*see sections 111 and 112*). 35
- (2) If the proposed variation is to the fair pay agreement to which the schedule is attached, only covered employees and covered employers in relation to ~~who are~~

~~covered by~~ that fair pay agreement are entitled to vote on the ratification of the proposed variation.

- (3) If the proposed variation is to the fair pay agreement that is attached as a schedule, only covered employees and covered employers in relation to ~~who are covered by~~ that fair pay agreement are entitled to vote on the ratification of the proposed variation. 5

### 178 Chief executive ~~to may~~ issue notice to vary fair pay agreement

- (1) ~~For the purpose of **section 174(d)**, the chief executive may validate a proposed variation of a fair pay agreement by issuing a fair pay agreement variation notice.~~ 10

- (2) ~~However, the chief executive must not issue a notice varying the terms of a fair pay agreement if—~~

(a) ~~the process set out in **section 174** has not been followed; or~~

(b) ~~the fair pay agreement to which the proposed variation relates has expired.~~ 15

- (1) For the purpose of **section 174(d)**, the chief executive must validate a proposed variation by issuing a fair pay agreement variation notice only if satisfied that—

(a) the process set out in **section 174** has been followed; and

(b) the fair pay agreement to which the proposed variation relates has not expired. 20

- (2) If the chief executive is not satisfied that the requirements have been met, the chief executive must, by written notice, advise the bargaining sides for the proposed variation of the reasons for not being satisfied.

- (3) If the chief executive issues a notice under **subsection (1)**, the chief executive must notify each bargaining side for the variation that the chief executive has issued the notice. 25

- (4) A notice issued under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

### 179 Form and content of notice to vary fair pay agreement 30

Each notice under **section 178** must—

(a) set out the terms of the variation of the fair pay agreement, which must be in the form prescribed by any regulations; and

(b) be for the variation that was ratified by the ratification vote that the chief executive verified under **section 148**. 35

### 180 Bargaining sides may seek recommendation from Authority

- (1) When bargaining for a proposed variation ~~of a fair pay agreement~~, the employee bargaining side and the employer bargaining side may agree to seek

- a non-binding recommendation from the Authority in relation to the proposed variation.
- (2) A bargaining side must not seek a recommendation from the Authority in relation to a proposed variation unless the other bargaining side agrees to do so.
- (3) If the bargaining sides for a proposed variation seek a recommendation from the Authority in relation to a matter,— 5
- (a) **section 216** applies with any necessary modifications; and
- (b) before making a recommendation, the Authority must consider the considerations listed in **section 220**.
- (4) If the bargaining sides accept a recommendation from the Authority, it may be incorporated into the proposed variation, and becomes part of the variation that follows the process set out in **section 174**. 10
- (5) There is no limit to the number of recommendations that the bargaining sides may seek from the Authority.
- 181 Bargaining sides may not seek determination in relation to proposed variation** 15
- When bargaining for a proposed variation ~~of a fair pay agreement~~, neither bargaining side may seek a determination from the Authority in relation to the proposed variation.
- Subpart 2—Renewal and replacement of fair pay agreements 20
- 182 Purpose of this subpart**
- This subpart sets out the process that must be followed to renew or replace a fair pay agreement ~~that has been notified under **subpart 5 of Part 7**~~.
- 183 Approval required to bargain to renew or replace fair pay agreement**
- (1) Bargaining to renew or replace a fair pay agreement must not start without the chief executive’s approval to do so. 25
- (2) The following parties may apply to the chief executive for approval to initiate bargaining to renew or replace a fair pay agreement:
- (a) ~~a bargaining party that —~~
- (i) ~~was a member of a bargaining side on the date on which the fair pay agreement was notified; or~~ 30
- (ii) ~~the chief executive approved to join the bargaining side during bargaining of a variation to the fair pay agreement;~~
- (b) an eligible union ~~that was not a member of the employee bargaining side when the fair pay agreement was notified;~~ 35
- (c) an eligible employer association ~~that was not a member of the employer bargaining side when the fair pay agreement was notified;~~



- (d) a specified employer bargaining party that may, in accordance with **section 63, 65, or 66**, be a bargaining party for the proposed renewal or the proposed replacement ~~that was not a member of the employer bargaining side when the fair pay agreement was notified, and that employs at least 1 covered employee.~~ 5
- (3) A ~~Despite **subsection (2)**,~~ a default bargaining party may not apply to the chief executive for approval to ~~start~~ initiate bargaining to renew or replace a fair pay agreement.

### *Timing*

#### **184 When application to renew fair pay agreement may be made** 10

- (1) An application to the chief executive for approval to initiate bargaining to renew a fair pay agreement may be made no earlier than,—
- (a) in the case of an application from an eligible union ~~or employee bargaining party~~, 180 days before the expiry date specified in the fair pay agreement; or 15
- (b) in the case of an application from an eligible employer association, ~~an employer bargaining party~~, or a specified employer bargaining party, 160 days before the expiry date specified in the fair pay agreement.
- (2) If a fair pay agreement has expired,—
- (a) an application for approval to bargain to renew the fair pay agreement may not be made; but 20
- (b) an application for approval to bargain to replace the ~~for a replacement~~ fair pay agreement may be made under **section 185**.

#### **185 Application for approval to bargain for replacement fair pay agreement**

- (1) If no application for approval under **section 184(1)** is made before the expiry date specified in the fair pay agreement (so that the agreement has expired), one of the following ~~an eligible union or an eligible employer association~~ may apply for approval to initiate bargaining for a replacement fair pay agreement based on the coverage of the expired fair pay agreement: 25
- (a) an eligible union; 30
- (b) an eligible employer association;
- (c) a specified employer bargaining party that, in accordance with **section 63, 65, or 66**, may be a bargaining party in relation to the proposed replacement.
- (2) An application for approval under this section may be made to the chief executive no later than 2 years after the date on which the fair pay agreement expires. 35

**186 Effect on expiry date of approval to bargain for renewal**

Despite the expiry date specified in a fair pay agreement, if a party applies for approval to initiate bargaining for renewal under **section 184(1)**, the agreement continues in force until the later of—

- (a) the expiry date specified in the fair pay agreement; and 5
- (b) the date on which the renewed fair pay agreement comes into force; and
- (c) the date on which the chief executive notifies the applicant that it has declined the application for approval to ~~start~~ initiate bargaining to renew the agreement; and
- ~~(d) the date on which bargaining for the proposed renewal stops under **section 78(6) or 80(6)**.~~ 10
- (d) the date on which bargaining for the proposed renewal is discontinued under **section 77A(2)(b), 78(3)(b), 80A(2)(b), or 80CB**.

**187 Commencement of renewed or replacement agreement**

- (1) A renewed fair pay agreement comes into force on a date specified in the renewed agreement, which date must be no earlier than the expiry date specified in the fair pay agreement immediately prior to being renewed. 15
- (2) A fair pay agreement that replaces an expired fair pay agreement comes into force on a date specified in the replacement agreement.

*Coverage* 20**188 Coverage of renewed or replaced fair pay agreement**

- (1) An application to initiate bargaining to renew a fair pay agreement must be to renew the fair pay agreement with the same coverage as, or a broader coverage than, that provided by the fair pay agreement being renewed on the date on which the application is made. 25
- (2) An application to initiate bargaining for an agreement to replace a fair pay agreement that has expired must be for a replacement agreement with the same coverage as, or a broader coverage than, the coverage of the expired fair pay agreement on the date on which it expired.
- (3) Bargaining to renew or replace a fair pay agreement must not reduce the coverage of the agreement contained in the application to start bargaining. 30

*Application for approval to renew or replace fair pay agreement***189 Contents of application to renew or replace fair pay agreement**

- (1) An application to initiate bargaining to renew or replace a fair pay agreement must— 35
  - (a) be in writing; and
  - (b) state the following:

- (i) the name of the applicant; and
  - (ii) the name of the primary contact person for the applicant; and
  - (iii) the email address of the primary contact person; and
  - (c) specify which renewal test the application meets (*see* **section 190**); and
  - (d) specify the coverage of the proposed renewal or the proposed replacement, including,— 5
    - (i) for an occupation-based agreement, a description of the work or type of work that is intended to be within the coverage; or
    - (ii) for an industry-based agreement, a description of—
      - (A) the industry or type of industry that is intended to be within the coverage; and 10
      - (B) the work or type of work that is intended to be within the coverage; and
  - (e) provide evidence of—
    - (i) the applicant being either an eligible union or an eligible employer association (as applicable); and 15
    - (ii) how the application meets the renewal test specified under **paragraph (c)**; and
  - (f) be signed by an authorised representative of the applicant; and
  - (g) include any other information required by regulations. 20
- (1A)** Evidence provided in support of an application must be provided in accordance with **section 189A** if—
- (a) the application is made by an eligible employer association or a specified employer bargaining party; and
  - (b) the application relies on the representation test specified in **section 190(2)(b)**. 25
- (1B)** If an eligible union makes an application that relies on the representation test specified in **section 190(2)(a)**, the evidence provided in support of the application must, for each employee who would be within the coverage and who is claimed to support initiating bargaining for the proposed renewal or the proposed replacement, include the following information: 30
- (a) the employee’s name:
  - (b) the employee’s occupation:
  - (c) the name of the employee’s employer:
  - (d) the date on which the employee agreed to support initiating bargaining: 35
  - (e) if the application is for an industry-based agreement, the industry in which the employee is employed:

- (f) if the application is made, in accordance with **section 190(2)(a)(ii)**, on the basis that at least 10% of the employees who would be within the coverage of the proposed renewal or the proposed replacement support the application, specify the total number of employees that will be within the coverage of the proposed fair pay agreement. 5
- (1C) Information provided under **subsection (1B)** must be no more than 12 months old as at the date on which the eligible union submits the application.
- (2) An applicant who intentionally or recklessly provides inaccurate information as part of an application to the chief executive for approval to initiate bargaining for a proposed renewal or a proposed replacement is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**. 10
- 189A Evidence provided in support of application from eligible employer association or specified employer bargaining party**
- (1) An application described in **section 189(1A)** must include the following evidence: 15
- (a) the name of each employer that would be within the coverage of the proposed renewal or the proposed replacement, and that supports the application; and
- (b) for each employer listed under **paragraph (a)**, the number of the employer's employees who would be within the coverage of the proposed renewal or the proposed replacement; and 20
- (c) the occupations of each employee that would be within the coverage of the proposed renewal or the proposed replacement; and
- (d) the date on which each employer agreed to support the application to initiate bargaining for the proposed renewal or the proposed replacement; and 25
- (e) if the application relates to an industry-based agreement, the industry in which the applicant employer operates; and
- (f) if the application is made, in accordance with **section 190(2)(b)(ii)**, on the basis that at least 10% of the employees who would be within the coverage of the proposed renewal or the proposed replacement support the application, the total number of employees that will be within the coverage of the proposed renewal or the proposed replacement. 30
- (2) Information provided under **subsection (1)** must be no more than 12 months old as at the date on which the eligible employer association or the specified employer bargaining party submits the application. 35
- 190 Test for initiating bargaining to renew or replace fair pay agreement**
- (1) An application for approval to initiate bargaining to renew or replace a fair pay agreement must meet— 40

- (a) the representation test; or
- (b) the public interest test.
- (2) An application meets the representation test if,—
- (a) for an application from an ~~employee bargaining party~~ eligible union,—
- (i) at least 1,000 employees who would be within the coverage of the proposed renewal or the proposed replacement support bargaining to renew or replace the fair pay agreement; or 5
- (ii) at least 10% of all employees within the coverage of the proposed renewal or the proposed replacement support bargaining to renew or replace the fair pay agreement; or 10
- (b) for an application from an ~~employer bargaining party~~ eligible employer association or specified employer bargaining party, bargaining for the proposed renewal or the proposed replacement is supported by 1 or more employers who, between them, employ—
- (i) at least 1,000 employees who would be within the coverage of the proposed renewal or the proposed replacement; or 15
- (ii) at least 10% of all employees who would be within the coverage of the proposed renewal or the proposed replacement.
- (3) An application meets the public interest test if the applicant provides evidence that the proposed renewal or the proposed replacement— 20
- (a) meets the public interest test specified in ~~section 29(4)~~section 29A(1); or
- (b) would have met the public interest test specified in ~~section 29(4)~~section 29A(1) if the fair pay agreement had not previously been in force.
- 191 Chief executive to assess application for approval to renew or replace fair pay agreement** 25
- (1) After receiving an application for approval to initiate bargaining for a proposed renewal or a proposed replacement, the chief executive must—
- (a) assess the application; and
- (b) as soon as practicable, notify the applicant in writing whether or not the chief executive has approved the application. 30
- (2) For the purpose of **subsection (1)**, ~~sections 30(2)~~sections 30A(1)(a)(i) and (1)(b), 31, 32(1), (2), (3), and (4)(b)(i), (ii), and (iii)(B)(ii), 32A, and 33 apply with all necessary modifications, including that—
- (a) references to the union must be read as references to the applicant; and 35
- (b) the application relates to bargaining for the proposed renewal or the proposed replacement, rather than to bargaining for a proposed FPA.
- (3) The chief executive must decline an application if,—

- (a) after assisting the applicant under **section 32(3)**, the chief executive considers the application does not define the coverage of the proposed renewal or the proposed replacement with sufficient clarity; or
- (b) after considering any additional information or evidence provided under **section 32(2)**, the chief executive is not satisfied that the application meets the requirements set out in **sections 32(4)(b)(i), and (ii), and ~~(iii)(B)~~, 189, and 190**; or
- (c) based on the information provided in the application and, if applicable, any additional information or evidence provided under **section 32(2)**, the chief executive is not satisfied that the coverage of the proposed renewal or the proposed replacement is different from the coverage of a proposed renewal or a proposed replacement for which bargaining has already been initiated.

