Version
as at 20 December 2023

Fair Pay Agreements Act 2022

Public Act	2022 No 58
Date of assent	1 November 2022
Commencement	see section 2

Fair Pay Agreements Act 2022: repealed, on 20 December 2023, by section 5 of the Fair Pay Agreements Act Repeal Act 2023 (2023 No 65).

Contents

Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Ministry of Business, Innovation, and Employment.

Part 6
Bargaining

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Fair Pay Agreements Act 2022.

2 Commencement

(1) Sections 283 and 284 come into force on the day after the date of Royal assent.

(2) Section 34(3) and (4) comes into force on 1 June 2023.

(3) The rest of this Act comes into force on 1 December 2022.

Part 1
Preliminary provisions

3 Purpose

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

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

4 Overview of Act

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

(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 (set out in subpart 2).

(4) Part 3 contains the preliminary requirements for bargaining for a fair pay agreement. It includes details about who is eligible to initiate bargaining and how to form and join bargaining sides.

(5) Part 4 sets out the provisions relating to specified employer bargaining parties and default bargaining parties.

(6) Part 5 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).

(7) Part 6 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.

(8) Part 7 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.

(9) Part 8 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 agreement to be—

(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 agreement (set out in subpart 2); and

(c) verified by the chief executive (set out in subpart 3); and

(d) 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).

(10) Part 9 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).

(11) Part 10 relates to penalties and enforcement.

(12) Part 11 contains provisions relating to employment relations institutions and includes the following subparts:

(a) subpart 1, which relates to mediation services:

(b) subpart 2, which requires the chief executive to provide bargaining support services:

(c) subpart 3, which provides for the role of the Authority, including determining whether a proposed agreement or a fair pay agreement 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.

(13) Part 12 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.

(14) Part 13 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.

(15) The Act contains the following 4 schedules:

(a) Schedule 1 sets out the transitional provisions:

(b) Schedule 2 sets out the number of votes 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:

(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

bargaining, in relation to a proposed agreement or a proposed variation,—

(a) means all interactions between the bargaining parties that relate to the proposed agreement or the proposed variation; and

(b) includes—

(i) negotiations that relate to the proposed agreement or the proposed variation; 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 agreement or the proposed variation; and

(iii) the ratification process under subpart 2 of Part 8; but

(c) excludes interactions between bargaining parties after a bargaining side applies, in accordance with section 244, to the Authority for a determination under section 252

bargaining party means—

(a) an employee bargaining party; or

(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—

(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 agreement or a proposed variation,—

(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

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

contact details, in relation to an employee, means—

(a) the employee's name:

(b) the employee's job title:

(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:

(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 the coverage of a proposed agreement overlaps, partially or wholly, with the coverage of a fair pay agreement

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 173

covered employer means an employer that employs at least 1 covered employee

default bargaining party means the employee default bargaining party or the employer default bargaining party

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 agreement, a proposed variation, or a fair pay agreement, an employer association—

(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, a proposed variation, 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

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

employee bargaining party means a member of an employee bargaining side that—

(a) is an eligible union that has had its application approved under section 33, 49, or 206; or

(b) is the employee default bargaining party and has, in accordance with section 69, 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 27 to 38, sections 47 to 50, section 82, or section 210, that—

(a) represents covered employees; and

(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 52(1)

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

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

employer association means an association of employers that—

(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—

(a) is an eligible employer association that has had its application approved under section 44 or 206; or

(b) is a specified employer bargaining party that is, in accordance with sections 58 to 62, an employer bargaining party; or

(c) is the employer default bargaining party and has, in accordance with section 69, notified the chief executive of its election to be an employer bargaining party

employer bargaining side means a bargaining side, formed in accordance with sections 43 to 46, section 82, or section 209, that—

(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 53(1)

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

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

fair pay agreement means an agreement that the chief executive has validated in accordance with section 168 by issuing a fair pay agreement notice, and includes the following:

(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:

(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 5 or sections 262 to 264

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

industry-based agreement means a fair pay agreement described in section 32(1)(b)

initiating party means an employee bargaining party or an employer bargaining party that initiates bargaining under section 39, 198, or 199

initiating union means a union that has applied for approval to initiate bargaining for a proposed agreement

initiation test means either the representation test described in section 28(1) or the public interest test described in section 29(1)

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 55(1)

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

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 rate or penalty rate payable under the fair pay agreement

minimum entitlement provision means a provision described in section 127

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

occupation-based agreement means a fair pay agreement described in section 32(1)(a)

overtime rate means a rate that is payable to a covered employee under a fair pay agreement for the time that the employee works in excess of a total number of hours worked in a day or a total number of hours worked in a week, as specified in the fair pay agreement

penalty rate means a rate that is payable to a covered 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 the standard hours set out in the fair pay agreement

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—

(a) a union has applied under section 30 for approval to initiate bargaining; but

(b) the chief executive has not validated the proposed fair pay agreement in accordance with section 168

proposed renewal means a proposed renewal of a fair pay agreement if—

(a) a party listed in section 197(2) has applied for approval to initiate bargaining for the proposed renewal; but

(b) the chief executive has not validated the renewal under section 168

proposed replacement means a proposed replacement of a fair pay agreement if—

(a) a party listed in section 197(2) has applied for approval to initiate bargaining for the proposed replacement; but

(b) the chief executive has not validated the replacement under section 168

proposed variation means a proposed variation of a fair pay agreement if—

(a) both bargaining sides for the fair pay agreement have agreed to bargain for the proposed variation (*see* section 179); but

(b) the chief executive has not validated the variation under section 192

Public Service Commissioner means the Public Service Commissioner appointed under section 42 of the Public Service Act 2020

regulations means regulations made under section 283

SEBP employer means—

(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:

(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) Health New Zealand:

(e) the Public Service Commissioner

standard hours means the hours each day, as specified in a fair pay agreement, during which the base wage rate is payable for work performed

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

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**,—

(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 37 or 111:

(ii) for a proposed renewal or a proposed replacement, in the chief executive's notification under section 111 or 207:

(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:

(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) Before recommending regulations that specify the employee default bargaining party or the employer default bargaining party, the Minister must be satisfied that,—

(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

(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.

(4) 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.

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
General principles and obligations

9 Object of this Part

The object of this Part is to establish that, for the purposes of this Act,—

(a) a covered employee may only be represented by an employee bargaining party; and

(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

(d) the 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

(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 244 for a determination under section 252,—

(a) to become or remain a member of a union or a particular union; or

(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 244 for a determination under section 252,—

(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

(1) For the purposes of bargaining, or for the purpose of an application made in accordance with section 244 for a determination under section 252, only an

employee bargaining party may represent the collective interests of covered employees.

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

(a) an eligible union that is an employee bargaining party may represent covered employees' collective interests despite some covered employees not being members of the union, or of any other union; and

(b) the employee default bargaining party may represent covered employees' collective interests despite some covered employees not being members of the employee default bargaining party or a union.

12 Only employer bargaining party may represent covered employers' interests

(1) For the purposes of bargaining, or for the purpose of an application made in accordance with section 244 for a determination under section 252, only an employer bargaining party may represent the collective interests of covered employers.

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

(a) an eligible employer association that is an employer bargaining party may represent covered employers' collective interests despite some covered employers not being members of the eligible employer association, or of any employer association; and

(b) the employer default bargaining party may represent covered employers' collective interests despite some covered employers not being members of the employer default bargaining party or an employer association.

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,—

(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.

(3) Subsection (1) is not breached because an employee's individual contract differs from those of other employees employed by the same employer.

(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 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 during which the fair pay agreement applies, than the total amount of the employee's union membership fees (for 1 union only) for that period.

14 Prohibition on preference: employers

A fair pay agreement 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, a fair pay agreement must not offer an employer a more favourable term on the condition that the employer join an employer association).

15 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

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 244 for a determination under section 252, exert undue influence, directly or indirectly, on another person with the intention of inducing the other person—

(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

(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.

(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 211.

Subpart 2—Duty of good faith

17 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,—

(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—

(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 bargaining for the same proposed agreement or proposed variation:

(e) a union bargaining party and a member of another union bargaining party, where both union bargaining parties are bargaining parties for the same fair pay agreement:

(f) an employee bargaining party and another employee bargaining party, where both employee bargaining parties are bargaining for the same proposed agreement or proposed variation:

(g) an employee bargaining party and another employee bargaining party, where both employee bargaining parties are bargaining parties for the same fair pay agreement:

(h) an employer bargaining party and another employer bargaining party, where both employer bargaining parties are bargaining for the same proposed agreement or proposed variation:

(i) an employer bargaining party and another employer bargaining party, where both employer bargaining parties are bargaining parties 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 agreement or proposed variation:

(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 for the same fair pay agreement.

(3) The activities are—

(a) bargaining for—

(i) a proposed FPA:

(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:

(c) any activity relating to bargaining for—

(i) a proposed FPA:

(ii) a proposed variation:

(iii) a proposed renewal:

(iv) a proposed replacement.

(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.

(5) This section does not prevent an employer from communicating with the employer's employees during bargaining (including, for example, in relation to an employer's proposals for a proposed FPA) as long as communication is consistent with the duty of good faith in subsection (1).

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 duty of good faith in section 17.

(2) The good faith obligations in subsection (3) apply to bargaining parties that—

(a) are bargaining for the same proposed agreement; and

(b) are on the same bargaining side; and

(c) have formed or joined the bargaining side for the proposed agreement at the relevant point in time specified in section 38, 46, 82, 209, or 210 (as applicable).

(3) The good faith obligations for the bargaining parties described in subsection (2) are, in accordance with section 54,—

(a) to agree the inter-party side agreement; and

(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 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 agreement or proposed variation but that are not on the same bargaining side.

(3) The good faith obligations for the bargaining parties described in subsection (2) are,—

(a) as soon as possible after the chief executive notifies approval of an application to initiate bargaining, 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

(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) 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

(e) to use their best endeavours to agree the terms of the proposed agreement or the proposed variation in an orderly, timely, and efficient manner; and

(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

(h) during bargaining, to provide the other bargaining side, in accordance with the requirements set out in sections 94 and 95, with any information that—

(i) the other bargaining side requests in accordance with section 93(2); and

(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.

20 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 252 (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.

21 Penalty for breach of duty of good faith

(1) An employer is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in section 211 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 20 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 252 (including any activity that relates to the process of the Authority deciding the terms of the determination).

(2) A party who fails to comply with the duty of good faith in section 17 while bargaining for a proposed agreement or a proposed variation is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in section 211 if the failure to comply with the duty of good faith—

(a) is deliberate, serious, and sustained; or

(b) is intended to undermine the process of bargaining.

(3) A party who fails to comply with the duty of good faith in section 20 after a bargaining party applies to the Authority for a determination under section 252, but before the Authority makes the determination, is liable to a penalty imposed by the Authority not exceeding the applicable amount in section 211 if the failure—

(a) is deliberate, serious, and sustained; or

(b) is intended to undermine the process of applying for, or receiving, a determination under section 252.

(4) A party who fails to comply with the 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 212.

Subpart 3—General obligations

22 Engaging employee under contract for services

(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.

(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 212.

(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—

(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

(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.

23 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.

(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.

24 Strikes and lockouts

(1) Participation in a strike or lockout that relates to bargaining for a proposed agreement or a proposed variation 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).

(2) In this section, **strike** and **lockout** have the meanings provided in Part 8 of the Employment Relations Act 2000.

Part 3
Preliminary requirements: initiating bargaining and forming bargaining sides

25 Overview

(1) Bargaining for a proposed FPA must be between—

(a) an employee bargaining side; and

(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 be an additional bargaining party on the employee bargaining side, or an employer association that wishes to be an employer bargaining party on an employer bargaining side, must apply to the chief executive for approval to do so.

(4) Once a bargaining side is formed, it has obligations that include—

(a) the requirement to comply with the duty of good faith specified in Part 2; and

(b) obligations relating to representation; and

(c) the requirement to agree an inter-party side agreement under section 54(2)(a); and

(d) the requirement to appoint a bargaining side lead advocate under section 54(2)(b).

Guidance note

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

(a) subpart 1 of Part 9 sets out the requirements for initiating bargaining for a proposed variation, including section 181, which applies some provisions in this Part to a proposed variation; and

(b) subpart 2 of Part 9 sets out the requirements for initiating bargaining for a proposed renewal or a proposed replacement, including sections 206 to 210, which apply some provisions in this Part to a proposed renewal or a proposed replacement.

Subpart 1—Process for initiating bargaining and forming bargaining sides

26 Limit on initiating bargaining

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

Union to apply for approval to initiate bargaining for proposed FPA

27 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 union's application meets one of the following initiation tests:

(i) the representation test (*see* section 28(1)); or

(ii) the public interest test (*see* section 29(1)); and

(c) the chief executive has notified, under section 37, approval of the union's application to initiate bargaining for the proposed FPA.

(2) Despite subsection (1), a union is not permitted to initiate bargaining if 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.

28 Test for initiating bargaining: representation test

(1) For the purposes of section 27(1)(b)(i), a union's application meets the representation test if the chief executive is satisfied that—

(a) at least 1,000 employees who would be within the coverage of the proposed FPA support the application to initiate bargaining for the proposed FPA; or

(b) at least 10% of all employees who would be within the coverage of the proposed FPA support the application to initiate bargaining for the proposed FPA.

(2) A union that seeks to rely on the representation test must provide evidence to the chief executive that the relevant number of employees who would be within the coverage of the proposed FPA support initiating bargaining (*see* section 31).

(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.

29 Test for initiating bargaining: public interest test

(1) For the purposes of section 27(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

(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):

(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) 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):

(b) further details as to how the criteria specified in subsection (1)(a) and (b) may be satisfied.

30 Application for approval for union to initiate bargaining

(1) A union's application to the chief executive for approval to initiate bargaining 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 32), 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

(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

(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 relies on; and

(e) provide evidence of—

(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 in support of an application must be provided in accordance with section 31.

(3) In this section, **relevant initiation test** means the initiation test specified in the application (which must be the representation test under section 28(1) or the public interest test under section 29(1)).

