

Version
as at 20 December 2023



Employment Relations Authority (Fair Pay Agreements) Amendment Regulations 2023 (SL 2023/66)

Employment Relations Authority (Fair Pay Agreements) Amendment Regulations 2023: revoked, on 20 December 2023, by section 6(a) of the Fair Pay Agreements Act Repeal Act 2023 (2023 No 65).

Rt Hon Dame Helen Winkelmann, Administrator of the Government

Order in Council

At Wellington this 8th day of May 2023

Present:

Her Excellency the Administrator of the Government in Council

These regulations are made under—

- (a) section 283 of the Fair Pay Agreements Act 2022—
 - (i) on the advice and with the consent of the Executive Council; and
 - (ii) on the recommendation of the Minister for Workplace Relations and Safety; and
- (b) section 237 of the Employment Relations Act 2000 on the advice and with the consent of the Executive Council.

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.

These regulations are administered by the Ministry of Business, Innovation, and Employment.

Contents

	Page
1 Title	3
2 Commencement	3
3 Principal regulations	3
4 Enacting statement amended	3
5 Regulation 3 amended (Interpretation)	3
6 Regulation 4 amended (Application)	3
7 Regulation 5 amended (Commencement of proceedings)	4
8 Regulation 8 amended (Statement in reply)	4
9 Regulation 12 amended (Removal of matters to court)	4
10 Regulation 16 amended (Service of notices and documents)	4
11 Regulation 17 amended (Service on New Zealand corporations)	4
12 Regulation 18 amended (Service on unincorporated societies)	4
13 Regulation 19 amended (Service on partnership or apparent partnership)	5
14 New regulations 26K to 26W and cross-heading inserted	5
<i>Applications under Fair Pay Agreements Act 2022</i>	
26K Definition of FPA reference number	5
26L Application to fix terms of proposed agreement: absence of bargaining side	5
26M Who may make statement in reply to application to fix terms of proposed agreement in absence of bargaining side	6
26N Statement in reply to application to fix terms of proposed agreement in absence of bargaining side	7
26O Application to fix terms of proposed agreement: bargaining sides' inability to agree	8
26P Statement in reply to application to fix terms of proposed agreement when bargaining sides unable to agree	9
26Q Application for non-binding recommendation for proposed variation or proposed agreement	11
26R Statement in reply to application for non-binding recommendation for proposed variation or proposed agreement	12
26S Submission for compliance assessment	13
26T Submission for determinations relating to coverage overlap	14
26U Application for determination in relation to other matters	15
26V Statement in reply to application for determination in relation to other matters	16
26W Application for removal of matter to court	17
15 Schedule 1, form 7 amended	17

16 Schedule 2 amended 17

Regulations

1 Title

These regulations are the Employment Relations Authority (Fair Pay Agreements) Amendment Regulations 2023.

2 Commencement

These regulations come into force on 8 June 2023.

3 Principal regulations

These regulations amend the Employment Relations Authority Regulations 2000.

4 Enacting statement amended

In the enacting statement, replace “and section 98 of the Screen Industry Workers Act 2022” with “, section 98 of the Screen Industry Workers Act 2022, and section 283 of the Fair Pay Agreements Act 2022”.

5 Regulation 3 amended (Interpretation)

Replace regulation 3(2)(a) with:

- (a) any word or expression that is defined in the Act, the Screen Industry Workers Act 2022, or the Fair Pay Agreements Act 2022, and that is used, but not defined, in these regulations,—
 - (i) has the same meaning as in the Act, for the purpose of any matter that relates to the Act; and
 - (ii) has the same meaning as in the Screen Industry Workers Act 2022, for the purpose of any matter that relates to the Screen Industry Workers Act 2022; and
 - (iii) has the same meaning as in the Fair Pay Agreements Act 2022, for the purpose of any matter that relates to the Fair Pay Agreements Act 2022:

6 Regulation 4 amended (Application)

After regulation 4(1)(aa), insert:

- (ab) to support the development of fair pay agreements under the Fair Pay Agreements Act 2022 and the good faith and other obligations that underpin them; and

7 Regulation 5 amended (Commencement of proceedings)

In regulation 5(3), replace “and 26I” with “26I, 26L, 26O, 26Q, 26S to 26U, and 26W”.

8 Regulation 8 amended (Statement in reply)

(1) In regulation 8(1), replace “or 26I” with “26I, 26L, 26O, 26Q, or 26U”.