*Notification requirements*

- 192 Chief executive must notify bargaining parties of approval to bargain for proposed renewal or proposed replacement** 15
- (1) If the chief executive approves an application for approval to initiate bargaining for a proposed renewal or a proposed replacement, the chief executive must—
- (a) publicly notify the chief executive’s approval of the application; and 20
- (b) notify each bargaining party to the fair pay agreement of the chief executive’s approval of the application.
- (2) A notification under **subsection (1)(a) or (b)** must comply with the requirements of **section 34** with the following modifications:
- (a) the references to a proposed FPA must be read as references to a proposed renewal or a proposed replacement: 25
- (b) **section 34(2)(a)(ii)** does not apply.
- (3) The chief executive must comply with **subsection (1)** within 5 working days of approving the application.
- 193 Notification of bargaining for proposed renewal or proposed replacement** 30
- (1) If the chief executive approves an application for approval to initiate bargaining for a proposed renewal or a proposed replacement,—
- (a) if the applicant is an eligible union ~~or an employee bargaining party~~, the applicant, any unions notified under ~~**section 36(1)(a)**~~ **section 36(1) or 37(1)**, and each covered employer must comply with **sections 36 to 4439, 234A, and 234B** (as applicable) with all necessary modifications; or 35

- (b) if the applicant is an eligible employer association or a specified employer bargaining party, the applicant, the employee bargaining side, and the employer must comply with **subsections (2) to (8)**.
- (2) Within 15 working days of the applicant receiving notice that the chief executive has approved its application to initiate bargaining, the applicant must— 5
- (a) use its best endeavours to identify each union, employer association, employer, and specified employer bargaining party that the applicant considers is likely to have covered employees or members who are covered employees (as applicable); and
- (b) use its best endeavours to notify those unions, employer associations, employers, and specified employer bargaining parties that the applicant has received approval to initiate bargaining; and 10
- (c) publish a notice—
- (i) on an Internet site that is administered by or on behalf of the initiating union, publicly available, and free of charge; and 15
- (ii) in the daily newspapers circulating in Auckland, Hamilton, Tauranga, Wellington, Christchurch, and Dunedin.
- (3) A notification under **subsection (2)(b)** must—
- (a) be in writing; and
- (b) state where to find the notice issued by the chief executive under **section 192**; and 20
- (c) in the case of a notification to an employer association, include a statement for the employer association to provide to each of its members that have covered employees; and
- (d) in the case of a notification to a specified employer bargaining party, include a statement for the specified employer bargaining party to provide to each of its covered employees; and 25
- (e) in the case of a notification to an employer, include a statement for the employer to provide to each of its covered employees; and
- (f) in each case, include a form that has been approved and issued by the chief executive under **section 243** that sets out the following information: 30
- (i) that an employer is required to provide contact details for each of the employer's covered employees to the employee bargaining side, unless the employee elects not to have their contact details provided: 35
- (ii) the process by which an employee who does not want their contact details to be provided to the employee bargaining side can elect not to have their contact details provided:

- (iii) the reason for providing the employee's contact details to the employee bargaining side:
- (iv) an explanation of to whom the employee bargaining side is able to provide the employee's contact details:
- (v) an explanation of the purposes for which the employee's contact details may be used: 5
- (vi) the consequences of the employee electing not to have their contact details provided:
- (vii) how an employee who has elected not to have their contact details provided can rescind that election so that the employer must provide the employee's contact details to the eligible union or the employee bargaining party. 10
- (4) A statement provided under **subsection (3)(c), (d), or (e)** must—
- (a) be in writing; and
- (b) be drafted in plain language; and 15
- (c) be drafted in such a way that it is able to be provided to the covered employees without the employer association or specified employer bargaining party needing to redraft it; and
- (d) advise the covered employee about the proposed renewal or the proposed replacement, including at least the following information: 20
- (i) that the applicant has been approved to initiate bargaining for a proposed renewal or a proposed replacement and that the employee is within the coverage of the proposed renewal or the proposed replacement:
- (ii) how the proposed renewal or the proposed replacement could affect the employee and the work they do: 25
- (iii) that, when bargaining for a proposed renewal or a proposed replacement, ~~an eligible union~~ that is an employee bargaining party represents all employees within the coverage of the proposed renewal or the proposed replacement, including employees who are not members of the union or of any other union: 30
- (iv) where to find further information about the proposed renewal or the proposed replacement and the bargaining process:
- (v) how to contact the employee bargaining side or the employer bargaining side (as applicable) to request any further information. 35
- (5) Within 15 working days of receiving notice under **subsection (2)(b)**, a covered employer must comply with **section 37** with all necessary modifications.
- (5A) A notice published—
- (a) under **subsection (2)(c)(i)** must— 40



- (i) state that approval has been given to initiate bargaining for a proposed renewal or a proposed replacement; and
- (ii) include the information specified in **subsection (3)(b) to (f)** (as applicable); or
- (b) under **subsection (2)(c)(ii)** must state— 5
- (i) that approval has been given to initiate bargaining for a proposed renewal or a proposed replacement; and
- (ii) where to find the notice issued by the chief executive under **section 192**; and
- (iii) where to find the notice published under **subsection (2)(c)(i)**. 10
- (6) An employee bargaining side for a proposed renewal or a proposed replacement must, within 10 working days of forming, provide to the applicant an email address to which the employer must provide its employees' contact details.
- (7) The applicant must, within 5 working days of receiving the email address, provide ~~the address~~ it to each union, employer association, employer, or specified employer bargaining party that the applicant considers is likely to have covered employees or members who are covered employees. 15
- (8) An employer must, within 10 working days after receiving the email address, comply with **section 39(1) and (3)**, which provisions apply with all necessary modifications. 20
- (9) An employer that intentionally or recklessly fails to comply with **subsection (5) or (8)** is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**.
- 194 ~~Formation of employer bargaining side for proposed renewal or proposed replacement~~** 25
- (1) ~~An employer bargaining side for a proposed renewal or a proposed replacement is formed 3 months after the chief executive approves an application for approval to start bargaining for the proposed renewal or the proposed replacement.~~
- (2) ~~For the purposes of forming an employer bargaining side, **sections 42 to 48, 56, and 58 to 61** apply with all necessary modifications, including the following:~~ 30
- (a) ~~the chief executive's notification of having approved the application is made under **section 192**;~~
- (b) ~~references to a proposed FPA must be read as references to a proposed renewal or a proposed replacement.~~ 35

**194 Formation of employer bargaining side for proposed renewal or proposed replacement**

- (1) If the chief executive notifies, under **section 192**, that the chief executive has approved an application to initiate bargaining for a proposed renewal or a proposed replacement, an employer bargaining side is formed on the following date: 5
- (a) if the application to initiate bargaining was from an eligible union, and within 2 months of the chief executive's notification under **section 192** the chief executive approves an application to be a bargaining party on the employer bargaining side, the date that is 2 months after the date of the chief executive's notification under **section 192**; or 10
- (b) if the application to initiate bargaining was from an eligible employer association or a specified employer bargaining party, the date that is 2 months after the date of the chief executive's notification under **section 192**; or 15
- (c) if the application to initiate bargaining was from a specified employer bargaining party and the proposed renewal or the proposed replacement applies to a covered employer that is a non-SEBP employer, and within 2 months of the chief executive's notification under **section 192** the chief executive approves an application to be a bargaining party on the employer bargaining side, the date that is 2 months after the date of the chief executive's notification under **section 192**; or 20
- (d) if (in accordance with **section 71A**) the employer default bargaining party elects to be an employer bargaining party for the proposed renewal or the proposed replacement, the date on which the employer default bargaining party notifies the chief executive of its election. 25
- (2) For the purposes of forming an employer bargaining side, **sections 43 to 45, 56, 58 to 61, 67, 92F, and 92G** apply with all necessary modifications, including the following:
- (a) the chief executive's notification of having approved the application is made under **section 192**; 30
- (b) each reference to 3 months must be read as a reference to 2 months;
- (c) each reference to a proposed FPA must be read as a reference to a proposed renewal or a proposed replacement.

**195 ~~Employee bargaining side for proposed renewal or proposed replacement~~** 35

- (1) ~~An employee bargaining side for a proposed renewal or a proposed replacement is formed 3 months after the chief executive approves an application for approval to initiate bargaining for the proposed renewal or the proposed replacement.~~
- (2) ~~For the purposes of forming an employee bargaining side, **sections 49 to 57 and 59 to 61** apply with all necessary modifications, including the following:~~ 40

- (a) ~~the chief executive's notification of having approved the application is made under **section 192**:~~
- (b) ~~references to a proposed FPA must be read as references to a proposed renewal or a proposed replacement.~~

**195** **Formation of employee bargaining side for proposed renewal or proposed replacement** 5

- (1) If the chief executive notifies, under **section 192** that the chief executive has approved an application to initiate bargaining for a proposed renewal or a proposed replacement, an employee bargaining side for the proposed renewal or the proposed replacement is formed on the following date: 10
- (a) if the application to initiate bargaining was from an eligible employer association or a specified employer bargaining party, and within 2 months of the chief executive's notification under **section 192** the chief executive approves an application to be an employee bargaining party on an employee bargaining side, the date that is 2 months after the date of the chief executive's notification under **section 192**; or 15
- (b) if the application to initiate bargaining was from an eligible union, on the date that is 2 months after the date of the chief executive's notification under **section 192**; or
- (c) if (in accordance with **section 71A**) the employee default bargaining party elects to be an employee bargaining party for the proposed renewal or the proposed replacement, the date on which the employee default bargaining party notifies the chief executive of its election. 20
- (2) For the purposes of forming an employee bargaining side, **sections 49 to 52, 56, 57, 59 to 61, 92C, 92D, and 92E** apply with all necessary modifications, including the following: 25
- (a) the chief executive's notification of having approved the application is made under **section 192**:
- (b) each reference to 3 months must be read as a reference to 2 months:
- (c) each reference to a proposed FPA must be read as a reference to a proposed renewal or a proposed replacement. 30

## Part 9

### Penalties and enforcement

#### *Penalties*

**196** **Penalty for non-compliance with obligation when bargaining** 35

- (1) This section applies to an obligation if a provision of this Act provides that the Authority may impose a penalty, not exceeding the applicable amount specified in this section, for a breach of that obligation.

- (2) A person who breaches an obligation to which this section applies is liable,—
- (a) if the person is an individual, to a penalty not exceeding \$20,000;
  - (b) in the case of any other person, to a penalty not exceeding \$40,000.
- (3) A person who incites, instigates, aids, or abets a breach of an obligation to which this section applies is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **subsection (2)**. 5

**197 Penalty for non-compliance with obligation when fair pay agreement in force**

- (1) This section applies to an obligation if a provision of this Act provides that the Authority may impose a penalty, not exceeding the applicable amount specified in this section, for a breach of that obligation. 10
- (2) A person who breaches an obligation to which this section applies is liable,—
- (a) if the person is an individual, to a penalty not exceeding \$10,000;
  - (b) in the case of any other person, to a penalty not exceeding \$20,000.
- (3) A person who incites, instigates, aids, or abets a breach of an obligation to which this section applies is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **subsection (2)**. 15

**198 Jurisdiction concerning penalties**

- (1) The Authority has full and exclusive jurisdiction to deal with all actions for the recovery of penalties under this Act— 20
- (a) for any breach of a fair pay agreement; or
  - (b) for a breach of any provision of this Act for which a penalty in the Authority is provided in the particular provision.
- (2) **Subsection (1)** is subject to—
- (a) sections 177 and 178 of the Employment Relations Act 2000 (which allow for the referral or removal of certain matters to the Employment Court); and 25
  - (b) any right to have the matter heard by the court under **clause 11 of Schedule 3** of this Act.

Compare: 2000 No 24 s 133

30

**199 Priority when overlapping jurisdiction**

- (1) If a person's actions mean that the person has breached this Act and another Act,—
- (a) any proceedings must be brought under the Act specified in this section; and 35
  - (b) proceedings may not be brought under both Acts.

- (2) If a fair pay agreement sets a minimum wage for covered employees that is the same as, or higher than, the minimum wage that would otherwise have applied under the Minimum Wage Act 1983, any proceedings relating to a failure to pay the minimum wage specified in the agreement must be brought under that Act. 5
- (3) If a fair pay agreement provides a leave entitlement, and payment for that leave entitlement, for covered employees that is the same as, or greater than, the leave entitlement and payment for that leave entitlement that would otherwise have applied under the Holidays Act 2003, any proceedings relating to a failure to provide the leave entitlement, or payment for that leave entitlement, specified in the agreement must be brought under that Act. 10

## 200 Matters Authority and court must have regard to in determining amount of penalty

In determining an appropriate penalty for a breach referred to in **section 196 or 197**, the Authority or the court (as applicable) must have regard to all relevant matters, including— 15

- (a) the purpose of this Act, stated in **section 3**; and
- (b) the nature and extent of the breach or involvement in the breach; and
- (c) whether the breach was intentional, inadvertent, or negligent; and
- (d) the nature and extent of any loss or damage suffered by any person, or gains made or losses avoided by the person in breach or the person involved in the breach, because of the breach or involvement in the breach; and 20
- (e) whether the person in breach or the person involved in the breach has paid an amount of compensation, reparation, or restitution, or has taken other steps to avoid or mitigate any actual or potential adverse effects of the breach; and 25
- (f) the circumstances in which the breach, or involvement in the breach, took place, including the vulnerability of the employee; and
- (g) whether the person in breach or the person involved in the breach has previously been found by the Authority or the court in proceedings under this Act, or any other enactment, to have engaged in any similar conduct. 30

Compare: 2000 No 24 s 133A

## 201 Recovery of penalties 35

- (1) Any action for the recovery of a penalty may be brought,—
- (a) in the case of a breach of a fair pay agreement, at the suit of one of the following parties ~~any party to the agreement~~ who is affected by the breach; ~~or~~;

- (i) a covered employee:
- (ii) a covered employer:
- (iii) a bargaining party; or
- (b) in the case of any other breach of this Act, at the suit of any person in relation to whom the breach is alleged to have taken place or a Labour Inspector under **section 241(5)**. 5
- (2) A claim for 2 or more penalties against the same person may be joined in the same action.
- (3) In any claim for a penalty, the Authority or the court—
  - (a) may give judgment for the total amount claimed, or any amount, not exceeding the maximum specified in **section 196 or 197** (as applicable); or 10
  - (b) may dismiss the action.
- (4) The Authority or the court may order payment of a penalty by instalments, but only if the financial position of the person paying the penalty requires it. 15
- (5) An action for the recovery of a penalty under this Act must be commenced within 12 months after the earlier of the following:
  - (a) the date on which the cause of action first became known to the person bringing the action:
  - (b) the date on which the case of action should reasonably have become known to the person bringing the action. 20

Compare: 2000 No 24 s 135

## 202 Chief executive or Labour Inspector may enforce payment of penalty

The chief executive or a Labour Inspector may recover in the District Court as a debt due to the Crown any penalty ordered by the Authority or the court under **section 201** to be paid to the Crown. 25

Compare: 2000 No 24 s 135A

## 203 Application of penalties recovered

- (1) Subject to any order made under **subsection (2)**, every penalty recovered in any penalty action, whether before the Authority or the court, must be paid into the Authority or the court, as the case requires, and not to the plaintiff, and must then be paid by the Authority or the court into a Crown Bank Account. 30
- (2) The Authority or the court may order that the whole or any part of any penalty recovered must be paid to any person.

Compare: 2000 No 24 s 136

35

## Part 10 Institutions

### Subpart 1—Mediation services

#### 204 Mediation services

- (1) The chief executive must employ or engage persons to provide mediation services to support all fair pay relationships. 5
- (2) For the purposes of this section, **fair pay relationships** includes, in relation to a proposed ~~FPA~~ agreement, a proposed variation, ~~a proposed renewal, a proposed replacement,~~ or a fair pay agreement,—
  - (a) the relationships listed in **section 17(2) or 19A(2)**; and 10
  - (b) the relationships between the following parties:
    - (i) the employer bargaining parties on an employer bargaining side and 1 or more ~~the~~ covered employees:
    - (ii) an employee bargaining party and 1 or more ~~the~~ covered employees: 15
    - (iii) an employee bargaining party and a representative or representatives of Māori covered employees:
    - (iv) an employer bargaining party and a representative or representatives of Māori covered employers:
    - (v) an employer bargaining party and 1 or more ~~the~~ covered employers: 20
    - (vi) the employee bargaining parties on an employee bargaining side and 1 or more ~~the~~ covered employers.
- (3) Mediation services may include services that—
  - (a) provide general information about rights and obligations in relation to fair pay agreements: 25
  - (b) provide information about what services are available for persons (including unions, employee bargaining parties, covered employees, covered employers, and employer associations) who have problems related to fair pay relationships: 30
  - (c) assist the smooth conduct of fair pay agreements:
  - (d) assist persons to resolve, promptly and effectively, problems related to fair pay relationships:
  - (e) assist persons to resolve any problem in relation to bargaining for the terms of a fair pay agreement. 35
- (4) A person employed or engaged to provide mediation services under this section may also be employed or engaged to provide mediation services under section

144 of the Employment Relations Act 2000, or bargaining support services under **section 207** of this Act.