(4) 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 211.

31 Evidence provided in support of application

(1) Evidence provided to demonstrate that an application under section 30 meets—

(a) the representation test under section 28(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 28(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

(b) the public interest test under section 29(1), must—

(i) align with, and be representative of, the coverage of the proposed FPA; and

(ii) demonstrate that the relevant criteria listed in section 29(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—

(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

(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.

32 Coverage of proposed FPA

(1) The coverage of a proposed FPA must be described according to—

(a) the occupation, including the work or the type of work, that the proposed FPA would cover (an **occupation-based agreement**); or

(b) the industry and the occupations, including the work or the type of work within that industry, that the proposed FPA would cover (an **industry-based agreement**).

(2) An occupation-based agreement must apply to—

(a) all covered employees who are employed in the occupation covered by the agreement; and

(b) all covered employers in relation to the agreement.

(3) An industry-based agreement must apply to—

(a) all covered employees who are employed in the occupation and industry covered by the agreement; and

(b) all covered employers in relation to the agreement.

(4) The coverage of a 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

(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

33 Chief executive must assess application for approval to initiate bargaining

(1) 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—

(i) whether 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) If, after considering any additional information or evidence provided under section 35 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.

(3) 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

(b) based on the information provided in the application, any additional information or evidence the chief executive receives under section 35(2), any information the chief executive receives under section 35(3), and any submissions received under section 36,—

(i) the coverage of the proposed FPA is defined with sufficient clarity (as required by section 32(4)); and

(ii) the applicant has met one of the initiation tests for the proposed FPA; and

(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.

(4) The chief executive must decline an application if,—

(a) after assisting the union under subsection (2), the chief executive considers the application does not define the coverage of the proposed FPA with sufficient clarity; or

(b) after considering any additional information or evidence the chief executive receives under section 35(2), any information the chief executive receives under section 35(3), and any submissions received under section 36, the chief executive is not satisfied that the application meets the requirements listed in subsection (3).

(5) 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.

34 Time frame for chief executive

(1) *[Expired]*

(2) *[Expired]*

(3) The chief executive must comply with section 33(1)—

(a) as soon as practicable; but

(b) no later than 30 working days after receiving—

(i) any additional information or evidence required to be provided under section 35(2); and

(ii) any information required to be provided under section 35(3).

(4) However, the time frame in subsection (3)(b) is subject to the following:

(a) if the chief executive invites public submissions under section 36, 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):

(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.

Section 34(1): expired, on 1 June 2023, by section 34(2).

Section 34(2): expired, on 1 June 2023, by section 34(2).

35 Chief executive may require applicant to provide further information

(1) This section applies when the chief executive is considering whether to approve an application to initiate bargaining.

(2) The chief executive may require the applicant to provide additional 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 may, for the purpose of verifying information that the applicant has provided under section 31(1)(a)(ii), require the applicant to provide information, of a type prescribed in regulations, in relation to—

(a) all employees who would be covered by the proposed FPA; or

(b) a sample of the employees who would be covered by the proposed FPA.

36 Chief executive may invite submissions when considering application

(1) When considering whether to approve an application for approval to initiate bargaining, the chief executive may invite public submissions on whether the application meets—

(a) the representation test specified in section 28(1)(b); or

(b) the public interest test specified in section 29(1).

(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.

(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 that does not identify the individual.

37 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:

(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* sections 28 and 29):

(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) 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

(b) 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

(c) where to find a plain language explanation of the next steps for bargaining.

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 113 to 120 apply.

Formation of employee bargaining side

38 Formation of employee bargaining side

An employee bargaining side for a proposed FPA is formed 3 months after the date on which the chief executive notifies, under section 37, that the chief executive has approved the application from an eligible union to initiate bargaining for the proposed FPA.

Initiating union must notify approval to initiate bargaining

39 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) 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

(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

(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

(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 37; and

(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 284, 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:

(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:

(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:

(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.

(3) A notice published—

(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):

(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 37; and

(iii) where to find the notice published under subsection (1)(c)(i).

(4) 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

(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:

(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:

(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.

40 Employer to notify employees and unions of bargaining being initiated

(1) Within 15 working days after receiving notice from an initiating union under section 39, a covered employer must 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

(b) where to find the notice issued by the chief executive under section 37.

(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 39(2)(d) and—

(a) a copy of the statement provided under section 39(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 39(4)(d)) in the format required under section 39(4)(a) and (b).

(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).

(4) If a union provides an employer with a statement under section 39(2)(c) and a form under section 39(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 211.

41 Union to notify employers of bargaining being initiated

(1) Within 15 working days after being notified under section 39(1) or 40(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.

(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 37; and

(c) include the statement provided under section 39(2)(c); and

(d) include the form provided under section 39(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—

(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

42 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 contact details for each of the employer's covered employees to the initiating union (or, if applicable, to the contact address for the employee bargaining side provided under section 106) for the proposed FPA.

(2) The employer must provide the contact details 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 40(2); but

(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 39(2)(d)(ii), not to have their contact details provided.

(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 211.

Employer bargaining side

43 Employer association may apply to be employer bargaining party

(1) If the chief executive notifies, under section 37, that the chief executive has approved an eligible union's application to initiate bargaining for a proposed FPA, an employer association that wishes to 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.

(2) An application must—

(a) be in writing; and

(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

(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.

(3) An employer association may only 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 earliest of the following dates:

(i) the date on which the chief executive validates the proposed FPA under section 168:

(ii) the date on which a bargaining party applies, in accordance with section 244, for a determination under section 252 in relation to the proposed FPA:

(iii) the date on which bargaining for the proposed FPA is discontinued.

44 Chief executive to assess application for approval to be employer bargaining party

(1) The chief executive may require an applicant for approval to 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

(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

(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.

(4) If the chief executive declines an application, the employer association may make another application.

45 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

(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 37.

46 Formation of employer bargaining side for proposed FPA

(1) If the chief executive publicly notifies, under section 37, 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 37, 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 37:

(b) if (in accordance with section 69) 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.

(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

(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.

Other union may apply to be additional employee bargaining party

47 Other union may apply for approval to be additional employee bargaining party on employee bargaining side

(1) If the chief executive notifies, in accordance with section 37, that the chief executive has approved 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 be an additional employee bargaining party on the employee bargaining side must apply to the chief executive for approval to do so.

(2) A union may make an application only if it is an eligible union.

(3) A union may only apply to be an employee bargaining party on the employee bargaining side between—

(a) the date on which the chief executive approves the initiation of bargaining for the proposed FPA under section 37; and

(b) the earliest of the following dates:

(i) the date on which the chief executive validates the proposed FPA under section 168:

(ii) the date on which a bargaining party applies, in accordance with section 244, for a determination under section 252 in relation to the proposed FPA:

(iii) the date on which bargaining for the proposed FPA is discontinued.

(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.

48 Application for approval for union to be additional employee bargaining party

A union's application for approval to be an additional employee bargaining party on the employee bargaining side 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) 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.

49 Chief executive to assess application for approval to be additional employee bargaining party

(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.

(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 to be an additional employee bargaining party on the employee bargaining side only if satisfied that the application complies with section 48.

(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 48.

(5) If the chief executive declines an application, the union may make another application.

50 Chief executive to notify decision on application for approval to be additional employee bargaining party

(1) As soon as practicable after receiving an application to 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.

(3) Within 5 working days after approving an eligible union's application to be an additional employee bargaining party, the chief executive must—

(a) publicly notify that it has approved the application to 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 37); and

(b) notify each other employee bargaining party on the bargaining side that it has approved the application (including the name of the union).

Subpart 2—General provisions for initiating bargaining

Notification of bargaining parties

51 Notification of bargaining parties

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.

Bargaining sides

52 Employee bargaining side

(1) The employee bargaining side for a proposed FPA consists of the following bargaining parties:

(a) the eligible union that is approved under section 33 to initiate bargaining for the proposed FPA; and

(b) any other eligible union that is approved under section 49 to be an additional employee bargaining party on the employee bargaining side; and

(c) any other eligible union that joins the bargaining side as a result of 2 proposed FPAs being consolidated in accordance with section 116; and

(d) the employee default bargaining party if it becomes a bargaining party under subpart 2 of Part 4.

(2) The bargaining parties of an employee bargaining side are not able to prevent an additional eligible union that has been approved under section 49 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—

(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 101; or

(c) the chief executive issues a fair pay agreement notice in respect of the proposed FPA (*see* section 168) and the fair pay agreement subsequently expires.

53 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 be an employer bargaining party on the employer bargaining side for the proposed FPA; and

(b) any other eligible employer association that joins the bargaining side as a result of 2 proposed FPAs being consolidated in accordance with section 116; and

(c) each specified employer bargaining party that has, in accordance with section 58, 60, or 61, become an employer bargaining party; and

(d) the employer default bargaining party if it becomes a bargaining party under subpart 2 of Part 4.

(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.

(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 101; or

(c) the chief executive issues a fair pay agreement notice in respect of the proposed FPA (*see* section 168) and the fair pay agreement subsequently expires.

54 Requirements for each bargaining side

(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 38, 46, or 82 (as applicable).

(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.

55 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.

(2) As soon as practicable after the date by which a bargaining side must comply with section 54(2), the bargaining side must provide the following information, in writing, to the chief executive:

(a) a copy of the inter-party side agreement; and

(b) a copy of any amendment to the inter-party side agreement.

56 When bargaining party subsequently joins bargaining side

If the chief executive approves an eligible union or an eligible employer association to be a bargaining party on a bargaining side after the bargaining side has provided its inter-party side agreement to the chief executive, the bargaining side—

(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.

Part 4
Specified employer bargaining parties and default bargaining parties

Subpart 1—Specified employer bargaining parties

57 Interpretation

In sections 58 to 61,—

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

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

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

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

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

58 Public Service Commissioner

(1) The Public Service Commissioner is an employer bargaining party if—

(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

(b) in the case of a proposed agreement, the chief executive has publicly notified, in accordance with section 37 or 207, that the chief executive has approved an application to initiate bargaining for the proposed agreement.

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

(a) a public service chief executive of a department if at least 1 employee of the department is a covered employee in relation to the proposed agreement, the proposed variation, or the fair pay agreement:

(b) the Secretary for Education if at least 1 employee of the education service is a covered employee in relation to the proposed agreement, the proposed variation, or the fair pay agreement.

(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

(b) the Secretary for Education when acting as an employer bargaining party on behalf of an employer in the education service.

59 Specified State employers

Section 60 applies to the following specified State employers in the specified circumstances:

(a) the Chief of Defence Force (appointed under section 8 of the Defence Act 1990), in relation to a proposed agreement, a proposed variation, or a fair pay agreement 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 agreement, a proposed variation, or a fair pay agreement if at least 1 employee appointed under section 136 or 138 of the Legislation Act 2019 is a covered employee:

(c) the Commissioner of Police (holding office under section 12 of the Policing Act 2008) in relation to a proposed agreement, a proposed variation, or a fair pay agreement if at least 1 Police employee is a covered employee:

(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.

60 Options for specified State employer

(1) An employer listed in section 59 may be an employer bargaining party if—

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

(b) in the case of a proposed agreement, the chief executive has publicly notified, in accordance with section 37 or 207, that the chief executive has approved an application to initiate bargaining for the proposed agreement.

(2) An employer listed in section 59 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.

(3) If an employer listed in section 59(a), (b), or (c) acts as an employer bargaining party under subsection (1), the employer must consult, during bargaining, the Public Service Commissioner about the terms of the proposed agreement or the proposed variation.

(4) If an employer listed in section 59 decides not to act as an employer bargaining party and is not represented by the Public Service Commissioner, no other employer bargaining party for the proposed agreement, the proposed variation, or the fair pay agreement may represent the employer's interests.

(5) Subsection (4) applies despite section 99.

61 Other specified State employers

(1) This section applies to—

(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.

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

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

(b) in the case of a proposed agreement, the chief executive has publicly notified, in accordance with section 37 or 207, that the chief executive has approved an application to initiate bargaining for the proposed agreement.

(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.

62 Specified employer bargaining parties

(1) Despite section 99, 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

(b) another employer bargaining party that is a member of the same bargaining side must not represent the interests of the SEBP employer.

(2) To avoid doubt, a specified employer bargaining party may, in accordance with sections 58 to 61 be an employer bargaining party despite not otherwise being an eligible employer association and therefore not otherwise being eligible to join a bargaining side.

63 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 agreement.

64 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—

(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.

(2) A notice under subsection (1) must state where to find the notice issued by the chief executive under section 37 or 207.

Subpart 2—Default bargaining parties

65 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:

(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:

(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:

(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—

(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.

(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.

66 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.

67 Chief executive's notification: bargaining side not formed

(1) Subsection (2) applies if the chief executive—

(a) has notified under section 37 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

(b) has notified under section 207 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

(c) has notified under section 207 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—

(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

(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.

(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—

(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.

68 Chief executive's notification: all bargaining parties on bargaining side cease to be bargaining parties

(1) Subsection (2) applies if the chief executive—

(a) grants approval under section 102(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

(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.

(2) If this subsection applies, the chief executive must notify—

(a) the bargaining side lead advocate for the other bargaining side for the proposed 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

(ii) in all other cases, that there is no bargaining party on bargaining side A; and

(b) 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

(c) the relevant default bargaining party that, in respect of the proposed agreement or the fair pay agreement, there is no bargaining party on bargaining side A and the default bargaining party may elect to be a bargaining party,—

(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.

69 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—

(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 67(2)(b) or 68(2)(c); or

(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

(b) until—

(i) the chief executive approves the default bargaining party ceasing to be a bargaining party under section 102; or

(ii) it ceases to be eligible to be a bargaining party under section 103; 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 168) and the fair pay agreement subsequently expires.

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

70 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—

(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 37, 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.

(2) 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

(b) within 2 months of the chief executive's notice of approval under section 207, 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.

(3) 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 244, to the Authority for a determination under section 252; or

(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 244, to the Authority for a determination under section 252.

71 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

(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.