(2) After regulation 8(2)(c), insert:

- (ca) be made in accordance with regulation 26N if it relates to an application for the Authority to fix the terms of a proposed agreement in the absence of a bargaining side under the Fair Pay Agreements Act 2022:
- (cb) be made in accordance with regulation 26P if it relates to an application for the Authority to fix the terms of a proposed agreement when the bargaining sides are unable to agree under the Fair Pay Agreements Act 2022:
- (cc) be made in accordance with regulation 26R if it relates to an application for a non-binding recommendation in relation to the terms of a proposed agreement or a proposed variation under the Fair Pay Agreements Act 2022:
- (cd) be made in accordance with regulation 26V if it relates to an application for a determination for other specified matters under the Fair Pay Agreements Act 2022:

9 Regulation 12 amended (Removal of matters to court)

In regulation 12, after “section 178 of the Act”, insert “, or under clause 14 of Schedule 3 of the Fair Pay Agreements Act 2022,”.

10 Regulation 16 amended (Service of notices and documents)

(1) In regulation 16(1), after “the Act”, insert “, the Fair Pay Agreements Act 2022,”.

(2) In regulation 16(2), replace “and 26I” with “26I, 26L, 26O, 26Q, and 26U”.

(3) In regulation 16(3), after “the Act”, insert “, the Fair Pay Agreements Act 2022,”.

11 Regulation 17 amended (Service on New Zealand corporations)

In regulation 17(1), after “the Act”, insert “, the Fair Pay Agreements Act 2022,”.

12 Regulation 18 amended (Service on unincorporated societies)

In regulation 18(1), after “the Act”, insert “, the Fair Pay Agreements Act 2022,”.

13 Regulation 19 amended (Service on partnership or apparent partnership)

In regulation 19(1), after “the Act”, insert “, the Fair Pay Agreements Act 2022,”.

14 New regulations 26K to 26W and cross-heading inserted

After regulation 26J, insert:

Applications under Fair Pay Agreements Act 2022

26K Definition of FPA reference number

In regulations 26L and 26N to 26V, unless the context otherwise requires, **FPA reference number** means, in relation to a proposed agreement or a fair pay agreement, the reference number issued by the department when the chief executive received the application for approval to initiate bargaining for the proposed agreement.

26L Application to fix terms of proposed agreement: absence of bargaining side

- (1) An application made under section 244 of the Fair Pay Agreements Act 2022 for a determination that fixes the terms of a proposed agreement under that Act must be made in accordance with regulations 12A to 15.
- (2) The application must include the following information:
 - (a) the full name, address, phone number, and email address of the respondent (if there is a respondent, *see* regulation 26M):
 - (b) the FPA reference number:
 - (c) a list of the terms (if any) that the applicant considers should be included in the proposed agreement in addition to the mandatory content required by section 123 of the Fair Pay Agreements Act 2022:
 - (d) for each term listed under paragraph (c), an explanation of why the applicant considers it should be included in the proposed agreement:
 - (e) a statement of what the applicant considers the terms of the proposed agreement should contain:
 - (f) a statement confirming that the applicant has not received either of the following documents from the chief executive in relation to the proposed agreement:
 - (i) notification that the chief executive has received an application under section 43 or 47 of the Fair Pay Agreements Act 2022 for approval to be a bargaining party on a bargaining side on which the default bargaining party was able to elect to be a bargaining party:
 - (ii) notification that the chief executive has approved an application to initiate bargaining for another proposed agreement that would

cover the same industry as the industry that the proposed agreement would cover:

- (g) a statement of whether the coverage of the proposed agreement has changed since the chief executive approved initiating bargaining;
 - (h) a statement of whether the applicant knows of any existing fair pay agreements that may apply to any of the industries or occupations covered by the proposed agreement (the applicant may also provide the FPA reference number of each existing fair pay agreement);
 - (i) a list of all of the documents to be provided with the application in accordance with subclause (3).
- (3) The applicant must provide the following, along with the application:
- (a) a copy of the notice issued by the chief executive under section 37 or 207 of the Fair Pay Agreements Act 2022 in relation to the proposed agreement;
 - (b) a copy of the notice issued by the chief executive under section 45 or 50 of the Fair Pay Agreements Act 2022 confirming that the chief executive has approved the applicant to be a bargaining party in relation to the proposed agreement;
 - (c) a copy of the notice issued by the chief executive under section 78 or 79 of the Fair Pay Agreements Act 2022 specifying that the applicant may apply to the Authority for a determination to fix the terms of the proposed agreement;
 - (d) if the chief executive has approved an application to change the coverage of the proposed agreement, a copy of the notice issued by the chief executive under section 111 of the Fair Pay Agreements Act 2022;
 - (e) any other documents that are relevant to the application.
- (4) The application must be dated and signed by the applicant.