Compare: 2000 No 24 s 144

## 205 Application of provisions in Employment Relations Act 2000

In relation to mediation services provided under this Act (rather than those provided under the Employment Relations Act 2000), sections 145 to 153 of that Act apply, with all necessary modifications, including the following:

- (a) each reference to the Employment Relations Act 2000 must also be read as a reference to this Act:
- (b) each reference to the object of the Employment Relations Act 2000 must be read as a reference to the purpose of this Act (*see section 3*):
- (c) section 148(5) of the Employment Relations Act 2000 applies only to mediation for the terms of a proposed agreement or FPA, a proposed variation, ~~a proposed renewal, or a proposed replacement~~:
- (d) in addition to applying to the payments specified in section 148A(3) of the Employment Relations Act 2000, section 148A of that Act also applies to any wages, holiday pay, or other money payable by an employer to an employee under a fair pay agreement:
- (e) sections 149A and 150 of the Employment Relations Act 2000 do not authorise a person employed or engaged by the chief executive to provide mediation services to make a recommendation (under section 149A of that Act) or a decision (under section 150 of that Act) as to what terms are to be included in a fair pay agreement:
- (f) the reference in section 150A(3)(a) of the Employment Relations Act 2000 to an employment relationship problem must be read as a reference to a problem relating to a fair pay relationship listed in **section 204(2)**:
- (g) section 153 of the Employment Relations Act 2000 also applies to a person employed or engaged to provide mediation services under this Act.

## 206 Other mediation services

Nothing in this Part prevents any person from seeking and using mediation services other than those provided by the chief executive under **section 204** of this Act or under section 144 of the Employment Relations Act 2000.

Compare: 2000 No 24 s 154

### Subpart 2—Bargaining support services

## 207 Bargaining support services

- (1) The chief executive must employ or engage persons to provide bargaining support services to support the following parties: ~~all fair pay relationships listed in~~



~~**section 204(2)** when bargaining for a proposed FPA, a proposed variation, a proposed renewal, or a proposed replacement.~~

- (a) a union:
  - (b) an employer association:
  - (c) a bargaining party: 5
  - (d) a bargaining side.
- (2) Bargaining support services may include services that—
- (aa) help a union or employer association to understand the requirements to become a bargaining party:
    - (a) help bargaining sides to understand the process for bargaining: 10
    - (b) support bargaining sides throughout the process of bargaining:
    - (c) support bargaining sides to ensure that bargaining is constructive and efficient:
    - (d) assist bargaining sides to understand the content requirements for a proposed agreement or FPA, a proposed variation, a proposed renewal, or a proposed replacement: 15
    - (e) assist in resolving any conflict within or between bargaining sides that are bargaining.
- (3) A person employed or engaged to provide bargaining support services under this section may also be employed or engaged to provide mediation services under **section 204** of this Act or under section 144 of the Employment Relations Act 2000. 20

**208 Access to bargaining support services**

A person who wishes to access bargaining support services must contact an office of the department that deals with employment relations issues. 25

Compare: 2000 No 24 s 146

**209 Provision of bargaining support services**

- (1) The chief executive may, by general instructions under **subsections (5) and (6)**,—
  - (a) decide how to provide the bargaining support services required under **section 207**; and 30
  - (b) treat matters presented for bargaining support in different ways, in order to promote fast and effective support.
- (2) Any of the bargaining support services may be provided, for example,—
  - (a) by a telephone, facsimile, Internet, or email service (whether as a means of explaining where information can be found or as a means of providing the information or of otherwise seeking to resolve a problem); or 35

- (b) by publishing pamphlets, brochures, booklets, or codes; or
- (c) by specialists who—
- (i) respond to requests or themselves identify how, where, and when their services can best support the purpose of this Act; or
  - (ii) provide their services in the manner, and at the time and place (including wherever practicable the workplace itself), that are most likely to provide the required support; or
  - (iii) provide their services in all of the ways described in this paragraph.
- (3) Any of the bargaining support services may be provided— 10
- (a) by a combination of the ways described in **subsection (2)**; or
  - (b) in any other way the chief executive thinks best supports the purpose of this Act.
- (4) **Subsections (2) and (3)** do not limit **subsection (1)**.
- (5) The chief executive, in managing the overall provision of bargaining support services, may give general instructions about the manner in which, and the times and places at which, bargaining support services are to be provided. 15
- (6) Any such general instructions may include general instructions about how bargaining support services are to be provided in relation to particular types of matters or particular types of situations, or both. 20
- Compare: 2000 No 24 ss 145, 153(2), (3)

### **209A Application of provisions in Employment Relations Act 2000**

- In relation to bargaining support services provided under this Act, sections 148, 152(1), and 153 of the Employment Relations Act 2000 apply, with all necessary modifications, including the following: 25
- (a) each reference to the Employment Relations Act 2000 must also be read as a reference to this Act:
  - (b) section 148(5) of the Employment Relations Act 2000 applies only to bargaining support services provided in relation to the terms of a proposed agreement or a proposed variation: 30
  - (c) section 153 of the Employment Relations Act 2000 also applies to a person employed or engaged to provide bargaining support services under this Act:
  - (d) each reference to mediation or mediation services must be read as a reference to bargaining support services provided under this Act. 35

**210 Other bargaining support services**

Nothing in this Part prevents any person from seeking and using bargaining support services other than those provided by the chief executive under **section 207**.

Compare: 2000 No 24 s 154

5

## Subpart 3—Employment Relations Authority

**211 Role of Authority**

- (1) Under this Act, the Authority's role includes the following:
- (a) making determinations (including to fix terms under **section 218 or 228C**), making recommendations, and resolving disputes relating to proposed agreements, ~~FPA~~s, proposed variations, ~~proposed renewals~~, ~~proposed replacements~~, and fair pay agreements by establishing the facts and making a decision according to the substantial merits of the case, without regard to technicalities: 10
  - (aa) assessing for coverage overlap: 15
  - (b) if the Authority decides there is coverage overlap, determining whether the proposed agreement ~~FPA~~, ~~the proposed renewal~~, ~~the proposed replacement~~, or the fair pay agreement provides the better terms overall for covered employees who are within the coverage of both agreements (*see **section 105***): 20
  - (c) assessing a ~~proposed FPA~~, agreement or a proposed variation, ~~a proposed renewal~~, or ~~a proposed replacement~~ to determine whether it complies with the requirements of this Act and other legislation (*see **section 133***). 25
- (2) In carrying out its role under this Act, the Authority must— 25
- (a) comply with the principles of natural justice; and
  - (b) aim to promote good faith behaviour; and
  - (c) support successful employment relationships; and
  - (d) generally further the object of this Act.
- (3) The Authority must act as it thinks fit in equity and good conscience, but may not do anything that is inconsistent with— 30
- (a) the Employment Relations Act 2000; or
  - (b) any regulations made under the Employment Relations Act 2000; or
  - (c) this Act; or
  - (d) any regulations made under this Act; or 35
  - (e) a fair pay agreement.

Compare: 2000 No 24 s 157

*Determinations ~~and recommendations~~***212 Parties may apply to Authority for determination**

The following parties may apply to the Authority for a determination:

- (a) an employee, an employer, or a bargaining party may apply for a determination in relation to whether an employee, a group of employees, or an employer is a covered employee, a group of covered employees, or a covered employer in relation to ~~within coverage of~~ a proposed agreement, FPA, a proposed variation, ~~a proposed renewal, or a proposed replacement~~ or a fair pay agreement: 5
- (aa) a bargaining side that is unable to agree with another bargaining side on whom to appoint as an independent reviewer under section 92A, in relation to whom the bargaining sides should appoint: 10
- (b) a party to a fair pay relationship described in **section 204(2)**, in relation to a dispute about a duty, obligation, or requirement provided under this Act: 15
- (c) a bargaining side for a proposed agreement, FPA, ~~a proposed renewal, or a proposed replacement,~~ in relation to whether to include a term that addresses a topic listed in **section 115(1)** in the proposed agreement FPA, the proposed renewal, or the proposed replacement:
- (d) ~~a bargaining side for a proposed FPA, a proposed renewal, or a proposed replacement, in relation to asking the Authority to fix the terms of the proposed FPA, the proposed renewal, or the proposed replacement:~~ 20
- (d) a bargaining side for a proposed agreement, in relation to asking the Authority under section 218 to fix the terms of the proposed agreement: 25
- (da) a bargaining party on the bargaining side that initiated bargaining for a proposed agreement (if the bargaining side lead advocate for the bargaining side receives a notice under section 80C or 80CA), in relation to asking the Authority under section 228C to fix the terms of the proposed agreement: 30
- (e) a covered employee or a covered employer, in relation to the interpretation, the application, or the operation of the fair pay agreement by which they are covered:
- (f) a Labour Inspector, in relation to whether an employee, or a group of employees, ~~is within the coverage of~~ is a covered employee or a group of covered employees in relation to a fair pay agreement. 35

**213 Jurisdiction of Authority**

- (1) The Authority has exclusive jurisdiction to make determinations relating to fair pay relationships (listed in **section 204(2)**), including—

- (a) any matter arising during the initiation of, bargaining for, or ratification of a proposed agreement or FPA, ~~a proposed variation, a proposed renewal, or a proposed replacement~~, including matters relating to—
- (i) forming bargaining sides:
  - (ii) notifying covered employees of process requirements for bargaining: 5
  - (iii) whether an employee is a covered employee:
  - (iv) whether an employer is a covered employer; and
- (b) determining whether a party has complied with the duty of good faith obligations imposed by this Act, including— 10
- (i) the terms of an inter-party side agreement:
  - (ii) the terms of the bargaining process agreement:
  - (iii) the appointment of a bargaining side lead advocate:
  - (iv) whom the bargaining sides to a proposed FPA should appoint as an independent reviewer for the purposes of ~~section 92(3)~~ section 92A(1); and 15
- (c) determining whether a bargaining party or bargaining side has complied with its bargaining obligations imposed by this Act, including the following:
- (i) ensuring a sufficient level of representation ~~and input from~~ of covered employees (see section 92C) or covered employers (see section 92F): 20
  - (ii) ensuring a sufficient level of Māori representation ~~and input~~ (see sections 92D and 92G); and
- (d) resolving a dispute about whether an employee is a covered employee in relation to ~~within the coverage of~~ a fair pay agreement; and 25
- (e) resolving a dispute about the interpretation or application of, or compliance with, a fair pay agreement; and
- (f) determining whether a topic listed in **section 115(1)** must be included in a proposed agreement FPA, ~~a proposed renewal, or a proposed replacement~~ under **section 214**; and 30
- (g) recommending the terms of a proposed agreement FPA, ~~a proposed renewal, or a proposed replacement~~ under **section 215**, or the terms of a proposed variation under **section 180**; and
- (h) fixing the terms of a proposed agreement FPA, ~~a proposed renewal, or a proposed replacement~~ under **section 218 or 228C**; and 35
- (i) determining any other matter arising under this Act.
- (1A) The Authority also has jurisdiction to—
- (a) assess for coverage overlap; and

- (b) if the Authority decides there is coverage overlap, determine whether the proposed agreement or the fair pay agreement provides the better terms overall for employees who are covered employees in relation to both agreements; and
- (c) assess a proposed agreement or a proposed variation to determine whether it complies with the requirements of this Act and other legislation. 5
- (2) This section is subject to **section 236.**
- Determinations and recommendations during bargaining process*
- 214 Determination relating to topic that bargaining sides must consider for inclusion** 10
- (1) If the bargaining sides for a proposed agreement ~~FPA, a proposed renewal, or a proposed replacement~~ are unable to agree whether to include a term that addresses a topic listed in **section 115(1)**,—
- (a) a bargaining side (or a bargaining party acting on behalf of the bargaining side) may apply to the Authority for a determination as to whether the proposed agreement ~~FPA, the proposed renewal, or the proposed replacement~~ must include such a term; and 15
- (b) the Authority must determine whether the proposed agreement ~~FPA, the proposed renewal, or the proposed replacement~~ must include such a term. 20
- (2) The Authority must determine that a proposed agreement ~~FPA, a proposed renewal, or a proposed replacement~~ must include a term to address a topic listed in **section 115(1)** unless the Authority considers there is good reason not to include such a term. 25
- (3) If the Authority determines that a proposed agreement ~~FPA, a proposed renewal, or a proposed replacement~~ must include a term to address a topic listed in **section 115(1)**, the bargaining sides must bargain to decide the content of the term.
- (4) To avoid doubt, this section and **sections 215 to 219 and 221** do not apply if a bargaining party applies or is entitled to apply, in accordance with **section 228BA**, to the Authority for a determination under **section 228C.** 30
- 215 Recommendations on terms of proposed agreement ~~FPA, proposed renewal, or proposed replacement~~**
- (1) If the bargaining sides for a proposed agreement ~~FPA, a proposed renewal, or a proposed replacement~~ are unable to agree the content of a term of the proposed agreement ~~FPA, the proposed renewal, or the proposed replacement~~, a bargaining side (or a bargaining party acting on behalf of the bargaining side)— 35

- (a) may apply to the Authority asking it to recommend the content of the term; but
- (b) is not permitted to apply for a recommendation under section 173A of the Employment Relations Act 2000.
- (2) The Authority must consider the factors listed in **section 220** before making a recommendation under **subsection (1)**. 5
- (3) A recommendation made by the Authority is not binding on the parties to the proposed agreement ~~FPA, the proposed renewal, or the proposed replacement~~.
- 216 Authority must direct use of mediation before making determination or recommendation** 10
- (1) Except as provided in **section 217**, if a party seeks a determination or recommendation from the Authority, the Authority must—
- (a) consider whether the party has attempted to resolve the matter by using mediation before applying to the Authority; and
- (b) if the Authority does not consider that the party has attempted to resolve the matter by using mediation, direct the party to use mediation or another process to resolve the matter before the Authority makes the determination or recommendation. 15
- (2) However, the Authority is not required to direct a party to use mediation or another process if the Authority considers that mediation or another process— 20
- (a) would not contribute constructively to resolving the matter; or
- (b) would not, in all the circumstances, be in the public interest; or
- (c) would undermine the urgent nature of the application; or
- (d) would otherwise be impractical or inappropriate in the circumstances.
- (3) The Authority must, when investigating a matter before making a determination or recommendation, consider from time to time whether to direct the parties to use mediation or another process before the Authority makes the determination or recommendation. 25
- (4) If the Authority gives a direction under **subsection (1)(b) or (3)**, the parties must comply with the direction and attempt in good faith to reach an agreed settlement of their differences, and proceedings in relation to the request before the Authority are suspended until the parties have done so or the Authority otherwise directs (whichever occurs first). 30
- 217 Limitations on issues relating to coverage**
- (1) A party listed in **subsection (2)** is not required to use mediation services, (whether provided under this Act, the Employment Relations Act 2000, or otherwise) before applying to the Authority for a determination as to whether, in relation to a proposed agreement ~~FPA, a proposed variation, a proposed renewal, a proposed replacement,~~ or a fair pay agreement,— 35

- (a) an employee is a covered employee;
- (b) an employer is a covered employer.
- (2) For the purposes of **subsection (1)**, the parties are,—
- (a) during bargaining for a proposed agreement or FPA, a proposed variation, ~~a proposed renewal, or a proposed replacement~~, employees, employers, and bargaining parties; or
- (b) when a fair pay agreement is in force, an employee or an employer.
- (3) If the Authority receives an application described in **subsection (1)**, the Authority—
- (a) must not direct the party to use mediation or another process before the Authority makes a determination; and
- (b) must give priority to investigating and determining the matter in accordance with **clause 2(2) of Schedule 3**.
- (4) An application for a determination described in **subsection (1)** cannot be made to the Employment Court.

*Fixing terms of fair pay agreements*

**218 Authority may fix terms of proposed agreement FPA, ~~proposed renewal, or proposed replacement~~**

- (1) If the bargaining sides for a proposed agreement FPA, ~~a proposed renewal, or a proposed replacement~~ are unable to agree the 1 or more terms of the proposed agreement FPA, a bargaining side (or a bargaining party acting on behalf of the bargaining side) may apply to the Authority for a determination to fix the terms of the proposed agreement FPA, ~~the proposed renewal, or the proposed replacement~~.
- (2) However, the Authority may only make a determination to fix the terms of a proposed agreement if it is satisfied that ~~before making an application,~~—
- (a) the bargaining sides ~~must~~ have exhausted all other reasonable alternatives for reaching agreement; or
- (b) the bargaining sides ~~must~~ have, for a reasonable period, used their best endeavours to identify and use reasonable alternatives to agree the terms of the proposed agreement FPA, ~~the proposed renewal, or the proposed replacement~~; or
- (ba) a bargaining side has breached the duty of good faith imposed by **section 17** and the breach—
- (i) was deliberate, serious, and sustained; or
- (ii) involved behaviour that undermined the bargaining process; or



- (c) the proposed ~~FPA, the proposed renewal, or the proposed replacement~~ must have agreement has been the subject of 2 ratification processes, without having been ratified.