(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 244, to the Authority for a determination under section 252.

Default bargaining parties for proposed agreement: when bargaining side ceases

72 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,—

(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.

(2) In the situation described in subsection (1)(a),—

(a) the employee default bargaining party may elect, in accordance with section 69, to be an employee bargaining party for the proposed agreement; or

(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 69, 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 244, to the Authority for a determination under section 252.

73 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 244, to the Authority for a determination under section 252.

(3) In the situation described in subsection (1)(b),—

(a) the employer default bargaining party may elect, in accordance with section 69, 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.

74 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,—

(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),—

(a) the employee default bargaining party may elect, in accordance with section 69, 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 244, to the Authority for a determination under section 252.

(3) In the situation described in subsection (1)(b),—

(a) the employer default bargaining party may elect, in accordance with section 69, 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, the specified employer bargaining party may apply, in accordance with section 244, to the Authority for a determination under section 252.

Default bargaining party ceases to be bargaining party

75 Default bargaining party ceases to be bargaining party

(1) This section applies if the chief executive approves, under section 102, a default bargaining party ceasing to be a bargaining party for a proposed agreement.

(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,—

(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

(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 244, to the Authority for a determination under section 252.

(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,—

(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, a bargaining party on the bargaining side that initiated bargaining may apply, in accordance with section 244, to the Authority for a determination under section 252.

(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,—

(a) if there is another bargaining party on the employee bargaining side, bargaining continues; or

(b) if there is no other bargaining party on the employee bargaining side, the specified employee bargaining party may apply, in accordance with section 244, to the Authority for a determination under section 252.

Default bargaining parties for proposed variations

76 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 employer bargaining party, if applicable), the default bargaining party may,—

(a) in accordance with section 69, elect to be a bargaining party; and

(b) in accordance with Part 9,—

(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.

77 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 179(2) applies.

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

78 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 69(1)(b), the chief executive must provide notice to the bargaining side lead advocate for the opposing bargaining side (**bargaining side B**) that,—

(a) if bargaining side B initiated bargaining for the proposed agreement, complies with subsections (2) and (3); or

(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—

(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 an employer bargaining side).

(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 244, to the Authority for a determination under section 252; and

(b) despite paragraph (a), the Authority will not make a determination under section 252 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

(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 244, to the Authority for a determination under section 252,

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 69(1)(b).

(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 79 applies.

79 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

(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 69(1)(b).

(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

(c) no later than 3 months after the date of the notice, the specified employer bargaining party may apply, in accordance with section 244, to the Authority for a determination under section 252; and

(d) despite paragraph (c), the Authority will not make a determination under section 252 if, before the specified employer bargaining party applies for the determination,—

(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

(e) if a specified employer bargaining party does not apply, in accordance with section 244, to the Authority for a determination under section 252, bargaining for the proposed renewal or the proposed replacement is dis-

continued on the day after the date by which the application for the determination must be made.

80 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 244(3) if—

(a) a bargaining party may apply, in accordance with section 244, to the Authority for a determination under section 252; but

(b) the bargaining party does not apply for a determination by the last day of the period specified in section 244(3).

81 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 78(3)(c) or (4) or 79(2)(e), the chief executive must publicly notify the following information:

(a) the coverage of the proposed agreement:

(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 37 or 207 (as applicable).

Subsequent formation of bargaining side

82 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

(b) a bargaining party is entitled to apply, in accordance with section 244, for a determination under section 252, but has not yet done so.

(2) Despite sections 38, 46, 209, and 210, a bargaining side for the proposed agreement may form if the chief executive approves an application under section 43 or 47 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

(b) a bargaining party applies, in accordance with section 244, for a determination under section 252 for the proposed agreement.

(3) If the chief executive approves an application under section 43 or 47 (as applicable) for the proposed agreement, the bargaining side for the proposed agreement is formed on the date of the chief executive's approval.

Part 5
FPA meetings and union access to workplaces

Subpart 1—FPA meetings

83 Requirements for arranging FPA meeting

(1) An employee bargaining party on an employee bargaining side for a proposed agreement may arrange an FPA meeting only if—

(a) the chief executive has publicly notified, in accordance with section 37 or 207, that the chief executive has approved an application to initiate bargaining for the proposed agreement; and

(b) both bargaining sides for the proposed agreement 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.

(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

(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

(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.

84 Entitlement to attend FPA meetings

(1) An employer must allow each covered employee—

(a) to attend 2 FPA meetings in relation to a proposed FPA; and

(b) to attend 1 FPA meeting in accordance with subsection (3) in relation to a proposed variation to a fair pay agreement; and

(c) to attend 2 FPA meetings in relation to a proposed renewal or a proposed replacement.

(2) Each FPA meeting must—

(a) last no longer than 2 hours; and

(b) relate to the proposed agreement or the proposed variation (as applicable); and

(c) take place during bargaining for the proposed agreement or the proposed variation; and

(d) be arranged in accordance with section 83.

(3) 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.

(4) 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.

(5) 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 211.

85 Payment for attending FPA meeting

(1) The employer of a covered employee, in relation to a proposed agreement or a proposed variation that will be discussed at an FPA meeting, 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.

(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.

(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 211.

86 Entitlement to attend additional FPA meeting

(1) An employer must allow each covered employee who is within the coverage of a proposed agreement to attend 1 additional FPA meeting in relation to the proposed agreement if—

(a) the employee has already attended 2 FPA meetings under section 84(1)(a) or (c) (as applicable); and

(b) in relation to the proposed 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 8).

(2) The following sections apply to an FPA meeting held under this section, with all necessary modifications:

(a) section 83(1) and (3):

(b) section 84(2), (4), (5), and (6):

(c) section 85.

(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 211.

Subpart 2—Employee bargaining party may access workplaces

87 Workplace does not include dwellinghouse

(1) For the purposes of sections 88 to 92, **workplace** does not include a dwellinghouse.

(2) In this section, **dwellinghouse** has the meaning given in section 5 of the Employment Relations Act 2000.

88 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:

(a) bargaining for a proposed FPA:

(b) bargaining for a proposed variation:

(c) bargaining for a proposed renewal:

(d) bargaining for a proposed replacement:

(e) a fair pay agreement.

(2) A purpose for entering a workplace under subsection (1)(a), (b), (c), or (d) includes a purpose that relates to—

(a) communicating to employees any progress in bargaining for the proposed agreement or the proposed variation; or

(b) seeking feedback from covered employees about any aspect of the proposed agreement or the proposed variation.

(3) A purpose for entering a workplace under subsection (1)(e) includes a purpose that relates to—

(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

(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.

(4) 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

(b) the employee bargaining party is a bargaining party for the proposed agreement, the proposed variation, or the fair pay agreement.

(5) 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—

(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

(ii) an FPA meeting under section 84 or 86 of this Act.

(6) 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 (5).

(7) In this section and sections 89 to 92, if a default employee bargaining party is a bargaining party for a proposed agreement, a proposed variation, 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.

Compare: 2000 No 24 s 20

89 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

(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

(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,—

(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—

(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.

Compare: 2000 No 24 s 21

90 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—

(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.

(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 88 might prejudice—

(i) the security or defence of New Zealand; or

(ii) the investigation or detection of offences.

Compare: 2000 No 24 s 22

91 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—

(a) all the employees employed in the workplace are employed by an employer who holds a current certificate of exemption issued under section 24 of the Employment Relations Act 2000; 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

92 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

(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 89.

(2) Subsection (1) is subject to sections 90 and 91.

(3) 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 211.

Compare: 2000 No 24 s 25

Part 6
Bargaining

Subpart 1—Good faith obligation to provide information

93 Providing information when bargaining

(1) This section and sections 94 and 95 apply for the purposes of a request made under section 19(3)(h).

(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

(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.

Compare: 1972 No 118 s 13ZC

94 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 229 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

(c) answer any questions from the bargaining side that requested the information in a way that maintains the confidentiality of the information.

95 Limits on use of information provided during bargaining

(1) Unless the employee bargaining side and the employer bargaining side agree, information provided under section 94(1)(a) and advice and answers provided under section 94(4) and (5)—

(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.

(2) Nothing in section 93 or 94 or in this section limits or affects the Privacy Act 2020.

(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 2—Representation

96 Entitlement and obligation to represent covered employees

(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,—

(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

(c) consider, during bargaining, all feedback received from covered employees; and

(d) advise all covered employees of any ratification vote (*see* section 154); 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.

(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.

97 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—

(a) seeking and considering feedback from representatives of Māori employees; and

(b) considering whether the bargaining side should include a person to represent the interests of Māori employees.

98 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' feedback to the employee bargaining side; and

(b) the employee bargaining side must consider that feedback when bargaining for the proposed FPA.

99 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.

(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

(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 154); 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 an employer bargaining party on the bargaining side is aware that the private sector employer regularly receives—

(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.

(3) 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.

(4) An employer bargaining party must not, whether directly or indirectly, do anything—

(a) to mislead or deceive a covered employer; or

(b) that is likely to mislead or deceive a covered employer.

(5) In subsection (2)(f),—

department has the meaning given in section 5 of the Public Service Act 2020

local authority has the meaning given in section 5 of the Local Government Act 2002.

100 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—

(a) seeking and considering feedback from representatives of Māori employers; and

(b) considering whether the bargaining side should include a person to represent the interests of Māori employers.

Subpart 3—Ceasing to be bargaining party

101 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 102(1); or

(b) the bargaining party is no longer eligible to be a bargaining party (*see* section 103).

102 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—

(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

(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—

(a) details of the proposed agreement, the proposed variation, 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

(c) whether there are any other bargaining parties remaining on the bargaining side for the proposed agreement, the proposed variation, or the fair pay agreement; and

(d) whether any of the remaining bargaining parties is a specified employer bargaining party; and

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

103 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 that is not a default bargaining party, it ceases to be an eligible union; or

(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

(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—

(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 agreement, the proposed variation, 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

(c) whether there are any other bargaining parties remaining on the bargaining side for the proposed agreement, the proposed variation, or the fair pay agreement; and

(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.

104 Appointment of new bargaining side lead advocate

If a bargaining side lead advocate for a proposed 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 agreement, the proposed variation, or the fair pay agreement, the relevant bargaining side must appoint a new bargaining side lead advocate under section 54.

Subpart 4—Provision of information

105 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 106, 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.

106 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.

(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.

107 Provision of information: coverage changes or new employers identified

(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.

(2) In the circumstances described in subsection (1),—

(a) the employer bargaining side must provide a statement that complies with section 39(4) and the form required under section 39(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,—

(i) unless it has already done so in respect of the proposed agreement, comply with each requirement in section 40(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 40(2), (3), and (4) in respect of each newly covered employee; and

(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—

(i) as soon as practicable after the date that is 20 working days after providing the information required under section 40(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,—

(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.

(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 211.

108 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 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 40(1); and

(ii) no later than 30 working days after the new employee commences the employment, comply with section 40(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—

(i) no earlier than 20 working days after providing the information required under section 40(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 211.

Subpart 5—Coverage change, coverage overlap, consolidation, and addition of occupation

Coverage changed during bargaining

109 Bargaining party must apply for approval to bargain with changed coverage

(1) This section applies when—

(a) the chief executive has publicly notified, in accordance with section 37 or 207, 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, if its coverage is changed, meets an initiation test (*see* sections 28 and 29).

110 Chief executive must assess application made under section 109

(1) As soon as practicable after receiving an application for approval under section 109, 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

(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.

(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 provided under subsection (2), that—

(a) both bargaining parties have agreed to the changed coverage of the proposed agreement; and

(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 28, 29, or 205 (as applicable).

(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.

(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.

111 Chief executive to publicly notify changed coverage

(1) Within 5 working days after approving an application made under section 109 to change the coverage of a proposed agreement, the chief executive must publicly notify the following information:

(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 28, 29, or 205:

(d) the reasons why the chief executive remains satisfied, despite the changed coverage, that the application meets the applicable initiation test:

(e) where to find the notice issued by the chief executive under section 37 or 207.

(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

(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

(c) where to find a plain language explanation of the next steps for bargaining.

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,—

(a) the chief executive must also comply with section 113; and

(b) section 114 applies.

Coverage overlap between proposed agreement and fair pay agreement

112 Application of sections 113 and 114

Sections 113 and 114 apply when—

(a) the chief executive has publicly notified, in accordance with section 37 or 207, that the chief executive has approved—

(i) an eligible union's application to initiate bargaining for a proposed FPA; or

(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 agreement.

113 Chief executive must notify initiating party of coverage overlap

(1) If the chief executive approves bargaining for a proposed agreement for which there is coverage overlap, the chief executive must notify the initiating party of the proposed agreement—

(a) that the coverage of the proposed agreement will result in coverage overlap; and

(b) of the consequences of the coverage overlap (*see* section 114).

(2) The initiating party must, after being notified of the coverage overlap under subsection (1), notify—

(a) each employee bargaining party on the employee bargaining side; and

(b) each employer bargaining party on the employer bargaining side.

114 Consequences of coverage overlap

The consequences of coverage overlap are that—

(a) before the chief executive validates a proposed agreement under section 168, the Authority must, in accordance with sections 146 and 149,—

(i) review the terms of the proposed agreement 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 agreement or the fair pay agreement provides the better terms overall, either section 166 or 167 applies.

Consolidation of bargaining

115 Application of sections 116 to 120

(1) Sections 116 to 120 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 additional occupation group within the industry that the first proposed agreement covers (the **second proposed agreement**).

(2) However, if a bargaining party has applied, in accordance with section 244, to the Authority for a determination under section 252 for the first proposed agreement,—

(a) sections 116 to 119 and 120(1) do not apply; and

(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 159 as a stand-alone fair pay agreement; but

(ii) may verify the later proposed agreement, and validate it under section 168, 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.

(3) In sections 116 to 120,—

first proposed agreement and **second proposed agreement** have the meanings given in subsection (1)

the 2 proposed agreements means both the first proposed agreement and the second proposed agreement.