26M Who may make statement in reply to application to fix terms of proposed agreement in absence of bargaining side

A statement in reply to an application made under regulation 26L may be made only by a bargaining party on the opposing bargaining side.

Example

A specified employer bargaining party may make a statement in reply if—

- (a) an eligible union initiates bargaining for a proposed agreement; and
- (b) the proposed agreement covers—
 - (i) employees that are employed by an SEBP employer; and
 - (ii) employees that are employed by a non-SEBP employer; and

- (c) the chief executive has publicly notified that a specified employer bargaining party is an employer bargaining party in relation to the proposed agreement (see section 64 of the Fair Pay Agreements Act 2022); and
- (d) the chief executive has not publicly notified that it has approved an application from an employer association to be an employer bargaining party in relation to the proposed agreement and the employer default bargaining party has not elected to be a bargaining party.

26N Statement in reply to application to fix terms of proposed agreement in absence of bargaining side

- (1) A statement in reply to an application made under section 244 of the Fair Pay Agreements Act 2022 for a determination that fixes the terms of a proposed agreement under that Act must be made in accordance with regulations 8 and 12A to 15.
- (2) The statement must include the following information:
 - (a) the full name, address, phone number, and email address of the applicant;
 - (b) the FPA reference number;
 - (c) a statement of whether the respondent considers that the proposed agreement should include any terms in addition to the mandatory content required by section 123 of the Fair Pay Agreements Act 2022, and a list of the terms (if any);
 - (d) for each term listed under paragraph (c), an explanation of why the respondent considers it should be included in the proposed agreement;
 - (e) for each term listed in an application in accordance with regulation 26L(2)(c) that the respondent considers should not be included in the proposed agreement, an explanation of why the respondent considers it should not be included;
 - (f) a statement of what the respondent considers the terms of the proposed agreement should contain;
 - (g) the respondent's view of the relevant facts;
 - (h) any other comments the respondent wishes the Authority to consider;
 - (i) a list of all of the documents to be provided with the statement in accordance with subclause (3).
- (3) The respondent must provide, along with the statement in reply, any other documents that are relevant to the statement.
- (4) The statement in reply must be dated and signed by the respondent.

260 Application to fix terms of proposed agreement: bargaining sides' inability to agree

- (1) An application made under section 234 of the Fair Pay Agreements Act 2022 for a determination that fixes the terms of a proposed agreement under that Act must be made in accordance with regulations 12A to 15.
- (2) The application must include the following information:
 - (a) the full name, address, phone number, and email address of the respondent;
 - (b) the FPA reference number;
 - (c) a list of the terms (if any) that the applicant considers should be included in the proposed agreement in addition to the mandatory content required by section 123 of the Fair Pay Agreements Act 2022;
 - (d) for each term listed under paragraph (c), an explanation of why the applicant considers it should be included in the proposed agreement;
 - (e) a statement of what the applicant considers the terms of the proposed agreement should contain;
 - (f) a list of the terms (if any) of the proposed agreement that the bargaining sides have already agreed;
 - (g) an explanation of what the terms listed in accordance with paragraph (f) contain;
 - (h) a statement confirming that 1 or more of the following criteria for the Authority to make a determination have been met:
 - (i) the bargaining sides have exhausted all other reasonable alternatives for reaching agreement;
 - (ii) 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;
 - (iii) a bargaining side has breached the duty of good faith imposed by section 17 of the Fair Pay Agreements Act 2022 and the breach—
 - (A) was deliberate, serious, and sustained; or
 - (B) involved behaviour that undermined the bargaining process;
 - (iv) the proposed agreement has been the subject of 2 ratification processes, without having been ratified;
 - (i) a statement of whether the bargaining sides have tried to agree the terms of the proposed agreement by using mediation services provided by the Ministry of Business, Innovation, and Employment (and, if so, the date or dates on which mediations took place):