## 219 Terms that Authority may fix

- (1) ~~If the Authority decides to fix the terms of a proposed FPA, a proposed renewal, or a proposed replacement, it may do so by—~~ 5
- (a) ~~fixing terms that, under **section 114**, must be included in a fair pay agreement;~~
- (b) ~~fixing terms on topics that, under **section 115**, the bargaining sides must discuss for inclusion in a fair pay agreement and that one bargaining side has requested to be included;~~ 10
- (c) ~~fixing terms that are not described in **paragraph (a) or (b)** but that both bargaining sides have agreed to include.~~
- (1) If the Authority receives a valid application under **section 218**, the Authority must— 15
- (a) fix the terms that, under **section 114(1)**, must be included in a fair pay agreement; and
- (b) fix the terms (unless there is good reason not to) on topics that,—
- (i) under **section 115(1)**, the bargaining sides must discuss whether to specify in a fair pay agreement; and 20
- (ii) a bargaining side has requested the Authority to fix.
- (c) if the term is not described in **paragraph (a) or (b)**, but both bargaining sides agreed to include the term, the Authority may fix the term.

## 220 Considerations when Authority recommends or fixes terms

When recommending terms of a proposed agreement or FPA, a proposed variation, ~~a proposed renewal, or a proposed replacement~~ under **section 180 or 215**, or fixing the terms of a proposed agreement FPA, a proposed renewal, or a proposed replacement under **section 218**, the Authority— may consider 1 or more of the following: 25

- (a) ~~must consider—~~ 30
- (i) ~~any terms of the proposed FPA, the proposed variation, the proposed renewal, or the proposed replacement (as applicable) that the bargaining sides have already agreed; and~~
- (ii) ~~industrial (in relation to an industry based agreement) or occupational (in relation to an occupation based agreement) practices and norms, including their evolution and development; and~~ 35
- (iii) ~~the likely impact and potential benefits of the terms on covered employees and, in particular, on covered employees who are low paid and vulnerable employees; and~~

- (iv) ~~the likely impact of the terms on covered employers; and~~
- (v) ~~relativities within the proposed FPA, the proposed variation, the proposed renewal, or the proposed replacement (as applicable) and with other relevant employment standards (for example, any relevant collective agreements under the Employment Relations Act 2000 or applicable minimum employment standards); and~~ 5
- (vi) ~~the need to ensure that the proposed FPA, the proposed variation, the proposed renewal, or the proposed replacement is easily understood by covered employees and covered employers (for example, by being expressed in plain language); and~~ 10
- (vii) ~~any other relevant considerations; and~~
- (b) ~~may consider any likely impacts on New Zealand's economy or society:~~
- (a) any terms of the proposed agreement or the proposed variation (as applicable) that the bargaining sides have already agreed:
- (b) industrial (in relation to an industry-based agreement) or occupational (in relation to an occupation-based agreement) practices and norms, including their evolution and development: 15
- (c) the likely impact and potential benefits of the terms on covered employees and, in particular, on covered employees who are low-paid and vulnerable employees: 20
- (d) the likely impact of the terms on covered employers:
- (e) relativities within the proposed agreement or the proposed variation (as applicable) and with other relevant employment standards (for example, any relevant collective agreements under the Employment Relations Act 2000 or applicable minimum employment standards): 25
- (f) the need to ensure that the proposed agreement or the proposed variation is easily understood by covered employees and covered employers (for example, by being expressed in plain language):
- (g) any likely impacts on New Zealand's economy or society:
- (h) any other relevant considerations. 30
- 221 Limits on Authority fixing terms**
- (1) ~~When the Authority fixes the terms of a proposed FPA, the terms must comply with the limitations and requirements specified in **Part 6** (content and form of fair pay agreements).~~
- (1) When the Authority fixes the terms of a proposed agreement under this Part, **Part 6** (content of fair pay agreements) applies. 35
- (2) However, the Authority—

- (a) may fix a term that provides for a union member payment (as defined in **section 13(4)**) only if both bargaining sides agree to include such a term in the proposed FPA agreement; and
- (b) must not fix a term that provides for the proposed FPA agreement to have a delayed commencement date for a specified employer (*see sections 127 to 129*). 5

## 222 Effect of Authority fixing terms

- (1) Terms that are fixed by the Authority under **section 218** ~~are binding and enforceable and~~—
    - (a) are not required to be— 10
      - (i) ~~assessed under subpart 4 of Part 7; or~~
      - (i) submitted to the Authority for a compliance assessment under section 132; or
      - (ii) ratified under **subpart 2 of Part 7**; or
      - (iii) verified under **subpart 3 of Part 7**; but 15
    - (b) must be—
      - (iaa) assessed for coverage overlap under section 135(2); and
      - (i) ~~assessed—checked and, if applicable, assessed for overlapping coverage overlap~~ under **subpart 4 of Part 7**; and
      - (ii) validated under **subpart 5 of Part 7**. 20
  - (2) If, when the Authority assesses terms for coverage overlap as required by subsection (1)(b)(ia) and (i), the Authority decides there is coverage overlap,—
    - (a) it must—
      - (i) determine, in accordance with section 138, which agreement provides the better terms overall; and 25
      - (ii) notify the bargaining sides for the agreements which agreement provides the better terms overall, no later than 20 working days after deciding that there is coverage overlap; and
    - (b) sections 154 and 155 apply with all necessary modifications.
  - (3) If the Authority fixes the terms of a proposed agreement under section 218, it must provide a copy of the terms to the chief executive. 30
  - (4) The Authority must assess a term for coverage overlap under subsection (1)(b) within the time frame permitted for fixing the term (see clause 8 of Schedule 3).
- ## 223 Membership of Authority when fixing terms of fair pay agreement 35
- (1) When fixing the terms of a proposed agreement—FPA, the Authority must consist of a panel of 3 members.

- (2) The Chief of the Authority must appoint 1 of the 3 members to be the chairperson of the panel.
- (3) The Chief of the Authority must replace a panel member who is temporarily or permanently unable to perform their function as panel member (for example, due to ill health) by appointing another panel member. 5

*General provisions relating to Employment Relations Authority*

**224 Powers of Authority under this Act**

- (1) Despite **Schedule 3**, the Authority has only the powers set out in **subsection (2)** when it is—
- (a) assessing a proposed FPA agreement for compliance in accordance with **section 133**; or 10
- (b) determining whether a proposed FPA agreement or a fair pay agreement provides better terms in accordance with **section 105**.
- (2) The Authority has the power—
- (a) to call for evidence and information from any person: 15
- (b) to interview any person:
- (c) to follow whatever procedure the Authority considers appropriate.

**225 Panel member not permitted to hear disputes about same fair pay agreement**

An Authority member who is a member of a panel that has fixed the terms of a fair pay agreement must not hear any disputes relating to the interpretation or application of the fair pay agreement. 20

**226 Decision of Authority**

- (1) The decision of a majority of the Authority members on a panel appointed in accordance with **section 223** is the decision of the panel. 25
- (2) If the panel members are unable to form a majority decision, the decision of the panel is,—
- (a) if the Chief of the Authority is a member of the panel, the Chief's decision; or
- (b) if the Chief of the Authority is not a member of the panel, the chairperson of the panel's decision. 30

Compare: 2000 No 24 s 210

**227 Obligation not to obstruct or delay Authority**

- (1) A person must not obstruct or delay the Authority from performing a function under this Act. 35

- (2) A person who, without sufficient cause, fails to comply with **subsection (1)** is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 197**.
- (3) The power to award a penalty under **subsection (2)** may be exercised by the Authority—
- (a) of its own motion; or
  - (b) on the application of any other party.

5

Compare: 2000 No 24 s 134A

*Provisions that apply when application made to Authority*

- 228 Application of Employment Relations Act 2000** 10
- The provisions of the Employment Relations Act 2000 listed in **Part 1 of Schedule 3**, and the provisions set out in **Part 2 of Schedule 3**, apply if a person applies, in accordance with this Part, for the Authority or the court to,—
- (a) issue a determination or recommendation:
  - (b) resolve a dispute: 15
  - (c) fix the terms of a fair pay agreement.

**Part 10A**

**Determinations in absence of bargaining side**

*Applications for determination*

- 228BA Bargaining party may apply to Authority for determination** 20
- (1) A bargaining party on the bargaining side that initiated the bargaining for a proposed agreement may apply to the Authority for a determination under **section 228C** if the bargaining side lead advocate for the bargaining side receives a notice under **section 80C or 80CA**.
  - (2) The bargaining party that makes an application does so on behalf of all the bargaining parties on the bargaining side. 25
  - (3) If a bargaining party applies for a determination, it must apply no later than 3 months after the date of the notice provided under **section 80C or 80CA**.
  - (4) However,—
    - (a) a bargaining party on the bargaining side that did not initiate bargaining for the proposed agreement is not permitted to apply to the Authority for a determination: 30
    - (b) a default bargaining party is not permitted to apply to the Authority for a determination:

- (c) in relation to a proposed renewal or a proposed replacement, a specified employer bargaining party may apply for a determination only if a specified employer bargaining party initiated bargaining.

### **228BB Application for determination**

- (1) A bargaining party that, in accordance with **section 228BA**, applies to the Authority to make a determination under **section 228C** must ensure that the application— 5
- (a) is made in the prescribed form; and
- (b) is filed with the Authority no later than 3 months after the date of the notice provided under **section 80C or 80CA**; and 10
- (c) confirms that the chief executive has not notified the applicant that—
- (i) the chief executive has received an application under **section 43 or 49** to be a bargaining party on a bargaining side (see **section 228BG(2)**); and
- (ii) the chief executive has approved an application to initiate bargaining for another proposed FPA that covers employees who are employed in the same industry (see **section 228BH(1)(b)**); and 15
- (d) specifies the coverage of the proposed agreement; and
- (e) specifies where to find the chief executive’s notice issued under **section 34 or 192** (as applicable). 20
- (2) To avoid doubt, an application must not seek to change the coverage of the proposed agreement, as approved by the chief executive under **section 34, 102F, or 192** (as applicable).

### **228BC Joint applicants and other parties to application for determination**

- If a bargaining party applies, in accordance with **section 228BA**, for a determination under **section 228C**,— 25
- (a) each bargaining party, including any specified employer bargaining party or default bargaining party, on the same bargaining side as the applicant is a joint applicant for the determination (but need not be named as an applicant on the application) and is a party to the determination; and 30
- (b) any bargaining party on the opposing bargaining side is a party to the application and the determination, but is not a joint applicant.

### *Notification requirements*

### **228BD Notification requirements: employee bargaining side**

- (1) **Subsections (2) and (3)** apply to an employee bargaining side— 35
- (a) that initiated bargaining for a proposed agreement; and

- (b) that may apply, in accordance with **section 228BA**, for a determination under **section 228C**.
- (2) An employee bargaining side described in **subsection (1)** must notify the following parties of its decision whether to apply for a determination under **section 228C**: 5
- (a) each employer that it knows to be within the coverage of the proposed agreement:
- (b) each employee that it knows to be within the coverage of the proposed agreement and for whom it holds contact details:
- (c) the chief executive. 10
- (3) If the employee bargaining side decides not to apply for a determination, it must also notify the parties listed in **subsection (2)** that bargaining for the proposed agreement will be discontinued on the day after the last day on which the employee bargaining side may apply for a determination.

**228BE Notification requirements: employer bargaining side** 15

- (1) **Subsections (2) and (3)** apply to an employer bargaining side—
- (a) that initiated bargaining for a proposed renewal or a proposed replacement; and
- (b) that may apply, in accordance with **section 228BA**, for a determination under **section 228C**. 20
- (2) An employer bargaining side described in **subsection (1)** must notify the following parties of its decision whether to apply for a determination under **section 228C**:
- (a) each employer that it knows to be within the coverage of the proposed renewal or the proposed replacement: 25
- (b) the chief executive.
- (3) If the employer bargaining side decides not to apply for a determination, it must also notify the parties listed in **subsection (2)** that bargaining for the proposed renewal or the proposed replacement will be discontinued on the day after the last day on which the employer bargaining side may apply for a determination. 30

**228BF Notification requirements: employers**

An employer that receives a notification under **section 228BE** must provide that notification to each of the employer's employees who are covered by the proposed renewal or the proposed replacement (as applicable). 35

Restrictions on applying for determinations**228BG Restriction on applying for determination: subsequent formation of bargaining side**

- (1) This section applies if, in relation to a proposed agreement,—
- (a) the initiating bargaining side is entitled to apply, in accordance with **section 228BA**, for a determination under **section 228C** but has not yet done so; and 5
  - (b) a party applies under **section 43 or 49** (as applicable) to be a bargaining party on the bargaining side on which the default bargaining party was eligible to elect to be a bargaining party. 10
- (2) If this section applies, the chief executive must notify the Authority and the bargaining side lead advocate for the initiating bargaining side that—
- (a) the chief executive has received an application under **section 43 or 49** (as applicable) to be a bargaining party on the bargaining side on which the default bargaining party was eligible to elect to be a bargaining party; and 15
  - (b) the initiating bargaining side is temporarily no longer permitted to apply for a determination; and
  - (c) the chief executive will notify the initiating bargaining side of the chief executive’s decision. 20
- (3) If the chief executive approves the application, the chief executive must notify the Authority and the bargaining side lead advocate for the initiating bargaining side that—
- (a) the chief executive has approved the application, so that there are 2 opposing bargaining sides for the proposed agreement; and 25
  - (b) the initiating bargaining party continues not to be permitted to apply for a determination.
- (4) If the chief executive declines the application, the chief executive must notify the Authority and the bargaining side lead advocate for the initiating bargaining side that— 30
- (a) the chief executive has declined the application; and
  - (b) the initiating bargaining party may apply for a determination if sufficient time remains to make an application in accordance with **section 228BA(3)**.

**228BH Restriction on applying for determination: bargaining initiated for another proposed agreement** 35

- (1) This section applies if—
- (a) the initiating bargaining side is entitled to apply, in accordance with **section 228BA**, for a determination under **section 228C** in relation to a



- proposed agreement (the **first proposed agreement**) but has not yet done so; and
- (b) the chief executive approves an application to initiate bargaining for another proposed agreement that covers employees who are employed in the same industry (the **second proposed agreement**). 5
- (2) If this section applies,—
- (a) bargaining for the first proposed agreement is consolidated with bargaining for the second proposed agreement in accordance with **sections 106 to 111**; and
- (b) the initiating bargaining party is no longer entitled to apply for a determination in respect of the first proposed agreement. 10
- (3) However, despite **subsection (2)(b)**, a bargaining party on the initiating bargaining side for a consolidated proposed agreement (see **section 109**) may apply, in accordance with **section 228BA**, for a determination under **section 228C** if it is entitled to do so. 15

*Authority's power to make determinations*

**228C Authority must make determination**

- (1) If a bargaining party applies for a determination in accordance with **section 228BA**, the Authority must make a determination that fixes the terms of the proposed agreement in accordance with this Part. 20
- (2) When the Authority is making a determination under this Part,—
- (a) **sections 220, 223, 225, 226, 227, and 228** apply to the Authority; and
- (b) **section 222** applies to the terms that the Authority fixes when making the determination. 25

**228D Terms that Authority must fix when making determination**

- (1) When making a determination to fix the terms of a proposed agreement under this Part, the Authority must—
- (a) fix the terms that, under **section 114(1)**, must be included in a fair pay agreement; and 30
- (b) fix the terms (unless there is good reason not to)—
- (i) on topics that, under **section 115(1)**, the bargaining sides must discuss whether to specify in a fair pay agreement; and
- (ii) that the applicant for the determination has requested the Authority to fix. 35
- (2) This section applies subject to **sections 228F and 228G**.