116 When bargaining for fair pay agreements is consolidated

(1) After the chief executive approves the application to initiate bargaining for the second proposed agreement,—

(a) bargaining for the 2 proposed agreements must be consolidated, and section 118 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

(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 244, to the Authority for a determination under section 252 but has not yet done so; or

(b) except as provided in paragraph (a)(ii), if 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, 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 37 that the chief executive has approved the application to initiate bargaining for the second proposed agreement.

(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,—

(a) the bargaining sides for the first proposed agreement are deemed to have decided not to consolidate bargaining for the 2 proposed agreements; and

(b) section 120 applies.

117 Chief executive to notify parties

(1) When the chief executive publicly notifies, in accordance with section 37, 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 for the second proposed agreement—

(i) that the chief executive has already approved bargaining for the first proposed agreement; and

(ii) that the first proposed agreement is an industry-based agreement; and

(iii) that the second proposed agreement covers an additional occupation group within the industry that the first proposed agreement covers; and

(iv) whether 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

(b) 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

(c) 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—

(i) decide whether to consolidate bargaining for the 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 37; and

(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.

(2) The chief executive's notification must explain the effects of—

(a) consolidating bargaining (*see* section 118); and

(b) not consolidating bargaining (*see* section 120).

118 Effect of decision to consolidate

(1) If a first proposed agreement and a second proposed agreement are consolidated into 1 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 2 proposed agreements agree otherwise); 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

(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

(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 39 to 42 (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.

(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 are consolidated, the consolidation takes effect,—

(a) if the chief executive notified the chief executive's approval to initiate bargaining for the second proposed agreement under section 37 less than 6 months after the chief executive notified the chief executive's approval to initiate bargaining for the first proposed agreement under section 37, on the date on which the chief executive notifies the bargaining parties under section 117(1)(b); or

(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 117(1)(c)(ii)).

(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

(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.

119 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.

(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 117(1)(b); or

(ii) the date on which a bargaining side for the first proposed agreement notifies, under section 117(1)(c)(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.

120 Effect of decision not to consolidate

(1) If the bargaining sides for the first proposed agreement decide not to consolidate bargaining for the 2 proposed agreements (*see* section 116(1)(b)),—

(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—

(i) must not verify the later of the 2 proposed agreements to be submitted under section 159 as a stand-alone fair pay agreement; but

(ii) may verify the later proposed FPA, and validate it under section 168, 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.

(2) Before validating a later proposed FPA as a schedule of an earlier fair pay agreement, the chief executive must—

(a) check the proposed FPA for coverage overlap in accordance with section 163; and

(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

(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 123(2)(a), for a period that is less than 3 years (as a result of complying with subsection (2)(b)(iii)).

(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.

Addition of occupation to fair pay agreement

121 Proposed FPA that adds occupation to fair pay agreement

(1) This section applies if—

(a) an industry-based agreement has been validated under section 168 and is in force in an industry; and

(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 168; but

(b) may validate the additional agreement under section 168 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—

(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

(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 123(2)(a), for a period that is less than 3 years (as a result of complying with subsection (3)(c)).

(5) In this section and section 122, **additional agreement** means an additional industry-based agreement described in subsection (1)(b)).

122 Chief executive to notify parties of existing fair pay agreement

When an initiating union initiates bargaining for an additional agreement in the circumstances set out in section 121(1), the chief executive must—

(a) notify the initiating union 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

(ii) that the additional agreement, once verified under section 160, will be validated as a schedule of the fair pay agreement that has already been validated under section 168; and

(b) explain to the union that section 121 applies and how section 121 applies.

Part 7
Content of fair pay agreements

Content of fair pay agreements

123 Mandatory content for each fair pay agreement

(1) Each fair pay agreement must specify the following:

(a) the date on which the agreement comes into force:

(b) the coverage of the agreement (with sufficient clarity to determine the work or type of work that is covered by the agreement):

(c) for each type of work covered by the agreement, and for each class of covered employees, the standard hours:

(d) the following details of wages to be paid for each type of work covered by the agreement, and to each class of covered employees:

(i) a minimum base wage rate, and when it applies:

(ii) an overtime rate, and when it applies:

(iii) a penalty rate, and when it applies:

(iv) in relation to each rate in subparagraphs (i) to (iii),—

(A) the specified amount by which it must be adjusted; or

(B) the calculation that must be used to adjust it:

(e) for each type of work covered by the agreement, and for each class of covered employees, the arrangements for training and development:

(f) for each type of work covered by the agreement, and for each class of covered employees, the leave entitlements:

(g) 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:

(h) 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 9:

(i) the date on which the agreement expires.

(2) For the purpose of determining the dates required under subsection (1)(a) and (i),—

(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—

(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) For the purposes of subsection (1)(c), and subject to section 124(3), the fair pay agreement must provide that an employee is entitled to be paid the relevant minimum base wage rate for work performed during the standard hours.

(4) Subsection (1)(d) applies subject to section 124.

(5) The mandatory content listed in subsection (1) must—

(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 141.

124 Mandatory content: details of wages

(1) Despite section 123(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 each minimum entitlement in the agreement.

(2) For the purpose of section 123(1)(d), if a minimum base wage rate specified in a fair pay agreement includes a starting-out rate of wages or a training rate of wages, the rate must be set in accordance with the requirements in sections 4A and 4B of the Minimum Wage Act 1983, except that the rate is specified in the agreement and not prescribed by Order in Council.

(3) A fair pay agreement must provide that—

(a) an employee is entitled to be paid the relevant overtime rate for any hours worked in excess of the maximum hours of work in a day or in a week for which the minimum base wage rate is payable, regardless of whether the hours worked are within the standard hours of work; and

(b) if both an overtime rate and a minimum base wage rate are payable in respect of the same hours worked by a covered employee (but not a penalty rate), the employee is entitled to be paid the higher of the 2 rates; and

(c) if both a penalty rate and a minimum base wage rate are payable in respect of the same hours worked by a covered employee (but not an overtime rate), the employee is entitled to be paid the higher of the 2 rates; and

(d) if both an overtime rate and a penalty rate are payable in respect of the same hours worked by a covered employee, the employee is entitled to be paid the higher of the 2 rates; and

(e) if a minimum base wage rate, an overtime rate, and a penalty rate are payable in respect of the same hours worked by a covered employee, the employee is entitled to be paid the highest of the 3 rates.

125 Topics that bargaining sides must discuss

(1) When bargaining for a proposed agreement, the bargaining sides must discuss whether the proposed agreement will specify the following topics:

(a) the objectives of the proposed agreement:

(b) health and safety requirements:

(c) arrangements relating to flexible working:

(d) 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 agree to include it; or

(b) the Authority determines under section 230 that the proposed agreement must include such a provision.

126 Limit on what fair pay agreement may include

(1) The bargaining parties to a proposed agreement or a proposed variation may agree to include a term that is not related to mandatory content listed in section 123 or a topic listed in section 125.

(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.

Minimum entitlement provisions

127 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:

(a) minimum base wage rates:

(b) increases to the minimum entitlements provided under the Holidays Act 2003:

(c) payment for any increases to the minimum entitlements provided under the Holidays Act 2003:

(d) overtime rates:

(e) penalty rates.

128 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.

129 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:

(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

(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.

(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.

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 employee is $21 per hour, the employee is entitled to be paid the minimum base wage rate of $21 per hour.

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

Minimum wage rates

130 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 a covered employee in relation to a fair pay agreement, the rate from which the permit exempts the employee is the higher of—

(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—

(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 a fair pay agreement; and

(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,—

(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.

131 Differing minimum base wage rates

(1) Subject to sections 132(1) and (3) and 133, a fair pay agreement may, in addition to specifying a minimum base wage rate payable to covered employees, also specify—

(a) a starting-out rate of wages; and

(b) a training rate of wages.

(2) The minimum base wage rates payable under a fair pay agreement are not payable to—

(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:

(c) an employee who has been issued a minimum wage exemption permit under section 8 of the Minimum Wage Act 1983.

132 Differing minimum base 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—

(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):

(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

(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.

(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

(b) includes any employment undertaken by the employee before—

(i) the employee turns 16:

(ii) the commencement of this Act.

133 Differing minimum base wage rates: training rate

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

(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.

Differentiation of application and entitlement

134 Fair pay agreement may include differentiation

(1) Subject to sections 13, 135, 137, and 138, 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 the same fair pay agreement.

(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:

(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.

135 Fair pay agreement may include district variation for some provisions

(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:

(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:

(c) for each type of work covered by the agreement, and for each class of covered employees, the standard hours:

(d) an overtime rate, and when it applies:

(e) a penalty rate, and when it applies:

(f) leave entitlements:

(g) arrangements relating to any redundancy:

(h) arrangements relating to training and development:

(i) health and safety requirements:

(j) arrangements relating to 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

(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 9; or

(e) the date on which the agreement expires; or

(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 subsection (2)(a), (b), (c), (d), (e), (f), or (h) must—

(a) be specified in the form required in regulations; and

(b) include all details required in regulations.

136 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) 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.

(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.

137 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—

(a) the district in which the employee or class of employees 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

(b) the occupation of the employee or class of employees (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 employees 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).

138 Prohibited differentiation

Section 137 does not authorise a fair pay agreement to include a term that is contrary to any other law, for example,—

(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

139 When delayed commencement can be considered

(1) This section and sections 140 and 141 apply—

(a) after the bargaining sides for a proposed agreement have agreed that bargaining is complete; but

(b) before the bargaining sides jointly submit the proposed agreement to the Authority for a compliance assessment under section 143.

(2) This section and sections 140 and 141 apply to a proposed agreement only if the bargaining sides for the proposed agreement agree—

(a) to consider applications from employers that wish to delay the commencement date of 1 or more terms of the proposed agreement for the employer; and

(b) a process by which an employer may apply for the commencement date of 1 or more terms of the proposed agreement to be delayed for the employer.

Guidance note

Sections 139 to 141 do not apply to a proposed variation because section 182(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.

140 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:

(c) an overtime rate, and when it applies:

(d) a penalty rate, and when it applies:

(e) leave entitlements.

141 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

(b) delaying commencement of the term or terms will allow the employer to arrange its business so that applying the proposed agreement will no longer result in a less favourable outcome for the employer's employees.

(2) A delay to the commencement of 1 or more terms of a proposed agreement must be for less than 12 months.

(3) If the bargaining sides approve an employer's application, the proposed agreement must be amended so that the commencement term specifies,—

(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

(b) the commencement date for the remainder of the proposed agreement.

Part 8
Finalisation of proposed agreement

142 Overview

(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.

(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 check whether there is any coverage overlap between a proposed agreement and any fair pay agreement.

(6) Subpart 5 provides that the chief executive must issue a notice to bring a proposed agreement into force.

Guidance note

This Part does not relate to proposed variations because sections 188 to 193 set out the requirements for finalising a proposed variation.

Subpart 1—Compliance assessment

143 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

(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—

(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

(b) the proposed agreement—

(i) is in writing; and

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

144 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—

(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

(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.

145 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

(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 144; 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.

(2) The bargaining sides may resubmit the proposed agreement as many times as necessary until the Authority approves the proposed agreement.

146 Authority to assess whether coverage overlap exists

(1) The Authority must, when a proposed agreement is submitted for a compliance assessment, assess whether there is coverage overlap between the proposed agreement and any fair pay agreement.

(2) The Authority must, after fixing the terms of a proposed agreement under section 234 or 252, assess if there is coverage overlap between the proposed agreement and any fair pay agreement.

(3) If the Authority decides that there is coverage overlap, it must determine which agreement provides the better terms overall.

147 Time frame for Authority to assess proposed agreement

(1) The Authority must 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 practicable after it receives the proposed agreement; but

(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.

(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.

148 Time frame for Authority to determine which agreement provides better terms overall

(1) The Authority must notify the bargaining sides for a proposed agreement which agreement provides the better terms overall—

(a) as soon as practicable after it receives the proposed agreement; but

(b) no later than 20 working days after it notifies the bargaining sides that it has provisionally approved the proposed agreement under section 147(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.

149 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

(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.

150 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.

(2) If the Authority determines that agreement A provides better terms overall,—

(a) the Authority must advise both bargaining sides for agreement B—

(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 work that is within the coverage of both agreement A and agreement B; and

(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; and

(d) each employer who, as a result of paragraph (b), no longer employs 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

(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 39(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

(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.

(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—

(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

(d) each covered employer in relation to agreement B is entitled to vote in the ratification process, despite also being a covered employer in relation to agreement A; and

(e) on the date on which agreement B comes into force, the work that is 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 39(2)(d)(ii), not to have their contact details provided) that—

(i) the Authority has determined that agreement B provides better terms overall; and

(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 validated, the employee would no longer be a covered employee within the coverage of agreement A but would be a covered employee within the coverage of agreement B; and

(g) the employer bargaining side for agreement B must use its best endeavours to advise each covered employer in relation to both agreement A and agreement B that—

(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 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 agreement

A but would be covered employees in relation to agreement B; and

(h) if the chief executive validates agreement B (in accordance with subpart 5), the chief executive must also amend agreement A to remove the work or type of work that is within the coverage of both agreement A and agreement B from the coverage of agreement A.

Subpart 2—Ratification

151 Approved proposed agreement to be ratified

(1) This subpart applies in relation to a proposed agreement if the Authority—

(a) has approved the proposed agreement under section 144; and

(b) has assessed, under section 146, 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—

(a) this subpart; and

(b) the ratification process set by the relevant bargaining side.

152 Provision of information prior to ratification

(1) No later than 5 working days after the Authority has approved a proposed agreement under section 144 or 5 working days after the Authority has notified the bargaining sides of its determination under section 148,—

(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 39(2)(d)(ii), not to have their contact details provided to the initiating union) 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.

(2) No later than 15 working days after being notified under subsection (1)(b), each covered employer must—

(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 com-

pleting and returning the form provided by the employer under paragraph (b); and

(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 106; and

(b) provide a form approved and issued by the chief executive under section 284 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

(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 reason for providing the employee's contact details to the employee bargaining side; and

(iv) an explanation of to whom the employee bargaining side is able to provide the employee's contact details; and

(v) an explanation of the purposes for which the employee's contact details may be used; and

(vi) the consequences of the employee electing not to have their contact details provided; and

(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 employee bargaining side; and

(viii) how to determine whether the employee is entitled to vote in the ratification vote.