**228E Terms that Authority may fix when making determination**

- (1) When making a determination to fix the terms of a proposed agreement under this Part, the Authority may fix the terms that, under **section 115(1)**, the bargaining sides must discuss whether to specify in a fair pay agreement, but that the applicant for the determination has not requested the Authority to fix. 5
- (2) This section applies subject to **sections 228F and 228G**.

**228F Terms that Authority must not fix when making determination**

When making a determination to fix the terms of a proposed agreement under this Part, the Authority must not fix a term of a fair pay agreement that—

- (a) provides for a union member payment (as defined in **section 13(4)**); or 10
- (b) provides for a delayed commencement date for a specified employer (*see sections 127 to 129*); or
- (c) amends the coverage of the proposed agreement; or
- (d) is not described in **section 228D or 228E**.

**228G Provisions that apply to determination under this Part** 15

When the Authority makes a determination to fix the terms of a proposed agreement under this Part, **sections 114(2) to (5), 117 to 119, and 121 to 126** apply.

*Consolidation***228H Consolidation when Authority making 2 determinations** 20

- (1) This section applies if—
- (a) a bargaining party applies, in accordance with **section 228BA**, to the Authority to make a determination under this Part in relation to a proposed agreement (the **first proposed agreement**); and
- (b) a bargaining party (which may be the same bargaining party that applies for the first proposed agreement) applies, in accordance with **section 228BA**, to the Authority to make a determination under this Part in relation to another proposed agreement (the **second proposed agreement**); and 25
- (c) the coverage of the second proposed agreement is in the same industry as the coverage of the first proposed agreement, but for a different occupation. 30
- (2) If this section applies, the Authority may decide to consolidate the determination processes for the first proposed agreement and the second proposed agreement. 35

**228I Effect of decision whether to consolidate**

- (1) If the Authority decides to consolidate 2 determination processes under **section 228H**, the processes are combined and proceed as if there were only 1 application for a determination.
- (2) If the Authority decides not to consolidate 2 determination processes under **section 228H**,— 5
- (a) the processes continue separately; and
- (b) if the chief executive decides to validate both proposed agreements under **section 156**, the chief executive must validate the second proposed agreement in the form of an amendment that adds the second proposed agreement as a schedule of the first proposed agreement. 10

*Provisions that apply during determination process***228KA Provisions that apply during determination process**

The following provisions apply, with all necessary modifications, during the process of applying, in accordance with **section 228BA**, to the Authority for a determination under **section 228C** in relation to a proposed agreement (including during the process of the Authority deciding the terms of the determination): 15

- (a) **section 67:**
- (b) **section 92C:** 20
- (c) **section 92D:**
- (d) **section 92E:**
- (e) **section 92F:**
- (f) **section 92G.**

*Provision of information* 25**228L Requirement to provide information**

- (1) If an employee bargaining party is a party to a determination that has been applied for in accordance with **section 228BA** in relation to a proposed agreement, the provisions listed in **subsection (2)** apply with all necessary modifications during the following period: 30
- (a) after the date on which a bargaining party applies in accordance with **section 228BA** to the Authority for the determination; but
- (b) before the date on which the chief executive issues a fair pay agreement notice under **section 156(1)(a)** in relation to the Authority's determination. 35
- (2) For the purposes of **subsection (1)**, the provisions that apply are—
- (a) **section 102A;** and

- (b) **section 102B(1)**; and
  - (c) **section 102C(1)(b), (2), (3)(b), (4), and (5)**; and
  - (d) **section 102D**.
- (3) **However, when applying the provisions listed in subsection (2),—**
- (a) **the reference to an employer bargaining side in section 102B(1) must be read as a reference to any covered employer of which the employee bargaining side is aware; and** 5
  - (b) **the references to an employer bargaining side in section 102C(1)(b), (2)(a), and (3)(b) must be read as references to an employee bargaining side.** 10

### **228M Personal information**

- Personal information that is provided to a bargaining side during the period described in section 228L(1) (excluding contact details provided under section 39, 102A, 102C, 102D, 141(3), 171(4), 172(2)(c), 173(4), 193(8), or 228L)—** 15
- (a) **must be used only for a purpose related to an application under section 228BA to the Authority for a determination in relation to a proposed agreement; and**
  - (b) **must not be disclosed to any person except in a form that does not identify the individual.** 20

### *FPA meetings*

### **228N Requirements for arranging FPA meetings**

- (1) **During the period described in section 228L(1), an employee bargaining party on an employee bargaining side for a proposed agreement may arrange an FPA meeting if the employee bargaining party has received approval from the employee bargaining side to hold the meeting on behalf of the employee bargaining side.** 25
- (2) **Before holding an FPA meeting under this section, the employee bargaining party must—**
  - (a) **give at least 14 days' notice of the date and time of the meeting to each employer who has employees who are eligible to attend the meeting; and** 30
  - (b) **make arrangements with each employer to ensure that the employer's business is maintained during the FPA meeting, including, where appropriate, an arrangement for sufficient employees to remain available during the meeting to enable the employer's operations to continue.** 35

**228O Entitlement to attend FPA meetings**

- (1) An employer must, during the period described in **section 228L(1)**, allow each employee who is within the coverage of a proposed agreement to attend the following number of FPA meetings in relation to the proposed agreement:
- (a) if the employee has not attended any FPA meetings in relation to the proposed agreement under **Part 4**, 2 FPA meetings under this Part; or 5
  - (b) if the employee has attended 1 FPA meeting in relation to the proposed agreement under **Part 4**, 1 FPA meeting under this Part; or
  - (c) if the employee has attended 2 or more FPA meetings in relation to the proposed agreement under **Part 4**, no additional FPA meetings under this Part. 10
- (2) Each FPA meeting held during the period described in **section 228L(1)** must—
- (a) last no longer than 2 hours; and
  - (b) relate to the proposed agreement; and 15
  - (c) be arranged in accordance with **section 228N**.
- (3) An employee is entitled to attend an FPA meeting under this Part despite not being a member of—
- (a) the union that arranges the meeting; or
  - (b) a union on the employee bargaining side; or 20
  - (c) any other union.
- (4) An employee's entitlement to attend an FPA meeting under this Part is in addition to any entitlement to attend a union meeting under section 26 of the Employment Relations Act 2000.
- (5) An employer who fails to comply with this section is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**. 25

**228P Payment for attending FPA meeting**

- (1) An employee's employer must allow the employee to attend an FPA meeting on ordinary pay— 30
- (a) if the employee is entitled to attend the FPA meeting under this Part; and
  - (b) if the FPA meeting is arranged in accordance with **section 228N**; and
  - (c) to the extent that the employee would otherwise be working for the employer during the meeting.
- (2) For the purposes of **subsection (1)**, the employee bargaining party that arranges the FPA meeting must— 35
- (a) supply to the employer a list of the employer's employees who attended the meeting; and

- (b) advise the employer of the duration of the meeting.
- (3) An employee must resume work as soon as practicable after attending an FPA meeting.
- (4) An employee who is absent from work for more than 2 hours to attend an FPA meeting is entitled to ordinary pay for a maximum of 2 hours. 5
- (5) An employer who fails to comply with this section is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**.

*Access to workplaces*

**228Q Access to workplaces** 10

- (1) A representative of an employee bargaining party is entitled, in accordance with this Part, to enter a workplace without the employer's consent if the primary purpose of entering the workplace is to discuss with a covered employee, or an employee who may be affected by, an application for a determination under **section 228C**, including the terms of such a determination. 15
- (2) A purpose for entering a workplace is within the scope of **subsection (1)** if, for example, it relates to—
- (a) communicating to employees any progress in the application for a determination; or
- (b) seeking feedback from covered employees about any aspect of the application for a determination; or 20
- (c) discussing the terms of a determination with covered employees.
- (3) However, the representative is entitled to enter a workplace in accordance with **subsection (1)** only if—
- (a) 1 or more employees at the workplace are covered employees (whether or not the employees are members of a union); and 25
- (b) the employee bargaining party is a party to the application that has been made, in accordance with **section 228BA**, for a determination under **section 228C**; and
- (c) the Authority has not yet made the determination. 30
- (4) For the purposes of the entitlement under this section,—
- (a) **section 86(6), (7), and (8)** and **sections 87 to 91** apply with all necessary modifications; and
- (b) in **section 86(6)(b)(ii)**, the reference to **section 82 or 84** must be read as a reference to **section 82, 84, or 228Q**; and 35
- (c) in **section 88(3)(b)**, the reference to **section 86** must be read as a reference to this section.
- (5) In this section,—

**dwellinghouse** has the meaning given in section 5 of the Employment Relations Act 2000

**workplace** does not include a dwellinghouse.

## Part 11 Miscellaneous provisions

5

### 229 Meaning of document

In this Part, **document** includes information that is stored electronically.

### *Representation*

### 230 Representation of individuals

- (1) **Subsection (2)** applies only if this Act confers on an employee the right to do anything or take any action— 10
- (a) in respect of an employer; or
  - (b) in respect of an employee bargaining party; or
  - (c) in the Authority; or
  - (d) in the court. 15
- (2) The employee may choose any person to represent the employee for the purpose of doing anything or taking any action described in **subsection (1)**.
- (3) **Subsection (4)** applies only if this Act confers on an employer the right to do anything or take any action— 20
- (a) in respect of an employee; or
  - (b) in respect of an employee bargaining party; or
  - (c) in respect of an employer bargaining party; or
  - (d) in the Authority; or
  - (e) in the court.
- (4) The employer may choose any person to represent the employer for the purpose of doing anything or taking any action described in **subsection (3)**. 25
- (5) Any person purporting to represent any employee or employer must establish that person's authority for that representation.

Compare: 2000 No 24 s 236

### 231 Representation of bargaining parties

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- (1) **Subsection (2)** applies only if this Act confers on an employee bargaining party the right to do anything or take any action—
- (a) in respect of an employer; or
  - (b) in respect of an employee bargaining party; or

- (c) in respect of an employer bargaining party; or
  - (d) in the Authority; or
  - (e) in the court.
- (2) The employee bargaining party may choose any person to represent the employee bargaining party for the purpose of doing anything or taking any action described in **subsection (1)**. 5
- (3) **Subsection (4)** applies only if this Act confers on an employer bargaining party the right to do anything or take any action—
- (a) in respect of an employer; or
  - (b) in respect of an employee bargaining party; or 10
  - (c) in respect of an employer bargaining party; or
  - (d) in the Authority; or
  - (e) in the court.
- (4) The employer bargaining party may choose any person to represent the employer bargaining party for the purpose of doing anything or taking any action described in **subsection (3)**. 15
- (5) Any person purporting to represent any employee bargaining party or employer bargaining party must establish that person's authority for that representation.
- Compare: 2000 No 24 s 236

### *Record-keeping requirements* 20

#### **232 Record when minimum entitlement provision has district variation**

- (1) An employer that has at least 1 covered employee within the coverage of a fair pay agreement that includes a minimum entitlement provision that applies to a specific district (*see* **section 123**) must keep records showing, for each of the employer's covered employees ~~who are within the coverage of the fair pay agreement~~ (regardless of where the employee works),— 25
- (a) the hours of each day that the employee worked; and
  - (b) the days of the week on which the employee worked; and
  - (c) for each hour of each day that the employee worked, the district in which the employee worked. 30
- (2) If the hours of each day that the employee is to work, the days of the week on which the employee is to work, and the district in which the employee is to work for each hour are agreed and the employee works those hours in the agreed district or districts (the **usual hours**), it is sufficient compliance with **subsection (1)** if those details are stated in— 35
- (a) the wages and time record; or
  - (b) the employment agreement; or



- (c) a roster or any other document or record used in the normal course of the employee's employment.
- (3) In **subsection (2)**, the **usual hours** of an employee who is remunerated by way of salary include any additional hours worked by the employee in accordance with the employee's employment agreement. 5
- (4) Despite **subsection (3)**, the employer must keep a record of any additional hours worked that need to be recorded for the employer to comply with section 4B(1) of the Employment Relations Act 2000.
- 233 Record when agreement includes penalty rate or overtime rate**
- (1) An employer that has at least 1 covered employee within the coverage of a fair pay agreement that includes a penalty rate or overtime rate that is not the same as the base wage rate must keep records showing, for each of the employer's covered employees who are within the coverage of the fair pay agreement,— 10
- (a) the number of hours the employee worked each day, including the time at which the employee started and finished working each day; and 15
- (b) the days of the week on which the employee worked; and
- (c) the pay rates the employee received for the hours worked, including the base wage rate, any penalty rate, and any overtime rate.
- (2) If the number of hours an employee is to work each day in a pay period (including the time at which the employee is to start and finish working each day) and the pay rates for those hours (including the base wage rate, any penalty rate, and any overtime rate) are agreed and the employee works those hours (the **usual hours**), it is sufficient compliance with **subsection (1)** if those usual hours and pay rates are stated in— 20
- (a) the wages and time record; or 25
- (b) the employment agreement; or
- (c) a roster or any other document or record used in the normal course of the employee's employment.
- (3) In **subsection (2)**, the **usual hours** of an employee who is remunerated by way of salary include any additional hours worked by the employee in accordance with the employee's employment agreement. 30
- (4) Despite **subsection (3)**, the employer must keep a record of any additional hours worked that need to be recorded for the employer to comply with section 4B(1) of the Employment Relations Act 2000.
- Compare: 2000 No 24 s 130 35
- 234 How records must be kept**
- (1) A record kept under **section 232 or 233**—
- (a) must form part of the employer's wages and time record kept under section 130 of the Employment Relations Act 2000; but

- (b) is additional to the requirements under that section.
- (2) A record must be kept—
- (a) in written form; or
- (b) in a form or in a manner that allows the information in the record to be easily accessed and converted into written form. 5
- (3) An employer that fails to comply with **section 232, 233**, or this section is liable to a penalty as if the employer had failed to comply with section 130 of the Employment Relations Act 2000.

*Employee contact details*

**234A Use of employee contact details by initiating union or employee bargaining party** 10

- (1) An initiating union or employee bargaining party that receives employees' contact details from an employee bargaining party or under **section 39, 102A, 102C, 102D, 141(3), 171(4), 172(2)(c), 173(4), or 193(8)**—
- (a) may use the contact details to communicate with the employees about whether the initiating union or employee bargaining party will apply for approval to initiate bargaining for a proposed renewal or a proposed replacement, or to seek the employees' support for such an application; but 15
- (b) except as provided in **paragraph (a)**, must not use the contact details for a purpose that is not related to the relevant proposed agreement, proposed variation, or fair pay agreement. 20
- (2) However, **subsection (1)** does not apply to an employee's contact details that an initiating union or employee bargaining party receives if—
- (a) the employee is or becomes a member of the initiating union or employee bargaining party; and 25
- (b) the contact details provided by the employee as part of being or becoming a member of the initiating union or the employee bargaining party match those provided under a section listed in **subsection (1)**.
- (3) Any communication from an initiating union or employee bargaining party using the contact details received under **section 39, 102A, 102C, 102D, 141(3), 171(4), 172(2)(c), 173(4), or 193(8)**— 30
- (a) may, despite **subsection (1)**, also provide supplementary information to the employee if the primary purpose of the communication—
- (i) is related to the relevant proposed agreement, proposed variation, or fair pay agreement; or 35
- (ii) is described in **subsection (1)(a)**; and

- (b) must advise the employee that they may elect not to receive any further communication from the initiating union or employee bargaining party, and how to do so.
- (4) Supplementary information provided under **subsection (3)(a)**—
- (a) may, without limitation, include the location of information about how to join a union; but 5
- (b) must otherwise be directly related to the primary purpose of the communication.
- (5) An initiating union or employee bargaining party that intentionally or recklessly fails to comply with this section is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**. 10

#### **234B Storage of employee contact details**

- (1) An initiating union or an employee bargaining party that receives employees' contact details from an employee bargaining party or under **section 39, 102A, 102C, 102D, 141(3), 171(4), 172(2)(c), 173(4), or 193(8)** must ensure that— 15
- (a) the contact details are stored separately from any other information held by the union; and
- (b) access to the contact details is limited to only those employees of the union who need to use the contact details for a purpose set out in this Act (for example, to communicate with the employee about bargaining for a proposed FPA, or for the union to access the workplace to discuss a proposed FPA). 20
- (2) Nothing in this section limits an initiating union's or employee bargaining party's obligation to ensure the security of employees' contact details under the Privacy Act 2020. 25
- (3) An initiating union or employee bargaining party that intentionally or recklessly fails to comply with **subsection (1)** is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**.

#### Personal information

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#### **234C Personal information**

- (1) Personal information that is provided to a bargaining side for the purpose of bargaining under this Act (excluding contact details provided under **section 39, 102A, 102C, 102D, 141(3), 171(4), 172(2)(c), 173(4), or 193(8)**)—
- (a) must be used only for the purposes of bargaining; and 35
- (b) must not be disclosed to any person except in a form that does not identify the individual.

- (2) Nothing in this Act limits the rights of an individual under the Privacy Act 2020 or any other Act (including the right to complain under Part 5 of the Privacy Act 2020).

**234D Chief executive may collect personal information**

The chief executive may collect personal information under this Act for the following purposes only: 5

- (a) assessing whether an application to initiate bargaining has met the required tests for the chief executive to approve the application:
- (aa) assessing whether to approve an application to be a bargaining party:
- (b) verifying that a ratification vote complies with the requirements set out in this Act: 10
- (c) monitoring compliance with this Act.

*Labour Inspector may make determination of coverage by fair pay agreement*

**235 Employee or employer may apply for coverage determination**

- (1) An employee or an employer (or a representative of the employee or the employer under **section 230**) may apply to a Labour Inspector for a determination as to whether an employee, or a group of employees, is a covered employee, or a group of covered employees, in relation to ~~is covered by~~ a fair pay agreement. 15
- (2) An application must be made using a form approved by the chief executive. 20
- (3) A Labour Inspector must not make a determination under **subsection (1)** in relation to an employee unless satisfied that the application is from—
- (a) the employee; or
- (b) the employer of the employee; or
- (c) a representative of the employee or the employee's employer, and the employee or employer has consented in writing to the representative applying on their behalf. 25

**236 Labour Inspector may determine whether employee is covered employee under coverage under fair pay agreement**

- (1) A Labour Inspector may determine whether an employee is a covered employee in relation to ~~by~~ a fair pay agreement if the Labour Inspector— 30
- (a) receives an application for a determination under **section 235**; or
- (b) considers, without receiving an application, that it is necessary to do so for the purposes of performing a function under section 223A of the Employment Relations Act 2000. 35

- (2) If an applicant applies for a determination about a group of employees, the Labour Inspector must make a separate determination about each employee in the group.
- (3) A Labour Inspector who receives an application for a determination must—
- (a) decide whether to investigate whether the employee is a covered employee in relation to ~~by~~ the fair pay agreement; and 5
  - (b) decide whether to make a determination; and
  - (c) decide whether to take any further action on behalf of the applicant, which may include referring the matter to the Authority; and
  - (d) within a reasonable period after receiving the application, notify the applicant of the Labour Inspector's ~~its~~ decisions under **paragraphs (a) to (c)**. 10
- (4) When the Labour Inspector notifies the applicant under **subsection (3)(d)**, the Labour Inspector must also,—
- (a) if the Labour Inspector decides to make a determination, include a copy of the determination; and 15
  - (aa) if the Labour Inspector decides not to make a determination, advise the applicant what other steps (if any) the applicant could take to resolve the matter; and
  - (b) advise the applicant whether the Labour Inspector will take any further action on behalf of the applicant. 20
- (5) A Labour Inspector who considers it is necessary to make a determination under **subsection (1)(b)** may decide to take further action on behalf of the employee who is the subject of the application, including by referring the matter to the Authority. 25

### 237 Actions by Labour Inspector

A Labour Inspector may commence an action in the Authority to seek a determination as to whether an employee is a covered employee in relation to ~~by~~ a fair pay agreement—

- (a) on behalf of an applicant under **section 235**; or 30
- (b) if the Labour Inspector did not receive an application, but has decided—
  - (i) it is necessary to make a determination for the purposes of performing a function under section 223A of the Employment Relations Act 2000; and
  - (ii) the Labour Inspector is unable to make a determination. 35

### 238 Effect of coverage determination

- (1) A determination made under **section 236** is prima facie evidence of the matter determined.

- (2) However, **subsection (1)** does not apply if—
- (a) a Labour Inspector makes a subsequent determination in relation to the same employee and the same fair pay agreement; or
  - (b) the determination is appealed against in accordance with **section 239**.
- (3) A determination as to whether an employee is a covered employee in relation to ~~by~~ a fair pay agreement overrides any earlier determination in relation to the same employee and the same fair pay agreement. 5

### **239 Appeal against coverage determination**

- (1) A person described in **section 235(1)** may appeal to the Authority against a determination made under **section 236** if the person is dissatisfied with the determination. 10
- (2) Any appeal must be made no later than 28 days after the date on which the Labour Inspector notifies the applicant of the determination under **section 236(3)(d)**.

### **240 Extended powers of Labour Inspectors** 15

- (1) For the purpose of determining whether an employee is a covered employee by ~~a fair pay agreement~~ under **section 236**, a Labour Inspector has the following powers:
- (a) the power to enter, at any reasonable hour, any premises where any person is employed or where the Labour Inspector has reasonable cause to believe that any person is employed (including the premises of a controlling third party), accompanied, if the Labour Inspector thinks fit, by any other employee of the department qualified to assist or by a constable: 20
  - (b) the power to interview any—
    - (i) person at any premises of the kind described in **paragraph (a)**: 25
    - (ii) employer:
    - (iii) controlling third party:
    - (iv) employee (including an employee of a controlling third party):
    - (v) employee of a business that has a contract with the employer of the employee who is the subject of the determination: 30
  - (c) the power to require the production of, to inspect, and to take copies from,—
    - (i) any wages and time record or any holiday and leave record whether kept under this Act, the Employment Relations Act 2000, or any other Act: 35
    - (ii) any records that an employer is required to keep under **sections 232 and 233**:

- (iii) any other document held that records the remuneration of any employees (including an employee of a controlling third party, or that is under the direction and control of a controlling third party):
- (iv) any other document that the Labour Inspector reasonably believes may assist in determining whether an employee is a covered employee ~~by a fair pay agreement~~ under **section 236**: 5
- (d) the power to require any employer or controlling third party to supply to the Labour Inspector, in relation to any employee of that employer or controlling third party, 1 or more of the following:
- (i) a copy of the wages and time record or holiday and leave record or employment agreement: 10
- (ii) any records that an employer is required to keep under **sections 232 and 233**:
- (e) the power to question any employer or controlling third party.
- (2) An employer or a controlling third party that is required, under **subsection (1)(c) or (d)**, to provide any information to a Labour Inspector must comply with the requirement immediately. 15
- (3) An employer or a controlling third party who, without reasonable cause, fails to comply with any requirement made under **subsection (1)(c) or (d)**—
- (a) is not liable to a penalty under the Employment Relations Act 2000; but 20
- (b) is liable, in an action brought by a Labour Inspector, to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 197**.
- (4) A Labour Inspector must not use any evidence or information obtained under **section 240** for any purpose other than to determine whether an employee is a covered employee ~~by a fair pay agreement~~ under **section 236**. 25
- (5) For the purpose of this section and **section 241**, **controlling third party** has the same meaning as in section 5 of the Employment Relations Act 2000.
- 241 Extent of Labour Inspectors' powers**
- (1) A Labour Inspector's powers under **section 240**— 30
- (a) apply only for the purpose of the Labour Inspector determining whether an employee is a covered employee in relation to ~~by a fair pay agreement~~ under **section 236**; and
- (b) permit a Labour Inspector to require a controlling third party to provide information only if the Labour Inspector reasonably believes that the controlling third party holds information that may assist the Labour Inspector to determine whether an employee is a covered employee ~~by a fair pay agreement~~; and 35

- (c) are subject to sections 230 to 233 of the Employment Relations Act 2000; and
- (d) are in addition to the Labour Inspector's powers under section 229 of that Act.
- (2) A Labour Inspector may only interview an employee under **section 240(1)(b)(iv) or (v)** if— 5
- (a) the employee consents to being interviewed; and
- (b) the interview takes place at a reasonable time of the day.
- (3) A Labour Inspector may only interview an employee under **section 240(1)(b)(v)** if the Labour Inspector reasonably believes that— 10
- (a) the employee who is the subject of the determination, or that employee's employer, has not provided sufficient information for the Labour Inspector to make the determination; and
- (b) the employee holds information that would contribute meaningfully to the Labour Inspector's determination. 15
- (4) A Labour Inspector may interview—
- (a) a person described in **section 240(1)(b)(i), (ii), or (iii)** in person; or
- (b) a person described in **section 240(1)(b)(iv) or (v)** in person or by way of telephone conference or video link.
- (5) A Labour Inspector may recover a penalty under this Act in the Authority for a breach of any provision that provides for the imposition of a penalty. 20

### *Regulations*

#### **242 Power to make regulations**

- (1) The Governor-General may, by Order in Council and on the ~~advice~~ recommendation of the Minister, make regulations for 1 or more of the following purposes: 25
- (a) providing for anything that this Act says may or must be provided for by regulations; and
- (b) providing for anything incidental that is necessary for carrying out, or giving full effect to, this Act. 30
- (2) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

### *Forms*

#### **243 Chief executive may approve forms**

- (1) The chief executive may approve and issue any forms that the chief executive considers necessary for the purposes of this Act and that are not forms prescribed by regulations made under this Act. 35



- (2) Every document purporting to be in a form approved and issued by the chief executive under and for the purposes of this Act is deemed to have been so approved and issued unless the chief executive certifies otherwise.

Compare: 2000 No 24 s 237AA

**244 Consequential amendments**

5

Amend the Acts specified in **Schedule 4** as set out in that schedule.

**Schedule 1**  
**Transitional, savings, and related provisions**

**s 6**

**Part 1**  
**Provisions relating to this Act as enacted**

5

There are no transitional, savings, or related provisions in this Act as enacted.

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**Schedule 2**  
**Ratification process: number of votes for covered employers**

<b>Number of covered employees <u>entitled to vote</u></b>	<b>s 144(3) Number of votes</b>
1	2.0
2	3.9
3	5.7
4	7.4
5	9.0
6	10.5
7	11.9
8	13.2
9	14.4
10	15.5
11	16.5
12	17.4
13	18.2
14	18.9
15	19.5
16	20.0
17	20.4
18	20.7
19	20.9
20	21.0

**Schedule 3**  
**Application of provisions of Employment Relations Act 2000 relating**  
**to Employment Relations Authority**

s 228

**Part 1**

5

**Provisions of Employment Relations Act 2000**

**1** ~~Provisions that apply when application made under Part 10~~ **Provisions**  
**that apply under this Act**

The following provisions of the Employment Relations Act 2000 apply, with all necessary modifications, and subject to **clauses 1A and 1B**, when an application is made to the Authority or the court under this Act: 10

- (a) section 156:
- (b) section 158:
- (c) section 160(1), (2), (2A), and (4):
- (d) section 162: 15
- (da) section 163:
- (e) section 164:
- (f) section 165:
- (g) section 166 (subject to **section 223** of this Act):
- (h) sections 166A to 173: 20
- (i) section 173A (except in relation to the Authority fixing the terms of a proposed agreement ~~FPA, a proposed renewal, or a proposed replacement~~ under **section 218** of this Act):
- (j) sections 175 to 177 ~~178A~~:
- (ja) section 178A: 25
- ~~(k) section 179B:~~
- (l) section 185:
- (m) section 186:
- (n) section 188:
- (o) section 188A: 30
- (p) section 189:
- (q) section 190:
- (r) section 191:
- (s) section 193:
- (t) section 194A: 35

- (u) sections 195 to 213:
- (v) section 217:
- (w) sections 219 to 222:
- (x) Schedule 2 (as applied by section 165):
- (y) Schedule 3 (as applied by section 191). 5

**1A Provisions that do not apply under Part 10A**

Despite **clause 1**, the following provisions of the Employment Relations Act 2000 do not apply when an application is made to the Authority or the court under this Act in relation to an application for a determination under **Part 10A**: 10

- (a) section 162:
- (b) section 163:
- (c) section 164:
- (d) section 173A:
- (e) section 188(2), (3), and (5): 15
- (f) section 188A:
- (g) section 190:
- (h) section 194A.

**1B Application of provisions relating to expert evidence and fees**

Clause 6 of Schedule 2 of the Employment Relations Act 2000 applies subject to **clauses 17A and 17B** of this schedule. 20

**Part 2**

**Provisions that apply in relation to Employment Relations Authority and Employment Court**

*Employment Relations Authority* 25

**2 Authority to prioritise previously mediated matters**

- (1) This clause applies if a matter comes before the Authority for investigation and recommendation, determination, or resolution, and the parties have attempted to resolve the matter by mediation.
- (2) The Authority must give priority to investigating and recommending, determining, or resolving the matter referred to in **subclause (1)** over any other matters where mediation has not been used unless the Authority considers that providing mediation services would be inappropriate having regard to section 159(1) of the Employment Relations Act 2000. 30

- (3) Despite **subclause (2)**, and even if no attempt has been made to resolve the matter by mediation, the Authority may give priority to proceedings in relation to determining whether—
- (a) an employee is a covered employee;
  - (b) an employer is a covered employer. 5
- Compare: 2000 No 24 s 159A
- 3 Authority to concentrate on resolving matters**
- The Authority is not bound to treat a matter as being a matter of the type described by the parties, and may, in investigating the matter, concentrate on resolving the matter, however described. 10
- Compare: 2000 No 24 s 160(3)
- 4 Authority to give oral determination or oral indication in certain circumstances**
- (1) At the conclusion of an investigation meeting, the Authority must, wherever practicable and subject to **subclause (2)**,— 15
- (a) give its determination on the matter orally; or
  - (b) give an oral indication of its preliminary findings on the matter.
- (2) This clause is subject to **clause 7**.
- Compare: 2000 No 24 s 174
- 5 Oral determinations** 20
- (1) If the Authority gives an oral determination under **clause 4(1)(a)**, it must—
- (a) express its conclusions on the matters or issues it considers require determination in order to dispose of the matter; and
  - (b) state any relevant findings of fact or law to the extent that it considers it necessary to do so in order to explain its conclusions; and 25
  - (c) specify what orders (if any) it is making.
- (2) The Authority must record an oral determination in writing as soon as practicable and not later than 1 month after the date on which the investigation meeting concluded.
- (3) However, the Authority may record an oral determination later than the date specified in **subclause (2)** if the Chief of the Authority decides that exceptional circumstances exist. 30
- (4) The Authority may amend an oral determination when it is recorded under **subclause (2)** if it is necessary to correct a mistake caused by an error or omission in the determination. 35
- Compare: 2000 No 24 s 174A