(3) The employer must provide the contact details 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.

(4) The employer must provide the contact details to the employee bargaining side—

(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) 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—

(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

(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 211.

153 Time frame for holding ratification vote

(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—

(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 147(1); or

(ii) of the outcome of the coverage overlap assessment under section 148.

(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—

(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—

(i) that it has approved the proposed agreement under section 147(1); or

(ii) of the outcome of the coverage overlap assessment under section 148.

154 Bargaining sides to notify of ratification vote

(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

(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).

(3) The following information must be provided:

(a) advice that the recipient of the information may be entitled to vote for or against ratifying the proposed agreement; and

(b) how the employee or employer can determine whether they are entitled, in accordance with section 155, to vote in the ratification vote; and

(c) the first date on which the recipient is able to cast their vote; and

(d) the final date by which the recipient may cast their vote; and

(e) the methods by which the recipient is able to cast their vote; and

(f) the consequences of the ratification vote for the proposed agreement.

(4) For the purpose of subsection (3)(e), 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).

155 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 168,—

(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.

(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

(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.

(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 168, the employer will employ at least 1 employee who will be a covered employee in relation to the fair pay agreement.

156 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.

(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),—

(a) a covered employer who has—

(i) fewer than 21 employees who the employer considers are entitled to vote 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 is entitled to 1 vote for each of those employees (for example, if a covered employer has 25 employees who the employer considers are entitled to vote, 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.

157 Notification of outcome of ratification vote

(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.

(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 159.

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

(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.

158 Obligation to keep records of ratification

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

(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—

(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 entitled to vote.

Subpart 3—Verification

159 Bargaining sides must submit evidence of ratification for verification

(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.

(2) Each bargaining side for the proposed agreement must, as soon as 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

(iii) if the bargaining side is an employer bargaining side,—

(A) for each employer who voted, the number of the employer's employees who the employer considers to be entitled to vote under section 155; and

(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

(c) a copy of the proposed agreement, which must include the title of the proposed agreement.

160 Chief executive to verify ratification

(1) The chief executive must, after receiving the evidence submitted under section 159 from both bargaining sides for a proposed agreement, verify the proposed agreement if satisfied that—

(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 entitled to vote; and

(c) each covered employer cast the number of votes determined under section 156(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 entitled to vote).

(3) A bargaining side, if required to provide further evidence, must provide the evidence in writing and as soon as practicable.

(4) Before deciding whether to verify a proposed agreement, the chief executive must—

(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.

(5) 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.

(6) The chief executive must decide whether to verify a proposed agreement by the later of—

(a) 20 working days after the date on which the chief executive receives the evidence required under section 159 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).

161 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—

(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 159 to the chief executive for verification.

(3) If a bargaining side resubmits evidence for verification, the chief executive must consider the evidence in accordance with this subpart.

162 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 211.

(2) A covered employer is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in section 211 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 to check for overlapping coverage

163 Chief executive to check whether coverage overlap exists

(1) The chief executive must, after verifying a proposed agreement under section 160 but before issuing a fair pay agreement notice under section 168, check whether there 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.

164 Consequences if coverage overlap may exist

If the chief executive concludes that there 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 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 make the determinations specified in section 165(1).

165 Authority to make determinations relating to coverage overlap

(1) The Authority must, when a proposed agreement is submitted under section 164, determine—

(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 149, whether the proposed agreement or the fair pay agreement provides the better terms overall.

(2) The Authority must make its determination—

(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 148.

166 Consequences of Authority's determination: proposed agreement provides better terms overall

(1) If the Authority determines, in accordance with section 165(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—

(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 within the coverage of the proposed agreement and the fair pay agreement will only be within the coverage of the proposed agreement when it is validated; and

(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 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.

(3) The employee bargaining side for the proposed agreement must inform each covered employee who is also a covered employee in relation to 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.

(4) The employer bargaining side for the proposed agreement must inform each covered employer that is also a covered employer in relation to 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), (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.

167 Consequences of Authority's determination: fair pay agreement provides better terms overall

(1) If the Authority determines, in accordance with section 165(1), that the fair pay agreement provides better terms overall than the proposed agreement, the Authority must notify the chief executive of that fact.

(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

(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 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 covered by the fair pay agreement; and

(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—

(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.

(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

(b) of the consequences of that determination.

Subpart 5—Issuing fair pay agreement notice

Chief executive to issue fair pay agreement notice

168 Chief executive to issue fair pay agreement notice

(1) Subject to subsection (2), the chief executive must, if satisfied that it complies with this Act,—

(a) validate the terms of a proposed agreement by issuing a fair pay agreement notice in accordance with this subpart; or

(b) for the purpose of section 150 or 166, 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.

(2) 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

(ii) has 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 234 or 252.

(3) 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.

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

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	The maker must publish it in accordance with the Legislation (Publication) Regulations 2021	LA19 s 74(1)(aa)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

169 Form and content of notice

(1) Each notice issued under section 168(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 168(2)(a), must be the terms that were ratified by the ratification vote that the chief executive verified under subpart 3; or

(b) for the purpose of section 168(2)(b), must be the terms determined by the Authority.

(2) However, a notice issued under section 168(1)(b) to amend the coverage of a fair pay agreement—

(a) is not required to set out the terms of the fair pay agreement; but

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

170 Notification to bargaining sides

(1) If the chief executive issues a notice under section 168(1)(a), the chief executive must notify each bargaining side for the fair pay agreement that the chief executive has issued the notice.

(2) If the chief executive issues a notice under section 168(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.

171 Chief executive may make editorial changes

(1) The chief executive may make the following changes to a fair pay agreement that the chief executive has validated under section 168:

(a) 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:

(b) 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:

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

(d) 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:

(iv) any other errors of a similar nature:

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

(f) 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

172 Application of notice and fair pay agreement

(1) A notice issued under section 168 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 141); and

(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 applies to—

(a) each covered employee who is within the coverage of the agreement (whether or not the employee is a union member); and

(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 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 but who subsequently becomes a covered employee, in which case the agreement applies to the employee from the date on which the employee becomes a covered employee:

(b) an employer who on the date on which the notice came into force 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:

(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.

(4) However, if, after the date on which the notice comes into force,—

(a) an employee ceases to be a covered employee, the agreement ceases to apply to the employee from the date on which they cease to be a covered employee:

(b) an employer ceases to employ any covered employees, the fair pay agreement ceases to apply to the employer from the date on which they cease to employ any covered employees.

173 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—

(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,—

(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.

(3) For the purpose of subsection (2)(b), the percentage of the work that an employee described in section 172(3)(a) performs must be assessed based on the work that the employee will perform.

174 Obligation to comply with fair pay agreement

(1) Subject to section 175, 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 (4), a failure by a covered employer to comply with subsection (1) is deemed to be a breach of this Act.

(3) Subject to subsection (4), a covered employer for a fair pay agreement that fails to comply with the fair pay agreement—

(a) is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in section 212; 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.

(4) A covered employer in relation to a fair pay agreement that fails to comply with a minimum entitlement provision that, in accordance with section 129(2), provides a level of entitlement that is below the level required under an Act listed in section 129(1),—

(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 129(1).

(5) A bargaining party for a fair pay agreement must comply with any obligations imposed on the bargaining party by the fair pay agreement.

(6) A failure by a bargaining party to comply with subsection (5) is deemed to be a breach of this Act.

(7) 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 212.

(8) 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 212, but is not liable to a penalty under the Employment Relations Act 2000.

175 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),—

(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 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).

176 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 apply to a party to the collective agreement.

(2) The existence of bargaining for a proposed agreement or a proposed variation, or the existence of a fair pay agreement, 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.

Part 9
Variation, renewal, and replacement of fair pay agreements

Subpart 1—Variation

177 Application

(1) This subpart applies if one of the bargaining sides for a fair pay agreement proposes that the fair pay agreement is varied.

(2) A fair pay agreement may be varied only in accordance with—

(a) the process set out in this Act; and

(b) the terms of the fair pay agreement that specify how the agreement may be varied (subject to section 126(2)).

178 Who may propose agreement to bargain for proposed variation

A request for agreement to bargain for a proposed variation may be made only by—

(a) a bargaining party that is a member of a bargaining side for the fair pay agreement on the date on which the request is made; or

(b) if permitted by section 76, the relevant default bargaining party.

179 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 for the fair pay agreement agree to do so.

(2) If either bargaining side for a proposed variation withdraws its agreement at any stage of the bargaining, the bargaining for the proposed variation is discontinued.

180 Notification requirements relating to agreement to bargain for proposed variation

(1) If, in accordance with section 179(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 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 the fair pay agreement that bargaining for the proposed variation has been discontinued; and

(b) the employer bargaining side must notify all employers that it considers may be covered employers in relation to the fair pay agreement that bargaining for the proposed variation has been discontinued.

181 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):

(a) sections 47(2) and 48 to 50 (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 56 applies.

(3) During bargaining for a proposed variation,—

(a) sections 52, 96, 97, and 98 apply to the employee bargaining side with all necessary modifications; and

(b) sections 53, 62, 99, and 100 apply to the employer bargaining side with all necessary modifications.

182 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:

(b) after a bargaining party has requested that the fair pay agreement be renewed (*see* section 197):

(c) if the bargaining sides for the fair pay agreement are bargaining to renew the agreement:

(d) after the agreement has expired.

(2) If bargaining for a proposed variation has not been completed by the date on which the fair pay agreement expires, bargaining for the proposed variation is discontinued on that date.

(3) A variation of a fair pay agreement may relate to any term of the agreement, except for a term that specifies—

(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.

183 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 considers may have at least 1 covered employee, that bargaining for the proposed variation has started.

(2) A bargaining party on the employer bargaining side must comply with subsection (1) no later than 15 working days after the bargaining sides agree to bargain for the proposed variation.

184 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.

(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.

185 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—

(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

(c) a form, approved and issued by the chief executive under section 284, that sets out the same information as that listed in section 152(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 considers may employ at least 1 covered employee; but

(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—

(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 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.

(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.

(6) The information is—

(a) that the employee bargaining side and the employer bargaining side have agreed to bargain for a proposed variation; 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

(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

(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 211.

186 Employer must provide information to new employee

(1) This section applies in relation to a covered employee who commences employment—

(a) in a role that is within the coverage of a fair pay agreement; and

(b) during the bargaining process for a proposed variation of the fair pay agreement.

(2) The employer of a covered employee described in subsection (1)—

(a) must, within 15 working days of the employee commencing employment in the role, provide the employee with—

(i) the information specified in section 185(6); and

(ii) the form specified in section 185(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; and

(c) must, unless the employee elects not to have their contact details provided, provide the employee's contact details, in an electronic format, to—

(i) the email address provided by the employer bargaining side under section 185(2)(a); or

(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)(c)—

(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.

(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 211.

187 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 may employ 1 or more covered employees, it must provide the new employer with—

(a) the information listed in section 185(6); and

(b) the form specified in section 185(1)(c); and

(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)—

(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.

(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 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.

(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 211.

188 Procedure for finalising variation

When bargaining for a proposed variation is complete, the process for finalising the variation is to complete the following steps in the order given:

(a) the bargaining side lead advocates for each bargaining side must jointly submit the proposed variation to the Authority for a compliance assessment, and sections 143 to 147 apply with all necessary modifications:

(b) if the Authority approves the proposed variation under section 144, the proposed variation must be ratified in accordance with the requirements set out in sections 189 and 191:

(c) 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 159, 160, 161(3), and 162, with all necessary modifications:

(d) if the chief executive verifies ratification, the chief executive may set the terms of the variation by issuing a notice in accordance with sections 192 and 193.

189 Process for ratifying proposed variation

(1) This section applies when the Authority has approved a proposed variation under section 144 (as that section applies in accordance with section 188(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—

(a) this section and section 190; 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 144,—

(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.

(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

(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.

(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 211.

190 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 144.

(2) The requirement to notify covered employees and covered employers of the ratification vote, as set out in section 154, applies with all necessary modifications.

(3) The process for holding the ratification vote is as set out in section 156 with all necessary modifications.

(4) As soon as 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.

(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 159 applies with all necessary modifications.

(6) The requirement to keep records of the ratification vote are as set out in section 158, with all necessary modifications.

191 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 120 and 121).

(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 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 that fair pay agreement are entitled to vote on the ratification of the proposed variation.

192 Chief executive to issue notice to vary fair pay agreement

(1) For the purpose of section 188(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 188 has been followed; and

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

(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.

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

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	The maker must publish it in accordance with the Legislation (Publication) Regulations 2021	LA19 s 74(1)(aa)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

193 Form and content of notice to vary fair pay agreement

Each notice under section 192 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 160.

194 Bargaining sides may seek recommendation from Authority

(1) When bargaining for a proposed variation, 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,—

(a) section 232 applies with any necessary modifications; and

(b) before making a recommendation, the Authority must consider the considerations listed in section 236.

(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 188.

(5) There is no limit to the number of recommendations that the bargaining sides may seek from the Authority.

195 Bargaining sides may not seek determination in relation to proposed variation

When bargaining for a proposed variation, 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

196 Purpose of this subpart

This subpart sets out the process that must be followed to renew or replace a fair pay agreement.

197 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.

(2) The following parties may apply to the chief executive for approval to initiate bargaining to renew or replace a fair pay agreement:

(a) an eligible union:

(b) an eligible employer association:

(c) a specified employer bargaining party that may, in accordance with section 58, 60, or 61, be a bargaining party for the proposed renewal or the proposed replacement.

(3) A default bargaining party may not apply to the chief executive for approval to initiate bargaining to renew or replace a fair pay agreement.

Timing

198 When application to renew fair pay agreement may be made

(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, 180 days before the expiry date specified in the fair pay agreement; or

(b) in the case of an application from an eligible employer association 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

(b) an application for approval to bargain to replace the fair pay agreement may be made under section 199.

199 Application for approval to bargain for replacement fair pay agreement

(1) If no application for approval under section 198(1) is made before the expiry date specified in the fair pay agreement (so that the agreement has expired), one of the following may apply for approval to initiate bargaining for a replacement fair pay agreement based on the coverage of the expired fair pay agreement:

(a) an eligible union:

(b) an eligible employer association:

(c) a specified employer bargaining party that, in accordance with section 58, 60, or 61, 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.

200 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 198(1), the agreement continues in force until the later of—

(a) the expiry date specified in the fair pay agreement; and

(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 initiate bargaining to renew the agreement; and

(d) the date on which bargaining for the proposed renewal is discontinued under section 72(2)(b), 73(3)(b), 75(2)(b), or 80.

201 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.

(2) A fair pay agreement that replaces an expired fair pay agreement comes into force on a date specified in the replacement agreement.

Coverage

202 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.

(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.

Application for approval to renew or replace fair pay agreement

203 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—

(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 205); and

(d) specify the coverage of the proposed renewal or the proposed replacement, including,—

(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

(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

(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.

(2) Evidence provided in support of an application must be provided in accordance with section 204 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 205(2)(b).

(3) If an eligible union makes an application that relies on the representation test specified in section 205(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:

(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:

(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 205(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.

(4) Information provided under subsection (3) must be no more than 12 months old as at the date on which the eligible union submits the application.

(5) 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 211.

204 Evidence provided in support of application from eligible employer association or specified employer bargaining party

(1) An application described in section 203(2) must include the following evidence:

(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

(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

(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 205(2)(b)(ii) (on the basis that 1 or more employers who, between them, employ at least 10% of all 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.

(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.

205 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—

(a) the representation test; or

(b) the public interest test.

(2) An application meets the representation test if,—

(a) for an application from an 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

(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

(b) for an application from an 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

(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—

(a) meets the public interest test specified in section 29(1); or

(b) would have met the public interest test specified in section 29(1) if the fair pay agreement had not previously been in force.

206 Chief executive to assess application for approval to renew or replace fair pay agreement

(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.

(2) For the purpose of subsection (1), sections 31(1)(a)(i) and (1)(b), 32, 33(1), (2), and (3)(b)(i) and (ii), 34, 35, and 36 apply with all necessary modifications, including that—

(a) references to the union must be read as references to the applicant; and

(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 may, for the purpose of verifying information the applicant has provided under section 203(2) or (3) or 204, require the applicant to provide information, of a type prescribed in regulations, in relation to—

(a) all employees or employers who would be covered by the proposed renewal or the proposed replacement; or

(b) a sample of the employees or employers who would be covered by the proposed renewal or the proposed replacement.

(4) The chief executive must decline an application if,—

(a) after assisting the applicant under section 33(2), 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 35(2) or any information provided under section 35(3), the chief executive is not satisfied that the application meets the requirements set out in sections 33(3)(b)(i) and (ii), 203, and 205; or

(c) based on the information provided in the application and, if applicable, any additional information or evidence provided under section 35(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

207 Chief executive must notify bargaining parties of approval to bargain for proposed renewal or proposed replacement

(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

(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 37 with the following modifications:

(a) the references to a proposed FPA must be read as references to a proposed renewal or a proposed replacement:

(b) section 37(2)(b) does not apply.

(3) The chief executive must comply with subsection (1) within 5 working days of approving the application.

208 Notification of bargaining for proposed renewal or proposed replacement

(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, the applicant, any unions notified under section 39(1) or 40(1), and each covered employer must comply with sections 39 to 42, 272, and 273 (as applicable) with all necessary modifications; or

(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 (9).

(2) Within 15 working days of the applicant receiving notice that the chief executive has approved its application to initiate bargaining, the applicant must—

(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

(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

(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 207; and

(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 employers; and

(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 284 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:

(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:

(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 pro-

vide the employee's contact details to the eligible union or the employee bargaining party.

(4) A statement provided under subsection (3)(c), (d), or (e) must—

(a) be in writing; and

(b) be drafted in plain language; and

(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:

(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:

(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:

(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.

(5) Within 15 working days of receiving notice under subsection (2)(b), a covered employer must comply with section 40 with all necessary modifications.

(6) A notice published—

(a) under subsection (2)(c)(i) must—

(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—

(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 207; and

(iii) where to find the notice published under subsection (2)(c)(i).

(7) 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.

(8) The applicant must, within 5 working days of receiving the email address, provide 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.

(9) An employer must, within 10 working days after receiving the email address, comply with section 42(1) and (3)\, which provisions apply with all necessary modifications.

(10) An employer that intentionally or recklessly fails to comply with subsection (5) or (9) is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in section 211.

209 Formation of employer bargaining side for proposed renewal or proposed replacement

(1) If the chief executive notifies, under section 207, 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:

(a) if the application to initiate bargaining was from an eligible union, and within 2 months of the chief executive's notification under section 207 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 207; or

(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 207; or

(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 207 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 207; or

(d) if (in accordance with section 69) 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.

(2) For the purposes of forming an employer bargaining side, sections 43 to 46, 51, 53 to 56, 62, 99, and 100 apply with all necessary modifications, including the following:

(a) the chief executive's notification of having approved the application is made under section 207:

(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.

210 Formation of employee bargaining side for proposed renewal or proposed replacement

(1) If the chief executive notifies, under section 207 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:

(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 207 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 207; or

(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 207; or

(c) if (in accordance with section 69) 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.

(2) For the purposes of forming an employee bargaining side, sections 47 to 50, 51, 52, 54 to 56, 96, 97, and 98 apply with all necessary modifications, including the following:

(a) the chief executive's notification of having approved the application is made under section 207:

(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.

Part 10
Penalties and enforcement

211 Penalty for non-compliance with obligation when bargaining

(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).

212 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.

(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).

213 Jurisdiction concerning penalties

(1) The Authority has full and exclusive jurisdiction to deal with all actions for the recovery of penalties under this Act—

(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

(b) any right to have the matter heard by the court under clause 16 of Schedule 3 of this Act.

Compare: 2000 No 24 s 133

214 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

(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.

(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.

215 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 211 or 212, the Authority or the court (as applicable) must have regard to all relevant matters, including—

(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

(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

(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.

Compare: 2000 No 24 s 133A

216 Recovery of penalties

(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 who is affected by the breach:

(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 282(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 211 or 212 (as applicable); or

(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.

(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 cause of action should reasonably have become known to the person bringing the action.

Compare: 2000 No 24 s 135

217 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 216 to be paid to the Crown.

Compare: 2000 No 24 s 135A

218 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.

(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

Part 11
Institutions

Subpart 1—Mediation services

219 Mediation services

(1) The chief executive must employ or engage persons to provide mediation services to support all fair pay relationships.

(2) For the purposes of this section, **fair pay relationships** includes, in relation to a proposed agreement, a proposed variation, or a fair pay agreement,—

(a) the relationships listed in section 17(2) or 20(2); and

(b) the relationships between the following parties:

(i) the employer bargaining parties on an employer bargaining side and 1 or more covered employees:

(ii) an employee bargaining party and 1 or more covered employees:

(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 covered employers:

(vi) the employee bargaining parties on an employee bargaining side and 1 or more covered employers.

(3) Mediation services may include services that—

(a) provide general information about rights and obligations in relation to fair pay agreements:

(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:

(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.

(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 222 of this Act.

Compare: 2000 No 24 s 144

220 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 a proposed variation:

(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 219(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.

221 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 219 of this Act or under section 144 of the Employment Relations Act 2000.

Compare: 2000 No 24 s 154

Subpart 2—Bargaining support services

222 Bargaining support services

(1) The chief executive must employ or engage persons to provide bargaining support services to support the following parties:

(a) a union:

(b) an employer association:

(c) a bargaining party:

(d) a bargaining side.

(2) Bargaining support services may include services that—

(a) help a union or employer association to understand the requirements to become a bargaining party:

(b) help bargaining sides to understand the process for bargaining:

(c) support bargaining sides throughout the process of bargaining:

(d) support bargaining sides to ensure that bargaining is constructive and efficient:

(e) assist bargaining sides to understand the content requirements for a proposed agreement or a proposed variation:

(f) 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 219 of this Act or under section 144 of the Employment Relations Act 2000.

223 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.

Compare: 2000 No 24 s 146

224 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 222; and

(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

(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—

(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.

(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.

Compare: 2000 No 24 ss 145, 153(2), (3)

225 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:

(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:

(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.

226 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 222.

Compare: 2000 No 24 s 154

Subpart 3—Employment Relations Authority

227 Role of Authority

(1) Under this Act, the Authority's role includes the following:

(a) making determinations (including to fix terms under section 234 or 252), making recommendations, and resolving disputes relating to proposed agreements, proposed variations, and fair pay agreements by establishing the facts and making a decision according to the substantial merits of the case, without regard to technicalities:

(b) assessing for coverage overlap (*see* sections 146(1) and (2) and 165(1)(a)):

(c) if the Authority decides there is coverage overlap, determining whether the proposed agreement or the fair pay agreement provides the better terms overall for covered employees who are within the coverage of both agreements (*see* sections 146(3) and 165(1)(b)):

(d) assessing a proposed agreement or a proposed variation to determine whether it complies with the requirements of this Act and other legislation (*see* section 144).

(2) In carrying out its role under this Act, the Authority must—

(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—

(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

(e) a fair pay agreement.

Compare: 2000 No 24 s 157

228 Jurisdiction of Authority

(1) The Authority has exclusive jurisdiction to make determinations relating to fair pay relationships (listed in section 219(2)), including—

(a) any matter arising during the initiation of, bargaining for, or ratification of a proposed agreement or a proposed variation, including matters relating to—

(i) forming bargaining sides:

(ii) notifying covered employees of process requirements for bargaining:

(iii) whether an employee is a covered employee:

(iv) whether an employer is a covered employer:

(v) whom to appoint as an independent reviewer for the purposes of section 94; and

(b) determining whether a party has complied with the duty of good faith imposed by this Act, including—

(i) in the terms of an inter-party side agreement:

(ii) in the terms of the bargaining process agreement:

(iii) when appointing a bargaining side lead advocate:

(iv) when providing requested information under section 94:

(v) when deciding whom to appoint as an independent reviewer for the purposes of section 94; and

(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 of covered employees (*see* section 96) or covered employers (*see* section 99):

(ii) ensuring a sufficient level of Māori representation (*see* sections 97 and 100); and

(d) resolving a dispute about whether an employee is a covered employee in relation to a fair pay agreement; and

(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 125(1) must be included in a proposed agreement under section 230; and

(g) recommending the terms of a proposed agreement under section 231, or the terms of a proposed variation under section 194; and

(h) fixing the terms of a proposed agreement under section 234 or 252; and

(i) determining any other matter arising under this Act.

(2) The Authority also has jurisdiction to—

(a) assess for coverage overlap (*see* sections 146(1) and (2) and 165(1)(a)); 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 (*see* sections 146(3) and 165(1)(b)); and

(c) assess a proposed agreement or a proposed variation to determine whether it complies with the requirements of this Act and other legislation (*see* section 144).

(3) This section is subject to section 277.

Determinations

229 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 a proposed agreement, a proposed variation, or a fair pay agreement:

(b) a bargaining side that is unable to agree with another bargaining side on whom to appoint as an independent reviewer under section 94, in relation to whom the bargaining sides should appoint:

(c) a party to a fair pay relationship described in section 219(2), in relation to a dispute about a duty, obligation, or requirement provided under this Act:

(d) a bargaining side for a proposed agreement, in relation to whether to include a term that addresses a topic listed in section 125(1) in the proposed agreement:

(e) a bargaining side for a proposed agreement, in relation to asking the Authority under section 234 to fix the terms of the proposed agreement:

(f) 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 78 or 79), in relation to asking the Authority under section 252 to fix the terms of the proposed agreement:

(g) 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:

(h) a Labour Inspector, in relation to whether an employee, or a group of employees, is a covered employee or a group of covered employees in relation to a fair pay agreement.

Determinations and recommendations during bargaining process

230 Determination relating to topic that bargaining sides must consider for inclusion

(1) If the bargaining sides for a proposed agreement are unable to agree whether to include a term that addresses a topic listed in section 125(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 must include such a term; and

(b) the Authority must determine whether the proposed agreement must include such a term.

(2) The Authority must determine that a proposed agreement must include a term to address a topic listed in section 125(1) unless the Authority considers there is good reason not to include such a term.

(3) If the Authority determines that a proposed agreement must include a term to address a topic listed in section 125(1), the bargaining sides must bargain to decide the content of the term.

(4) To avoid doubt, this section and sections 231 to 235 and 237 do not apply if a bargaining party applies or is entitled to apply, in accordance with section 244, to the Authority for a determination under section 252.

231 Recommendations on terms of proposed agreement

(1) If the bargaining sides for a proposed agreement are unable to agree the content of a term of the proposed agreement, a bargaining side (or a bargaining party acting on behalf of the bargaining side)—

(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 may consider the factors listed in section 236 before making a recommendation under subsection (1).

(3) A recommendation made by the Authority is not binding on the parties to the proposed agreement.

232 Authority must direct use of mediation before making determination or recommendation

(1) Except as provided in section 233, 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.

(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—

(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.

(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).

233 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, a proposed variation, or a fair pay agreement,—

(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 a proposed variation, 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 5(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

234 Authority may fix terms of proposed agreement

(1) If the bargaining sides for a proposed agreement are unable to agree the terms of the proposed agreement, 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.

(2) However, the Authority may only make a determination to fix the terms of a proposed agreement if it is satisfied that—

(a) the bargaining sides have exhausted all other reasonable alternatives for reaching agreement; or

(b) the bargaining sides have, for a reasonable period, used their best endeavours to identify and use reasonable alternatives to agree the terms of the proposed agreement; or

(c) 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

(d) the proposed agreement has been the subject of 2 ratification processes, without having been ratified.