## 6 Oral indication of preliminary findings

- (1) If the Authority gives an oral indication of its preliminary findings under **clause 4(1)(b)**, it—
- (a) must—
- (i) give an indication of its likely conclusions on the matters or issues it considers require determination in order to dispose of the matter; and 5
- (ii) state any likely relevant findings of fact or law to the extent that it considers it necessary to do so in order to explain its likely conclusions; and 10
- (b) may express the oral indication of its preliminary findings as being subject to any further evidence or information from the parties or any other person.
- (2) The Authority must provide a written determination in respect of a matter for which it has given an oral indication of its preliminary findings as soon as practicable and not later than the later of the following dates: 15
- (a) the day that is 3 months after the date on which the investigation meeting concluded; and
- (b) the day that is 3 months after the date on which the Authority received the last evidence or information from the parties or other person referred to in **subclause (1)(b)**. 20
- (3) However, the Authority may provide a written determination in respect of a matter for which it has given an oral indication of its preliminary findings later than the latest date specified in **subclause (2)** if the Chief of the Authority decides that exceptional circumstances exist. 25

Compare: 2000 No 24 s 174B

## 7 Authority may reserve determination

- (1) Despite **clause 4** and subject to **clause 8**, the Authority may reserve its determination of a matter if it is satisfied that there are good reasons as to why it is not practicable for it to provide an oral determination or an oral indication of its preliminary findings at the conclusion of the investigation meeting. 30
- (2) If the Authority reserves its determination of a matter under **subclause (1)**, it may, before providing a written determination of its findings in accordance with **subclause (3)**, require the parties or any other person to provide any further evidence or information that the Authority thinks fit. 35
- (3) If the Authority reserves its determination of a matter under **subclause (1)**, it must provide a written determination of its findings as soon as practicable and not later than the later of the following dates:
- (a) the day that is 3 months after the date on which the investigation meeting concluded; and 40

- (b) the day that is 3 months after the date on which the Authority received the last evidence or information from the parties or any other person.
- (4) However, the Authority may provide a written determination of its findings later than the latest date specified in **subclause (3)** if the Chief of the Authority decides that exceptional circumstances exist. 5
- Compare: 2000 No 24 s 174C
- 8 Authority must reserve determination when fixing terms**
- ~~(1) When the Authority is fixing the terms of a fair pay agreement, it must reserve its determination of the matter.~~
- (1) When the Authority is fixing the terms of a fair pay agreement under **section 218 or Part 10A**, it must reserve its determination of the matter. 10
- (2) When the Authority reserves its determination of a matter under **subclause (1)**, it may, before providing a written determination of its findings in accordance with **subclause (3)**, require the parties or any other person to provide any further evidence or information that the Authority thinks fit. 15
- (3) When the Authority reserves its determination of a matter under **subclause (1)**, it must provide a written determination of its findings as soon as practicable and not later than the later of the following dates:
- (a) the day that is 3 months after the date on which the investigation meeting concluded; and 20
- (b) the day that is 3 months after the date on which the Authority received the last evidence or information from the parties or any other person.
- (4) However, the Authority may provide a written determination of its findings later than the latest date specified in **subclause (3)** if the Chief of the Authority decides that exceptional circumstances exist. 25
- 9 Authority may determine matter without holding investigation meeting**
- (1) Subject to **subclause (2)**, and despite **clauses 4, 7, and 8**, the Authority may determine a matter without holding an investigation meeting.
- ~~(2) The Authority must hold an investigation meeting when fixing the terms of a fair pay agreement.~~ 30
- (2) The Authority must hold an investigation meeting when fixing the terms of a fair pay agreement under **section 218 or Part 10A**.
- (3) If the Authority determines a matter without holding an investigation meeting, it must provide a written determination of its findings as soon as practicable and not later than the day that is 3 months after the date on which the Authority received the last evidence or information from the parties or any other person. 35



- (4) However, the Authority may provide a written determination of its findings later than the latest date specified in **subclause (3)** if the Chief of the Authority decides that exceptional circumstances exist.

Compare: 2000 No 24 s 174D

**10 Content of written determinations** 5

- (1) A written determination provided by the Authority in accordance with **clause 5(2), 6(2), 7(3), 8(3), or 9(3)**—

- (a) must—
- (i) state relevant findings of fact; and
  - (ii) state and explain its findings on relevant issues of law; and 10
  - (iii) express its conclusions on the matters or issues it considers require determination in order to dispose of the matter; and
  - (iv) specify what orders (if any) it is making; but
- (b) need not—
- (i) set out a record of all or any of the evidence heard or received; or 15
  - (ii) record or summarise any submissions made by the parties; or
  - (iii) indicate why it made, or did not make, specific findings as to the credibility of any evidence or person; or
  - (iv) record the process followed in investigating and determining the matter. 20

- (2) However, if a written determination fixes the terms of a fair pay agreement, the terms must be in a format that complies with any requirements prescribed in regulations.

Compare: 2000 No 24 s 174E

**10A Removal to court** 25

- (1) The Authority may, on its own motion or on the application of a party to a matter, order the removal of the matter, or any part of it, to the court to hear and determine the matter without the Authority investigating it.

- (2) The Authority may order the removal of the matter, or any part of it, to the court if— 30

- (a) an important question of law is likely to arise in the matter other than incidentally; or
- (b) the case is of such a nature and of such urgency that it is in the public interest that it be removed immediately to the court; or
- (c) the court already has before it proceedings that are between the same parties and that involve the same or similar or related issues; or 35
- (d) the Authority is of the opinion that in all the circumstances the court should determine the matter.

- (3) If the Authority declines to remove any matter, or any part of a matter, to the court on application under **subclause (1)**, the party applying for the removal may seek the special leave of the court for an order of the court that the matter or part be removed to the court, and in any such case the court must apply the criteria set out in **subclause (2)(a) to (c)**. 5
- (4) An order for removal to the court under this clause may be made subject to any conditions that the Authority or the court, as applicable, thinks fit.
- (5) If the Authority, acting under **subclause (2)**, orders the removal of any matter, or a part of it, to the court, the court may, if it considers the matter or part was not properly removed, order the Authority to investigate the matter. 10
- (6) This clause is subject to **clause 10B**.

Compare: 2000 No 24 s 178

### **10B Limits on ability to remove matter to court**

- (1) **Clause 10A** does not apply—
- (a) to a matter, or part of a matter, about the procedure that the Authority has followed, is following, or intends to follow; or 15
- (b) without limiting **paragraph (a)**, to a matter, or part of a matter, about whether the Authority may follow or adopt a particular procedure.
- (2) **Clause 10A** does not permit the court to make a determination that fixes the terms of a proposed agreement under **section 218 or 228C**. 20
- (3) If a matter or part of a matter is removed to the court under **clause 10A** and the matter or the part of the matter is part of an application to the Authority to fix the terms of a proposed agreement, the court—
- (a) may determine the matter that is part of the application to the Authority to fix the terms; but 25
- (b) must refer the application to fix the terms back to the Authority for determination.

### **11 Challenges to determinations of Authority**

- (1) ~~A~~ Subject to **clause 12**, a party to a matter before the Authority that is dissatisfied with a written determination of the Authority under **clause 5(2), 6(2), 7(3), 8(3), or 9(3)** (or any part of that determination) may elect to have the matter heard by the court. 30
- (2) An election under **subclause (1)** must be made in the manner prescribed in any regulations and within 28 days after the date of the determination.
- (3) The election must— 35
- (a) specify the determination, or the part of the determination, to which the election relates; and

- (b) state whether the party making the election is seeking a full hearing of the entire matter (referred to as a **hearing ~~de novo~~ de novo** in this schedule and in Part 10 of the Employment Relations Act 2000).
- (4) If the party making the election is not seeking a hearing *de novo*, the election must specify, in addition to the matters specified in **subclause (3)**,— 5
- (a) any error of law or fact alleged by that party; and
- (b) any question of law or fact to be resolved; and
- (c) the grounds on which the election is made, which grounds are to be specified with such reasonable particularity as to give full advice to both the court and the other parties of the issues involved; and 10
- (d) the relief sought.
- (5) **Subclause (1)** does not apply—
- (a) to an oral determination or an oral indication of preliminary findings given by the Authority under **clause 6(1)(a) or (b)**; and
- (b) to a determination, or part of a determination, about the procedure that the Authority has followed, is following, or is intending to follow; and 15
- (c) without limiting **paragraph (b)**, to a determination, or part of a determination, about whether the Authority may follow or adopt a particular procedure.
- Compare: 2000 No 24 s 179 20

## ~~12 Limitation on challenges to certain determinations of Authority~~

- (1) ~~This clause applies to a determination of the Authority that fixes the terms of a fair pay agreement.~~
- (2) ~~A party may not elect, under **clause 11(1)** to have the matter heard by the court unless it is an appeal on a question of law.~~ 25
- (3) ~~For the purpose of **subclause (2)**, a question of law is limited to whether the Authority, in fixing the terms of the fair pay agreement,—~~
- (a) ~~met the threshold for fixing the terms of a fair pay agreement (see **section 218**); or~~
- (b) ~~correctly applied the criteria that, when fixing the terms of a fair pay agreement (see **section 220**), it must consider under **section 220(a)** or may consider under **section 220(b)**.~~ 30

Compare: 2000 No 24 s 179A

## 12 Limitation on challenges to certain Authority determinations

- (1) This clause applies to a determination of the Authority that fixes the terms of a fair pay agreement, including a determination under **Part 10A**. 35
- (2) A party may not elect, under **clause 11(1)**, to have the matter heard by the court unless it is an appeal on a question of law.

- (3) For the purpose of **subclause (2)**, a question of law is limited to,—
- (a) in relation to a determination under **Part 10A**,—
- (i) whether the application for the determination was made in accordance with **section 228BA**; or
- (ii) whether the Authority, in making the determination, correctly applied the criteria that it may consider under **section 220** (which applies in accordance with **section 228C(2)**); or 5
- (b) whether the Authority, in fixing the terms of a fair pay agreement under **section 218(2)**,—
- (i) met the threshold for fixing the terms of a fair pay agreement (*see* **section 218**); or 10
- (ii) correctly applied the criteria that it may consider under **section 220** when fixing the terms of a fair pay agreement.

Compare: 2000 No 24 s 179A

**13 Election not to operate as stay** 15

Making an election under **clause 11** does not operate as a stay of proceedings on the determination of the Authority unless the court, or the Authority, so orders.

Compare: 2000 No 24 s 180

**14 Report in relation to good faith** 20

- (1) Where the election states that the person making the election is seeking a hearing *de novo*, the Authority must, if the court so requests, as soon as practicable, submit to the court a written report giving the Authority's assessment of the extent to which the parties involved in the investigation have—
- (a) facilitated rather than obstructed the Authority's investigation; and 25
- (b) acted in good faith towards each other during the investigation.
- (2) The court may request a report under **subclause (1)** only where the court considers, on the basis of the determination made by the Authority under **clause 5(2), 6(2), 7(3), 8(3), or 9(3)**, that any party may not have participated in the Authority's investigation of the matter in a manner that was designed to resolve the issues involved. 30
- (3) The Authority must, before submitting the report to the court, give each party to the proceedings a reasonable opportunity to supply to the Authority written comments on the draft report.
- (4) A party that supplies written comments to the Authority under **subclause (3)** must, immediately after doing so, serve a copy of those comments on each other party to the proceedings. 35

- (5) The Authority must, in submitting the final report to the court, submit with it any written comments received from any party.

Compare: 2000 No 24 s 181

## 15 Hearings

- (1) If the election states that the person making the election is seeking a hearing *de novo*, the hearing held in accordance with that election is to be a hearing *de novo* unless the parties agree otherwise or the court otherwise directs. 5
- (2) The court may give a direction under **subclause (1)** only if—
- (a) it has requested a report under **clause 14(1)**; and
  - (b) on the basis of that report and after having had regard to any comments submitted under **clause 14(5)**, it is satisfied that the person making the election did not participate in the Authority's investigation of the matter in a manner that was designed to resolve the issues involved. 10
- (3) **Subclause (4)** applies if—
- (a) the court gives a direction under **subclause (1)**; or 15
  - (b) the election states that the person seeking the election is not seeking a hearing *de novo*.
- (4) In the circumstances described in **subclause (3)**, the court must direct, in relation to the issues involved in the matter, the nature and extent of the hearing. 20
- Compare: 2000 No 24 s 182

## 16 Decision

- (1) If a party to a matter has elected under **clause 11** to have that matter heard by the court, the court must make its own decision on that matter and any relevant issues.
- (2) Once the court has made a decision, the determination of the Authority on the matter is set aside and the decision of the court on the matter stands in its place. 25
- (3) Despite **subclause (2)**, a person may apply for review of the determination of the Authority under **clause 19**.
- Compare: 2000 No 24 s 183

## 17 Restriction on review

- (1) Except on the ground of lack of jurisdiction or as provided in **clause 11**, no determination, order, or proceedings of the Authority are removable to any court by way of certiorari or otherwise, or are liable to be challenged, appealed against, reviewed, quashed, or called in question in any court. 30
- (2) No review proceedings under **clause 19** may be initiated in relation to any matter before the Authority unless— 35

- (a) the Authority has issued a determination under **clause 5(2), 6(2), 7(3), 8(3), or 9(3)** (as applicable) on all matters relating to the subject of the review application between the parties to the matter; and
- (b) (if applicable) the party initiating the review proceedings has challenged the determination under **clause 11**; and 5
- (c) the court has made a decision on the challenge under **clause 16**.
- (3) For the purposes of **subclause (1)**, the Authority suffers from lack of jurisdiction only where,—
- (a) in the narrow and original sense of the term jurisdiction, it has no entitlement to enter upon the inquiry in question; or 10
- (b) the determination or order is outside the classes of determinations or orders that the Authority is authorised to make; or
- (c) the Authority acts in bad faith.
- (4) However, **subclauses (1) and (3)** do not apply to a determination under **Part 10A**. 15
- Compare: 2000 No 24 s 184

#### **17A Authority may seek expert evidence**

Without limiting anything else provided in this schedule, the Authority may seek evidence from an expert for the purposes of performing the following functions under this Act: 20

- (a) making a determination under **section 218 or Part 10A**:
- (b) assessing a proposed agreement that has been submitted under **section 132** for a compliance assessment:
- (c) when the Authority decides under **section 135, 153, or 222** that there is coverage overlap between a proposed agreement and a fair pay agreement, determining which agreement provides the better terms overall. 25

#### **17B Expert's expenses**

- (1) An expert who provides evidence sought by the Authority under **clause 17A** is entitled to be paid fees, allowances, and expenses calculated in accordance with— 30
- (a) regulations made under this Act; or
- (b) if no such regulations have been made, the Witnesses and Interpreters Fees Regulations 1974.
- (2) A payment made under **subclause (1)** must be made by the department.
- (3) Regulations made for the purpose of **subclause (1)** must set out a framework for calculating the fees, allowances, and expenses to which an expert is entitled. 35

*Employment Court***18 Jurisdiction of court**

- (1) The court has exclusive jurisdiction—
- (a) to hear and determine elections under **clause 11** for a hearing of a matter previously determined by the Authority under this Act: 5
  - (b) to hear and determine actions for the recovery of penalties under this Act for a breach of any provision of this Act (being a provision that provides for the penalty to be recovered in the court):
  - (c) to hear and determine any application for review of the type referred to in **clause 19 or 19A**. 10
- (2) The court does not have jurisdiction to entertain an application for summary judgment.
- (3) Except as provided in this Act, no other court has jurisdiction in relation to any matter that, under **subclause (1)**, is within the exclusive jurisdiction of the court. 15

Compare: 2000 No 24 s 187

**18A Court must appoint counsel to assist court**

- (1) If a party to a determination made under **section 228C** (see **section 228BC**) appeals against the determination (or part of the determination) in accordance with this schedule, the court must appoint a counsel to assist the court. 20
- (2) A counsel appointed under **subclause (1)** must represent the interests of the covered employees or covered employers (as applicable) that were not represented by a bargaining party that was a party to the determination.