235 Terms that Authority may fix

If the Authority receives a valid application under section 234, the Authority must—

(a) fix the terms that, under section 123(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 125(1), the bargaining sides must discuss whether to specify in a fair pay agreement; and

(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.

236 Considerations when Authority recommends or fixes terms

When recommending terms of a proposed agreement or a proposed variation under section 194 or 231, or fixing the terms of a proposed agreement under section 234, the Authority may consider 1 or more of the following:

(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:

(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:

(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):

(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.

237 Limits on Authority fixing terms

(1) When the Authority fixes the terms of a proposed agreement under this Part, Part 7 (content of fair pay agreements) applies.

(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 agreement; and

(b) must not fix a term that provides for the proposed agreement to have a delayed commencement date for a specified employer (*see* sections 139 to 141).

238 Effect of Authority fixing terms

(1) Terms that are fixed by the Authority under section 234—

(a) are not required to be—

(i) submitted to the Authority for a compliance assessment under section 143; or

(ii) ratified under subpart 2 of Part 8; or

(iii) verified under subpart 3 of Part 8; but

(b) must be—

(i) assessed for coverage overlap under section 146(2); and

(ii) checked and, if applicable, assessed for coverage overlap under subpart 4 of Part 8; and

(iii) validated under subpart 5 of Part 8.

(2) If, when the Authority assesses terms for coverage overlap as required by subsection (1)(b)(i) and (ii), the Authority decides there is coverage overlap,—

(a) it must—

(i) determine, in accordance with section 149, which agreement provides the better terms overall; and

(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 166 and 167 apply with all necessary modifications.

(3) If the Authority fixes the terms of a proposed agreement under section 234, it must provide a copy of the terms to the chief executive.

(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 11 of Schedule 3).

239 Membership of Authority when fixing terms of fair pay agreement

(1) When fixing the terms of a proposed agreement, 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.

General provisions relating to Employment Relations Authority

240 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.

241 Decision of Authority

(1) The decision of a majority of the Authority members on a panel appointed in accordance with section 239 is the decision of the panel.

(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.

Compare: 2000 No 24 s 210

242 Obligation not to obstruct or delay Authority

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

(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 212.

(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.

Compare: 2000 No 24 s 134A

Provisions that apply when application made to Authority

243 Application of Employment Relations Act 2000

(1) 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—

(a) if a person applies, in accordance with this Act, for the Authority or the court to—

(i) issue a determination or recommendation:

(ii) resolve a dispute:

(iii) fix the terms of a fair pay agreement:

(b) when the Authority is—

(i) assessing for coverage overlap (*see* sections 146(1) and (2) and 165(1)(a)):

(ii) if the Authority decides there is coverage overlap, determining whether the proposed agreement or the fair pay agreement provides the better terms overall for covered employees who are within the coverage of both agreements (*see* sections 146(3) and 165(1)(b)):

(iii) assessing a proposed agreement or a proposed variation to determine whether it complies with the requirements of this Act and other legislation (*see* section 144).

(2) Subsection (1) applies subject to clauses 2, 3, and 4 of Schedule 3.

Part 12
Determinations in absence of bargaining side

Applications for determination

244 Bargaining party may apply to Authority for determination

(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 252 if the bargaining side lead advocate for the bargaining side receives a notice under section 78 or 79.

(2) The bargaining party that makes an application does so on behalf of all the bargaining parties on the bargaining side.

(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 78 or 79.

(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:

(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.

245 Application for determination

(1) A bargaining party that, in accordance with section 244, applies to the Authority to make a determination under section 252 must ensure that the application—

(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 78 or 79; and

(c) confirms that the chief executive has not notified the applicant that—

(i) the chief executive has received an application under section 43 or 47 to be a bargaining party on a bargaining side (*see* section 250(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 251(1)(b)); and

(d) specifies the coverage of the proposed agreement; and

(e) specifies where to find the chief executive's notice issued under section 37 or 207 (as applicable).

(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 37, 110, or 207 (as applicable).

246 Joint applicants and other parties to application for determination

If a bargaining party applies, in accordance with section 244, for a determination under section 252,—

(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

(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

247 Notification requirements: employee bargaining side

(1) Subsections (2) and (3) apply to an employee bargaining side—

(a) that initiated bargaining for a proposed agreement; and

(b) that may apply, in accordance with section 244, for a determination under section 252.

(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 252:

(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.

(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.

248 Notification requirements: employer bargaining side

(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 244, for a determination under section 252.

(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 252:

(a) each employer that it knows to be within the coverage of the proposed renewal or the proposed replacement:

(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.

249 Notification requirements: employers

An employer that receives a notification under section 248 must provide that notification to each of the employer's employees who are covered by the proposed renewal or the proposed replacement (as applicable).

Restrictions on applying for determinations

250 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 244, for a determination under section 252 but has not yet done so; and

(b) a party applies under section 43 or 47 (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.

(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 47 (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

(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.

(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

(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—

(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 244(3).

251 Restriction on applying for determination: bargaining initiated for another proposed agreement

(1) This section applies if—

(a) the initiating bargaining side is entitled to apply, in accordance with section 244, for a determination under section 252 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**).

(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 115 to 120; and

(b) the initiating bargaining party is no longer entitled to apply for a determination in respect of the first proposed agreement.

(3) However, despite subsection (2)(b), a bargaining party on the initiating bargaining side for a consolidated proposed agreement (*see* section 118) may apply, in accordance with section 244, for a determination under section 252 if it is entitled to do so.

Authority's power to make determinations

252 Authority must make determination

(1) If a bargaining party applies for a determination in accordance with section 244, the Authority must make a determination that fixes the terms of the proposed agreement in accordance with this Part.

(2) When the Authority is making a determination under this Part,—

(a) sections 236, 239, 240, 241, 242, and 243 apply to the Authority; and

(b) section 238 applies to the terms that the Authority fixes when making the determination.

253 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 123(1), must be included in a fair pay agreement; and

(b) fix the terms (unless there is good reason not to)—

(i) on topics that, under section 125(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.

(2) This section applies subject to sections 255 and 256.

254 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 125(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.

(2) This section applies subject to sections 255 and 256.

255 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

(b) provides for a delayed commencement date for a specified employer (*see* sections 139 to 141); or

(c) amends the coverage of the proposed agreement; or

(d) is not described in section 253 or 254.

256 Provisions that apply to determination under this Part

When the Authority makes a determination to fix the terms of a proposed agreement under this Part, sections 123(2) to (5), 127 to 129, and 131 to 138 apply.

Consolidation

257 Consolidation when Authority making 2 determinations

(1) This section applies if—

(a) a bargaining party applies, in accordance with section 244, 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 244, to the Authority to make a determination under this Part in relation to another proposed agreement (the **second proposed agreement**); and

(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.

(2) If this section applies, the Authority may decide to consolidate the determination processes for the first proposed agreement and the second proposed agreement.

258 Effect of decision whether to consolidate

(1) If the Authority decides to consolidate 2 determination processes under section 257, 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 257,—

(a) the processes continue separately; and

(b) if the chief executive decides to validate both proposed agreements under section 168, 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.

Provisions that apply during determination process

259 Provisions that apply during determination process

The following provisions apply, with all necessary modifications, during the process of applying, in accordance with section 244, to the Authority for a determination under section 252 in relation to a proposed agreement (including during the process of the Authority deciding the terms of the determination):

(a) section 62:

(b) section 96:

(c) section 97:

(d) section 98:

(e) section 99:

(f) section 100.

Provision of information

260 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 244 in relation to a proposed agreement, the provisions listed in subsection (2) apply with all necessary modifications during the following period:

(a) after the date on which a bargaining party applies in accordance with section 244 to the Authority for the determination; but

(b) before the date on which the chief executive issues a fair pay agreement notice under section 168(1)(a) in relation to the Authority's determination.

(2) For the purposes of subsection (1), the provisions that apply are—

(a) section 105; and

(b) section 106(1); and

(c) section 107(1)(b), (2), (3)(b), (4), and (5); and

(d) section 108.

(3) However, when applying the provisions listed in subsection (2),—

(a) the reference to an employer bargaining side in section 106(1) must be read as a reference to any covered employer of which the employee bargaining side is aware; and

(b) the references to an employer bargaining side in section 107(1)(b), (2)(a), and (3)(b) must be read as references to an employee bargaining side.

261 Personal information

Personal information that is provided to a bargaining side during the period described in section 260(1) (excluding contact details provided under section 42, 105, 107, 108, 152(3), 185(4), 186(2)(c), 187(4), 208(9), or 260)—

(a) must be used only for a purpose related to an application under section 244 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.

FPA meetings

262 Requirements for arranging FPA meetings

(1) During the period described in section 260(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.

(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

(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.

263 Entitlement to attend FPA meetings

(1) An employer must, during the period described in section 260(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 5, 2 FPA meetings under this Part; or

(b) if the employee has attended 1 FPA meeting in relation to the proposed agreement under Part 5, 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 5, no additional FPA meetings under this Part.

(2) Each FPA meeting held during the period described in section 260(1) must—

(a) last no longer than 2 hours; and

(b) relate to the proposed agreement; and

(c) be arranged in accordance with section 262.

(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

(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 211.

264 Payment for attending FPA meeting

(1) An employee's employer must allow the employee to attend an FPA meeting on ordinary pay—

(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 262; 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—

(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) 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 211.

Access to workplaces

265 Access to workplaces

(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 252, including the terms of such a determination.

(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

(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

(b) the employee bargaining party is a party to the application that has been made, in accordance with section 244, for a determination under section 252; and

(c) the Authority has not yet made the determination.

(4) For the purposes of the entitlement under this section,—

(a) sections 88(5), (6), and (7) and 89 to 92 apply with all necessary modifications; and

(b) in section 88(5)(b)(ii), the reference to section 84 or 86 must be read as a reference to section 84, 86, or 263; and

(c) in section 90(3)(b), the reference to section 88 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 13
Miscellaneous provisions

266 Meaning of document

In this Part, **document** includes information that is stored electronically.

Representation

267 Representation of individuals

(1) Subsection (2) applies only if this Act confers on an employee 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 the Authority; or

(d) in the court.

(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—

(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).

(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

268 Representation of bargaining parties

(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).

(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

(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).

(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

269 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 135) must keep records showing, for each of the employer's covered employees (regardless of where the employee works),—

(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.

(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—

(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.

(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.

270 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,—

(a) the number of hours the employee worked each day, including the time at which the employee started and finished working each day; and

(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—

(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.

(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

271 How records must be kept

(1) A record kept under section 269 or 270—

(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.

(3) An employer that fails to comply with section 269, 270, 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

272 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 from an employee bargaining party or under section 42, 105, 107, 108, 152(3), 185(4), 186(2)(c), 187(4), or 208(9)—

(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

(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.

(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

(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 42, 105, 107, 108, 152(3), 185(4), 186(2)(c), 187(4), or 208(9)—

(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

(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

(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 211.

273 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 42, 105, 107, 108, 152(3), 185(4), 186(2)(c), 187(4), or 208(9) must ensure that—

(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).

(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.

(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 211.

Personal information

274 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 42, 105, 107, 108, 152(3), 185(4), 186(2)(c), 187(4), or 208(9))—

(a) must be used only for the purposes of bargaining; and

(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).

275 Chief executive may collect personal information

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

(a) assessing whether an application to initiate bargaining has met the required tests for the chief executive to approve the application:

(b) assessing whether to approve an application to be a bargaining party:

(c) verifying that a ratification vote complies with the requirements set out in this Act:

(d) monitoring compliance with this Act.

Labour Inspector may make determination of coverage by fair pay agreement

276 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 267) 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 a fair pay agreement.

(2) An application must be made using a form approved by the chief executive.

(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.

277 Labour Inspector may determine whether employee is covered employee under fair pay agreement

(1) A Labour Inspector may determine whether an employee is a covered employee in relation to a fair pay agreement if the Labour Inspector—

(a) receives an application for a determination under section 276; 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.

(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 the fair pay agreement; and

(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 decisions under paragraphs (a) to (c).

(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

(b) 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

(c) advise the applicant whether the Labour Inspector will take any further action on behalf of the applicant.

(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.

278 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 a fair pay agreement—

(a) on behalf of an applicant under section 276; or

(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.

279 Effect of coverage determination

(1) A determination made under section 277 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 280.

(3) A determination as to whether an employee is a covered employee in relation to a fair pay agreement overrides any earlier determination in relation to the same employee and the same fair pay agreement.

280 Appeal against coverage determination

(1) A person described in section 276(1) may appeal to the Authority against a determination made under section 277 if the person is dissatisfied with the determination.

(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 277(3)(d).

281 Extended powers of Labour Inspectors

(1) For the purpose of determining whether an employee is a covered employee under section 277, 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:

(b) the power to interview any—

(i) person at any premises of the kind described in paragraph (a):

(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:

(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:

(ii) any records that an employer is required to keep under sections 269 and 270:

(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 under section 277:

(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:

(ii) any records that an employer is required to keep under sections 269 and 270:

(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.

(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

(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 212.

(4) A Labour Inspector must not use any evidence or information obtained under section 281 for any purpose other than to determine whether an employee is a covered employee under section 277.

(5) For the purpose of this section and section 282, **controlling third party** has the same meaning as in section 5 of the Employment Relations Act 2000.

282 Extent of Labour Inspectors' powers

(1) A Labour Inspector's powers under section 281—

(a) apply only for the purpose of the Labour Inspector determining whether an employee is a covered employee in relation to a fair pay agreement under section 277; 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; and

(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 281(1)(b)(iv) or (v) if—

(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 281(1)(b)(v) if the Labour Inspector reasonably believes that—

(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.

(4) A Labour Inspector may interview—

(a) a person described in section 281(1)(b)(i), (ii), or (iii) in person; or

(b) a person described in section 281(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.

Regulations

283 Power to make regulations

(1) The Governor-General may, by Order in Council and on the recommendation of the Minister, make regulations for 1 or more of the following purposes:

(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.

(2) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Forms

284 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.

(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

285 Consequential amendments

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

There are no transitional, savings, or related provisions in this Act as enacted.

Schedule 2
Ratification process: number of votes for covered employers

s 156(3)

Number of covered employees entitled to vote	Number of votes
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

s 243

Part 1
Provisions of Employment Relations Act 2000

1 Provisions that apply under this Act

The following provisions of the Employment Relations Act 2000 apply, with all necessary modifications, and subject to clauses 2, 3, and 4, when an application is made to the Authority or the court under this Act:

(a) section 156:

(b) section 158:

(c) section 160(1), (2), (2A), and (4):

(d) section 162:

(e) section 163:

(f) section 164:

(g) section 165:

(h) section 166 (subject to section 239 of this Act):

(i) sections 166A to 173:

(j) section 173A (except in relation to the Authority fixing the terms of a proposed agreement under section 234 of this Act):

(k) sections 175 to 177:

(l) section 178A:

(m) section 185:

(n) section 186:

(o) section 188:

(p) section 188A:

(q) section 189:

(r) section 190:

(s) section 191:

(t) section 193:

(u) section 194A:

(v) sections 195 to 213:

(w) section 217:

(x) sections 219 to 222:

(y) Schedule 2 (as applied by section 165):

(z) Schedule 3 (as applied by section 191).

2 Provisions that do not apply under Part 12

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 12:

(a) section 162:

(b) section 163:

(c) section 164:

(d) section 173A:

(e) section 188(2), (3), and (5):

(f) section 188A:

(g) section 190:

(h) section 194A.

3 Limited Authority powers in certain circumstances

(1) This clause applies when the Authority is—

(a) assessing for coverage overlap (*see* sections 146(1) and (2) and 165(1)(a)):

(b) if the Authority decides there is coverage overlap, determining whether the proposed agreement or the fair pay agreement provides the better terms overall for covered employees who are within the coverage of both agreements (*see* sections 146(3) and 165(1)(b)):

(c) assessing a proposed agreement or a proposed variation to determine whether it complies with the requirements of this Act and other legislation (*see* section 144).

(2) When this clause applies,—

(a) clause 1 of this schedule does not apply; and

(b) the provisions of the Employment Relations Act 2000 listed in subclause (3) apply, with all necessary modifications, when an application is made to the Authority or the court under this Act; and

(c) the Authority has the power—

(i) to call for evidence and information from any person:

(ii) to interview any person:

(iii) to follow whatever procedure the Authority considers appropriate; and

(d) Part 2 of this schedule does not apply to the Authority or the court, except for the following clauses:

(i) clause 22:
(ii) clause 23:
(iii) clause 24:
(iv) clause 25(1)(c), (2), and (3):
(v) clause 27:
(vi) clause 32:
(vii) clause 33.

(3) The provisions of the Employment Relations Act 2000 that apply are—

(a) section 156:
(b) section 158:
(c) section 160(2) and (4):
(d) section 165:
(e) section 166:
(f) sections 166A to 173:
(g) section 175:
(h) section 176:
(i) section 185:
(j) section 186:
(k) section 188(1) and (4):
(l) section 189:
(m) section 191:
(n) section 193:
(o) sections 195 to 213:
(p) section 217:
(q) sections 219 to 222:
(r) Schedule 2 (as applied by section 165):
(s) Schedule 3 (as applied by section 191).

4 Application of provisions relating to expert evidence and fees

Clause 6 of Schedule 2 of the Employment Relations Act 2000 applies subject to clauses 23 and 24 of this schedule.

Part 2
Provisions that apply in relation to Employment Relations Authority and Employment Court

Employment Relations Authority

5 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.

(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.

Compare: 2000 No 24 s 159A

6 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.

Compare: 2000 No 24 s 160(3)

7 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),—

(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 10.

Compare: 2000 No 24 s 174

8 Oral determinations

(1) If the Authority gives an oral determination under clause 7(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

(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.

(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.

Compare: 2000 No 24 s 174A

9 Oral indication of preliminary findings

(1) If the Authority gives an oral indication of its preliminary findings under clause 7(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

(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

(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:

(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).

(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.

Compare: 2000 No 24 s 174B

10 Authority may reserve determination

(1) Despite clause 7 and subject to clause 11, 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.

(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.

(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

(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.

Compare: 2000 No 24 s 174C

11 Authority must reserve determination when fixing terms

(1) When the Authority is fixing the terms of a fair pay agreement under section 234 or Part 12, it must reserve its determination of the matter.

(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.

(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

(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.

12 Authority may determine matter without holding investigation meeting

(1) Subject to subclause (2), and despite clauses 7, 10, and 11, 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 under section 234 or Part 12.

(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.

(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

13 Content of written determinations

(1) A written determination provided by the Authority in accordance with clause 8(2), 9(2), 10(3), 11(3), or 12(3)—

(a) must—

(i) state relevant findings of fact; and

(ii) state and explain its findings on relevant issues of law; and

(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

(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.

(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

14 Removal to court

(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—

(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

(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).

(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.

(6) This clause is subject to clause 15.

Compare: 2000 No 24 s 178

15 Limits on ability to remove matter to court

(1) Clause 14 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

(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 14 does not permit the court to make a determination that fixes the terms of a proposed agreement under section 234 or 252.

(3) If a matter or part of a matter is removed to the court under clause 14 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

(b) must refer the application to fix the terms back to the Authority for determination.

16 Challenges to determinations of Authority

(1) Subject to clause 17, a party to a matter before the Authority that is dissatisfied with a written determination of the Authority under clause 8(2), 9(2), 10(3), 11(3), or 12(3) (or any part of that determination) may elect to have the matter heard by the court.

(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—

(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*** 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),—

(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

(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 9(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

(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

17 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 12.

(2) A party may not elect, under clause 16(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 12,—

(i) whether the application for the determination was made in accordance with section 244; or

(ii) whether, if the Authority applied 1 or more of the criteria that it may consider under section 236 (which applies in accordance with section 252(2)), it applied the criteria correctly; or

(b) in relation to fixing the terms of a fair pay agreement under section 234(2),—

(i) whether the threshold for fixing the terms of a fair pay agreement (*see* section 234) had been met; or

(ii) whether, if the Authority applied 1 or more of the criteria that it may consider under section 236, it applied the criteria correctly.

Compare: 2000 No 24 s 179A

18 Election not to operate as stay

Making an election under clause 16 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

19 Report in relation to good faith

(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

(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 8(2), 9(2), 10(3), 11(3), or 12(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.

(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.

(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

20 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.

(2) The court may give a direction under subclause (1) only if—

(a) it has requested a report under clause 19(1); and

(b) on the basis of that report and after having had regard to any comments submitted under clause 19(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.

(3) Subclause (4) applies if—

(a) the court gives a direction under subclause (1); or

(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.

Compare: 2000 No 24 s 182

21 Decision

(1) If a party to a matter has elected under clause 16 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.

(3) Despite subclause (2), a person may apply for review of the determination of the Authority under clause 27.

Compare: 2000 No 24 s 183

22 Restriction on review

(1) Except on the ground of lack of jurisdiction or as provided in clause 16, 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.

(2) No review proceedings under clause 27 may be initiated in relation to any matter before the Authority unless—

(a) the Authority has issued a determination under clause 8(2), 9(2), 10(3), 11(3), or 12(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 16; and

(c) the court has made a decision on the challenge under clause 21.

(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

(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 12.

Compare: 2000 No 24 s 184

23 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:

(a) making a determination under section 234 or Part 12:

(b) assessing a proposed agreement that has been submitted under section 143 for a compliance assessment:

(c) when the Authority decides under section 146, 165, or 238 that there is coverage overlap between a proposed agreement and a fair pay agreement, determining which agreement provides the better terms overall.

24 Expert's expenses

(1) An expert who provides evidence sought by the Authority under clause 23 is entitled to be paid fees, allowances, and expenses calculated in accordance with—

(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.

Employment Court

25 Jurisdiction of court

(1) The court has exclusive jurisdiction—

(a) to hear and determine elections under clause 16 for a hearing of a matter previously determined by the Authority under this Act:

(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 27 or 28.

(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.

Compare: 2000 No 24 s 187

26 Court must appoint counsel to assist court

(1) If a party to a determination made under section 252 (*see* section 246) appeals against the determination (or part of the determination) in accordance with this schedule, the court must appoint a counsel to assist the court.

(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.

27 Application for review

(1) This clause applies if a person wishes, in relation to the exercise, refusal to exercise, or proposed or purported exercise 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,—

(a) to apply for review under the Judicial Review Procedure Act 2016; or

(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) Despite any other Act or rule of law, but subject to clause 22(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.

(3) Where a right of appeal (which includes, for the purposes of this subclause, the right to make an election under clause 16) 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 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.

(4) A Judge may at any time and after hearing any persons 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.

(5) This clause is subject to clause 28.

Compare: 2000 No 24 s 194

28 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,—

(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.

(3) An application under this clause is valid only if—

(a) the Authority has issued a determination under clause 8(2), 9(2), 10(3), 11(3), or 12(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 16; and

(c) the court has made a decision on the challenge under clause 21; 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.

(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

(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

29 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.

(2) Section 56 of the Senior Courts Act 2016 applies to an appeal under subclause (1).

(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.

(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 conditions that it thinks fit, whether as to costs or otherwise.

(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.

Compare: 2000 No 24 s 214

30 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.

(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.

(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).

Compare: 2000 No 24 s 214A

31 Court of Appeal may refer appeals back for reconsideration

(1) Despite anything in clause 29, 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.

(2) In giving a direction under this clause, the Court of Appeal must—

(a) advise the court of its reasons for so doing; and

(b) give the court any directions that 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.

(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).

Compare: 2000 No 24 s 215

32 Obligation to have regard to special jurisdiction of court

In determining an appeal under clause 29 or 33, the Court of Appeal must have regard to—

(a) the special jurisdiction and powers of the court; and

(b) the purpose of this Act; and

(c) in particular, sections 189, 190, 193, 219, and 221 of the Employment Relations Act 2000.

Compare: 2000 No 24 s 216

33 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 27 that is dissatisfied with any final or interlocutory order in respect of the application may appeal to the Court of Appeal.

(2) Section 56 of the Senior Courts Act 2016 applies to an appeal under subclause (1).

Compare: 2000 No 24 s 218

Schedule 4
Consequential amendments

s 285

Defence Act 1990 (1990 No 28)

After section 45(5), insert:

(5A) Nothing in the Fair Pay Agreements Act 2022 applies to members of the Armed Forces.

Employment Relations Act 2000 (2000 No 24)

In section 5, definition of **employment standards**, after paragraph (b), insert:

(ba) the minimum entitlement provisions under section 127 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 127 of the Fair Pay Agreements Act 2022; and

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.

(1B) For the purposes of subsection (1A), **covered employee** has the meaning given in section 5(1) of the Fair Pay Agreements Act 2022.

In section 24(1), after "section 23", insert ", or for the purposes of section 91 of the Fair Pay Agreements Act 2022".

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 a proposed variation:

(ii) the existence of bargaining for a proposed agreement or a proposed variation:

(iii) the existence of a fair pay agreement.

After section 86(1)(e), insert:

(ea) relates to a proposed agreement, a proposed variation, or a fair pay agreement under the Fair Pay Agreements Act 2022; or

Replace section 132(2) with:

Employment Relations Act 2000 (2000 No 24)—*continued*

(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—

(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 135 of the Fair Pay Agreements Act 2022).

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".

After section 161(1)(m)(v), insert:

(vi) under section 211 or 212 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 228 of that Act:

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

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.

Replace section 235A(a) with:

Employment Relations Act 2000 (2000 No 24)—*continued*

(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

(ii) section 269(1) or 270(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:

13ZNA Relationship between pay equity claims and fair pay agreements

(1) Bargaining for a proposed agreement or a proposed variation, 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.

(2) In subsection (1), **bargaining**, **covered employee**, **covered employer**, **fair pay agreement**, **proposed agreement**, and **proposed variation** have the meanings given in section 5(1) of the Fair Pay Agreements Act 2022.

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 a fair pay agreement under the Fair Pay Agreements Act 2022, the employee is entitled to receive no less than the greater of—

(a) each entitlement under this Act; and

(b) the corresponding entitlement under the fair pay agreement.

(2) In subsection (1), **covered employee** and **fair pay agreement** have the meanings as in section 5(1) of the Fair Pay Agreements Act 2022.

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

(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.

(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):

(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):

(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:

(i) clause 22 of Schedule 3 (which restricts review proceedings being brought in respect of any matter before the Employment Relations Authority):

(ii) clause 25(1)(c) of Schedule 3 (which confers on the Employment Court exclusive jurisdiction to hear and determine certain proceedings and applications):

(iii) clause 27 of Schedule 3 (which provides that a person may not apply for review or bring proceedings unless any appeal has first been determined):

(iv) clause 28 of Schedule 3 (which provides that a person may only apply for review or bring proceedings in certain circumstances).

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 a fair pay agreement under the Fair Pay Agreements Act 2022, the worker is entitled to receive no less than the greater of—

(a) the minimum rate to which the worker is entitled under this Act; and

Minimum Wage Act 1983 (1983 No 115)—*continued*

(b) the minimum rate to which the worker is entitled under the fair pay agreement.

(3) In subsection (2), **covered employee** and **fair pay agreement** have the meanings as in section 5(1) of the Fair Pay Agreements Act 2022.

Replace section 8(4) with:

(4) While a permit remains in force, the rate of wages stated in the permit is taken to be,—

(a) if the worker is a covered employee in relation to 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.

Replace section 8(6) with:

(6) In this section,—

covered employee has the same meaning as in section 5(1) of the Fair Pay Agreements Act 2022

disability has the same meaning as in section 21(1)(h) of the Human Rights Act 1993.

Notes

1 General

This is a consolidation of the Fair Pay Agreements Act 2022 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 Legal status

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 Editorial and format changes

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 Amendments incorporated in this consolidation

Fair Pay Agreements Act Repeal Act 2023 (2023 No 65): section 5

Fair Pay Agreements Act 2022 (2022 No 58): section 34(2)

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