**19 Application for review**

- (1) This clause applies ~~**Subclauses (3) to (5)** apply~~ if a person wishes, in relation to the exercise, refusal to exercise, or proposed or purported exercise ~~by a person listed in **subclause (2)**~~ of a statutory power or statutory power of decision (as defined by section 4 of the Judicial Review Procedure Act 2016) conferred by or under this Act,— 25
- (a) to apply for review under the Judicial Review Procedure Act 2016; or 30
  - (b) to bring proceedings seeking a writ or order of, or in the nature of, mandamus, prohibition, or certiorari, or a declaration or an injunction.
- (2) ~~For the purposes of **subclause (1)**, the persons are—~~
- ~~(a) the Authority; or~~
  - ~~(b) an officer of the Authority or the court; or~~ 35
  - ~~(c) an employer, or that employer's representative; or~~
  - ~~(d) a union, or that union's representative; or~~

- (e) ~~an employer association; or~~
- (f) ~~an employee bargaining side; or~~
- (g) ~~an employer bargaining side; or~~
- (h) ~~the chief executive; or~~
- (i) ~~any other person.~~ 5
- (3) Despite any other Act or rule of law, but subject to **clause 17(2)**, the court has full and exclusive jurisdiction to hear and determine any application or proceedings of the type referred to in **subclause (1)**, and all such applications or proceedings must be made to or brought in the court.
- (4) Where a right of appeal (which includes, for the purposes of this subclause, the right to make an election under **clause 11**) is conferred on any person under this Act in respect of any matter, that person may not make an application or bring proceedings (referred to in ~~under~~ **subclause (1)**) in respect of that matter unless any appeal brought by that person in the exercise of that right of appeal has first been determined. 10 15
- (5) A Judge may at any time and after hearing any such persons, if any, as the Judge thinks fit, give such directions prescribing the procedure to be followed in any particular case under this clause as the Judge deems expedient, having regard to the exigencies of the case and the interests of justice.
- (6) This clause is subject to **clause 19A**. 20  
Compare: 2000 No 24 s 194

### **19A Application for review: bargaining party**

- (1) This clause applies if a person wishes, in relation to the exercise, refusal to exercise, or proposed or purported exercise by a bargaining party or bargaining side of a statutory power or statutory power of decision (as defined by section 4 of the Judicial Review Procedure Act 2016) conferred by or under this Act,— 25
- (a) to apply for review under the Judicial Review Procedure Act 2016; or
- (b) to bring proceedings seeking a writ of, or in the nature of, mandamus, prohibition, or certiorari, or a declaration or an injunction.
- (2) Despite any other Act or rule of law, but subject to **subclauses (3) and (4)**, the court has full and exclusive jurisdiction to hear and determine any application or proceedings of the type referred to in **subclause (1)**, and all such applications or proceedings must be made to or brought in the court. 30
- (3) An application under this clause is valid only if—
- (a) the Authority has issued a determination under **clause 5(2), 6(2), 7(3), 8(3), or 9(3)** (as applicable) on all matters relating to the subject of the review application between the parties to the matter; and 35
- (b) (if applicable) the party initiating the review proceedings has challenged the determination under **clause 11**; and



- (c) the court has made a decision on the challenge under **clause 16**; and
- (d) (if applicable) the party initiating the proceedings has applied for a compliance order under section 137 or 139 of the Employment Relations Act 2000; and
- (e) (if applicable) any enforcement action has been taken under section 141 of the Employment Relations Act 2000. 5
- (4) A party may initiate proceedings under this clause only on the grounds that a bargaining party—
- (a) has exercised a statutory power or statutory power of decision that this Act did not confer on the bargaining party; or 10
- (b) when exercising the statutory power or statutory power of decision, did not act in accordance with a duty of good faith imposed by this Act.

### *Appeals*

#### **20 Appeals on question of law**

- (1) A party to a proceeding under this Act that is dissatisfied with a decision of the court (other than a decision on the terms of a fair pay agreement) as being wrong in law may, with the leave of the Court of Appeal, appeal to the Court of Appeal against the decision. 15
- (2) Section 56 of the Senior Courts Act 2016 applies to an appeal under **sub-clause (1)**. 20
- (3) A party that wishes to appeal to the Court of Appeal under this clause against a decision of the Employment Court must, within 28 days after the date of the issue of the decision or within such further time as the Court of Appeal may allow, apply to the Court of Appeal, in such manner as may be directed by rules of court, for leave to appeal to that court. 25
- (4) The Court of Appeal may grant leave accordingly if, in the opinion of that court, the question of law involved in that appeal is one that, by reason of its general or public importance or for any other reason, ought to be submitted to the Court of Appeal for decision.
- (5) The Court of Appeal, in granting leave under this clause, may, in its discretion, impose any such conditions that ~~as~~ it thinks fit, whether as to costs or otherwise. 30
- (6) In its determination of an appeal, the Court of Appeal may confirm, modify, or reverse the decision appealed against or any part of that decision.
- (7) Neither an application for leave to appeal nor an appeal operates as a stay of proceedings on the decision to which the application or the appeal relates unless the court or the Court of Appeal so orders. 35

Compare: 2000 No 24 s 214

- 21 Appeals to Supreme Court on question of law in exceptional circumstances**
- (1) A party to a proceeding under this Act that is dissatisfied with a decision of the court (other than a decision on the terms of a fair pay agreement) as being wrong in law may, with the leave of the Supreme Court, appeal to the Supreme Court against the decision. 5
- (2) In its determination of the appeal, the Supreme Court may confirm, modify, or reverse the decision appealed against or any part of that decision.
- (3) Neither an application for leave to appeal nor an appeal operates as a stay of proceedings on the decision to which the application or the appeal relates unless the court or the Supreme Court so orders. 10
- (4) This clause is subject to section 75 of the Senior Courts Act 2016 (which provides that the Supreme Court must not give leave to appeal directly to it against a decision made in a court other than the Court of Appeal unless it is satisfied that there are exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court). 15
- Compare: 2000 No 24 s 214A
- 22 Court of Appeal may refer appeals back for reconsideration**
- (1) Despite anything in **clause 20**, the Court of Appeal may in any case, instead of determining an appeal under that clause, direct the court to reconsider, either generally or in respect of any specified matters, the whole or any specified part of the matter to which the appeal relates. 20
- (2) In giving a direction under this ~~clause~~~~section~~, the Court of Appeal must—
- (a) advise the court of its reasons for so doing; and
- (b) give the court ~~any such~~ directions ~~that as~~ it thinks just as to the rehearing or reconsideration or otherwise of the whole or any part of the matter that is referred back for reconsideration. 25
- (3) In reconsidering the matter, the court must have regard to—
- (a) the Court of Appeal’s reasons for giving a direction under **subclause (1)**; and
- (b) the Court of Appeal’s directions under **subclause (2)(b)**. 30
- Compare: 2000 No 24 s 215
- 23 Obligation to have regard to special jurisdiction of court**
- In determining an appeal under **clause 20 or 24**, the Court of Appeal must have regard to—
- (a) the special jurisdiction and powers of the court; and 35
- (b) the purpose of this Act; and

- (c) in particular, ~~the provisions of~~ sections 189, 190, 193, 219, and 221 of the Employment Relations Act 2000.

Compare: 2000 No 24 s 216

**24 Appeal to Court of Appeal in respect of order on application for review**

- (1) Any party to an application for review or other proceeding under **clause 19** 5  
that is dissatisfied with any final or interlocutory order in respect of the appli-  
cation may appeal to the Court of Appeal.
- (2) Section 56 of the Senior Courts Act 2016 applies to an appeal under **sub-**  
**clause (1)**. 10

Compare: 2000 No 24 s 218

## Schedule 4

### Consequential amendments

s 244

#### Employment Relations Act 2000 (2000 No 24)

In section 5, definition of **employment standards**, after paragraph (b), insert: 5

- (ba) the minimum entitlement provisions under **section 117** of the Fair Pay Agreements Act **2022**:

In section 5, definition of **minimum entitlement provisions**, before paragraph (a), insert:

- (aaa) the minimum entitlement provisions under **section 117** of the Fair Pay Agreements Act **2022**; and 10

After section 14(1), insert:

(1A) A society may satisfy the requirement in subsection (1)(a) despite having rules (registered under the Incorporated Societies Act 1908) or a constitution (registered under the Incorporated Societies Act 2022) that, for the purposes of the Fair Pay Agreements Act 2022, enables the society to represent the collective interests of covered employees under section 11 of that Act, whether or not the employees are members of the society or any union. 15

(1B) For the purposes of subsection (1A), covered employee has the meaning given in section 5(1) of the Fair Pay Agreements Act 2022. 20

After section 33(2)(d), insert:

- (e) any of the following under the Fair Pay Agreements Act **2022**:
- (i) the initiation of bargaining for a proposed agreement or FPA, a proposed variation, ~~a proposed renewal, or a proposed replacement~~: 25
  - (ii) the existence of bargaining for a proposed agreement or FPA, a proposed variation, ~~a proposed renewal, or a proposed replacement~~: 30
  - (iii) the existence of a fair pay agreement.

After section 86(1)(e), insert: 30

- (ea) relates to a proposed FPA agreement, a proposed variation, ~~a proposed renewal, a proposed replacement~~, or a fair pay agreement under the Fair Pay Agreements Act **2022**; or

Replace section 132(2) with:

(2) Where evidence of the type referred to in subsection (1) is given, the Authority may, unless the defendant proves that those claims are incorrect, accept as proved all claims made by the employee in respect of— 35

**Employment Relations Act 2000 (2000 No 24)**—*continued*

- (a) the wages actually paid to the employee, including overtime rate payments, and penalty rate payments:
- (b) the hours, days, and time worked by the employee:
- (c) the district in which the employee worked for each hour and day (*see section 123* of the Fair Pay Agreements Act **2022**).

5

After section 137(1)(a)(xi), insert:

- (xii) the Fair Pay Agreements Act **2022**.

In section 148A(3), replace “or the Support Workers (Pay Equity) Settlements Act 2017” with “the Support Workers (Pay Equity) Settlements Act 2017, or the Fair Pay Agreements Act **2022**”.

10

After section 161(1)(m)(v), insert:

- (vi) under **section 196 or 197** of the Fair Pay Agreements Act **2022**:

After section 161(1)(qd), insert:

- (qe) all matters arising under the Fair Pay Agreements Act **2022** and, in particular, those listed in **section 213** of that Act.

15

After section 223(1)(b), insert:

- (ba) the Fair Pay Agreements Act **2022**; and

Replace section 224(1)(a) with:

- (a) an employee makes a complaint to the Labour Inspector, or the Labour Inspector believes on reasonable grounds, that an employee has not received wages or holiday pay or other money payable by the employer to the employee under—
  - (i) the Fair Pay Agreements Act **2022**; or
  - (ii) the Holidays Act 2003; or
  - (iii) the Minimum Wage Act 1983; and

20

25

Replace section 228(1) with:

- (1) A Labour Inspector may commence an action on behalf of an employee to recover any wages or holiday pay or other money payable by an employer to that employee under—
  - (a) the Fair Pay Agreements Act **2022**; or
  - (b) the Holidays Act 2003; or
  - (c) the Minimum Wage Act 1983.

30

Replace section 235A(a) with:

- (a) a failure by an employer to comply with the requirements of—
  - (i) section 64(1) or (2) or 130(1) of this Act; or

35

**Employment Relations Act 2000 (2000 No 24)**—*continued*

- (ii) **section 232(1) or 233(1)** of the Fair Pay Agreements Act **2022**; or
- (iii) section 81(2) of the Holidays Act 2003:

**Equal Pay Act 1972 (1972 No 118)**

After section 13ZN, insert:

5

**13ZNA Relationship between pay equity claims and fair pay agreements**

- (1) Bargaining for a proposed ~~FPA, agreement or a proposed variation, a proposed renewal, or a proposed replacement~~, or the validation of a fair pay agreement under the Fair Pay Agreements Act **2022** that covers 1 or more covered employers and 1 or more covered employees does not settle or extinguish an unsettled pay equity claim to which 1 of those employers is a party. 10
- (2) In **subsection (1), bargaining, covered employee, covered employer, fair pay agreement, proposed FPA agreement, and proposed variation, proposed renewal, and proposed replacement** have the meanings given in section 5(1) of the Fair Pay Agreements Act **2022**. 15

**Holidays Act 2003 (2003 No 129)**

After section 6, insert:

**6A Relationship between Act and fair pay agreements**

- (1) If an employee is a covered employee in relation to ~~within the coverage of a fair pay agreement under the Fair Pay Agreements Act 2022~~, the employee is entitled to receive no less than the greater of— 20
  - (a) each entitlement under this Act; and
  - (b) the corresponding entitlement under the fair pay agreement.
- (2) In **subsection (1), coverage covered employee and fair pay agreement** have the meanings ~~has the same meaning as in section 5(2), section 5(1)~~ of the Fair Pay Agreements Act **2022**. 25

**Judicial Review Procedure Act 2016 (2016 No 50)**

Replace section 7 with:

- 7 This Act subject to certain provisions of Employment Relations Act 2000 and Fair Pay Agreements Act 2022** 30
- (1) This Act is subject to the provisions of the Employment Relations Act 2000 and the Fair Pay Agreements Act **2022** relating to the jurisdiction of the Employment Court and High Court in respect of—
  - (a) applications for review; or

**Judicial Review Procedure Act 2016 (2016 No 50)—continued**

- (b) proceedings for a writ or order of, or in the nature of, mandamus, prohibition, or certiorari; or
- (c) proceedings for a declaration or injunctions against any body constituted by, or any person acting under, the Employment Relations Act 2000 or the Fair Pay Agreements Act **2022**. 5
- (2) In particular, this Act is subject to—
- (a) the following provisions of the Employment Relations Act 2000:
- (i) section 184 (which restricts review proceedings being brought in respect of any matter before the Employment Relations Authority): 10
- (ii) section 187(1)(h), (i), (j), and (ka) (which confers on the Employment Court exclusive jurisdiction to hear and determine certain proceedings and applications):
- (iii) section 194A (which provides that review proceedings in relation to an employment relationship problem may not be brought in either the Employment Court or the High Court): 15
- (iv) section 213 (which confers on the Court of Appeal exclusive jurisdiction in relation to the review of any proceedings before the Employment Court); and
- (b) the following provisions of the Fair Pay Agreements Act **2022**: 20
- (i) **clause 17 of Schedule 3** (which restricts review proceedings being brought in respect of any matter before the Employment Relations Authority):
- (ii) **clause 18(1)(c) of Schedule 3** (which confers on the Employment Court exclusive jurisdiction to hear and determine certain proceedings and applications). 25

**Minimum Wage Act 1983 (1983 No 115)**

After section 6, insert as subsections (2) and (3):

- (2) However, if a worker is a covered employee in relation to ~~within the coverage of~~ a fair pay agreement under the Fair Pay Agreements Act **2022**, the worker is entitled to receive no less than the greater of— 30
- (a) the minimum rate to which the worker is entitled under this Act; and
- (b) the minimum rate to which the worker is entitled under the fair pay agreement.
- (3) In **subsection (2)**, ~~coverage covered employee and fair pay agreement~~ have the meanings ~~has the same meaning as in **section 5(2)** **section 5(1)**~~ of the Fair Pay Agreements Act **2022**. 35

Replace section 8(4) with:

**Minimum Wage Act 1983 (1983 No 115)—continued**

- (4) While a permit remains in force, the rate of wages stated in the permit is taken to be,—
- (a) if the worker is within the scope of a fair pay agreement under the Fair Pay Agreements Act **2022**, the minimum rate of wages set out in the fair pay agreement for the worker; or
  - (b) in all other cases, the minimum rate of wages prescribed under this Act for the worker.

5

**Legislative history**

29 March 2022  
5 April 2022

Introduction (Bill 115–1)  
First reading and referral to Education and Workforce  
Committee