- (j) a statement of whether the bargaining sides have tried to agree the terms of the proposed agreement by using mediation services other than those provided by the Ministry of Business, Innovation, and Employment:
 - (k) if the bargaining sides have not attempted to agree the terms of the proposed agreement by using mediation services, a statement explaining why not:
 - (l) a description of any other steps taken to agree the terms of the proposed agreement:
 - (m) a statement of whether the coverage of the proposed agreement has changed since the chief executive approved initiating bargaining:
 - (n) a list of all of the documents to be provided with the application in accordance with subclause (3):
 - (o) a statement of whether the applicant knows of any existing fair pay agreements that may apply to any of the industries or occupations covered by the proposed agreement (the applicant may also provide the FPA reference number of each existing fair pay agreement).
- (3) The applicant must provide the following, along with the application:
- (a) a copy of the notice issued by the chief executive under section 37 or 207 of the Fair Pay Agreements Act 2022 in relation to the proposed agreement:
 - (b) if the applicant has provided a statement under subclause (2)(h)(iii) that a bargaining side has breached the duty of good faith, evidence of that breach:
 - (c) if the applicant has provided a statement under subclause (2)(h)(iv) confirming that the proposed agreement has been the subject of 2 ratification processes without having been ratified, evidence of the failed ratification processes:
 - (d) if the chief executive has approved an application to change the coverage of the proposed agreement, a copy of the notice issued by the chief executive under section 111 of the Fair Pay Agreements Act 2022:
 - (e) any other documents that are relevant to the application.
- (4) The application must be dated and signed by the applicant.

26P Statement in reply to application to fix terms of proposed agreement when bargaining sides unable to agree

- (1) A statement in reply to an application made under section 234 of the Fair Pay Agreements Act 2022 for a determination that fixes the terms of a proposed agreement under that Act must be made in accordance with regulations 8 and 12A to 15.
- (2) The statement must include the following information:

- (a) the full name, address, phone number, and email address of the applicant:
 - (b) the FPA reference number:
 - (c) a statement of whether the respondent considers that the proposed agreement should include any terms in addition to the mandatory content required by section 123 of the Fair Pay Agreements Act 2022, and a list of the terms (if any):
 - (d) for each term listed under paragraph (c), an explanation of why the respondent considers it should be included in the proposed agreement:
 - (e) for each term listed in an application in accordance with regulation 26O(2)(c) that the respondent considers should not be included in the proposed agreement, an explanation of why the respondent considers it should not be included:
 - (f) a statement of what the respondent considers the terms of the proposed agreement should contain:
 - (g) the respondent's view of the relevant facts, including whether the criteria for the Authority to make a determination have been met:
 - (h) a statement confirming or disputing the terms of the proposed agreement that the bargaining parties have already agreed:
 - (i) any other comments the respondent wishes the Authority to consider:
 - (j) a list of all of the documents to be provided with the statement in reply in accordance with subclause (3):
 - (k) a statement of whether the bargaining sides have tried to agree the terms of the proposed agreement by using mediation services provided by the Ministry of Business, Innovation, and Employment (and, if so, the date or dates on which mediations took place):
 - (l) a statement of whether the bargaining sides have tried to agree the terms of the proposed agreement by using mediation services other than those provided by the Ministry of Business, Innovation, and Employment:
 - (m) if the bargaining sides have not attempted to agree the terms of the proposed agreement by using mediation services, a statement explaining why not:
 - (n) a description of any other steps taken to agree the terms of the proposed agreement.
- (3) The respondent must provide, along with the statement in reply, any other documents that are relevant to the statement.
 - (4) The statement in reply must be dated and signed by the respondent.

26Q Application for non-binding recommendation for proposed variation or proposed agreement

- (1) An application for a non-binding recommendation in relation to a proposed variation under section 194 of the Fair Pay Agreements Act 2022 or in relation to a proposed agreement under section 231 of that Act must be made in accordance with regulations 12A to 15.
- (2) The application must include the following information:
 - (a) the full name, address, phone number, and email address of the applicant:
 - (b) the FPA reference number:
 - (c) a statement of whether the application is being made under section 194 or 231 of the Fair Pay Agreements Act 2022:
 - (d) a list of the terms (if any) of the proposed agreement or the proposed variation that the bargaining parties have already agreed:
 - (e) an explanation of what the terms listed in accordance with paragraph (d) contain:
 - (f) a list of the terms for which the applicant is seeking a recommendation from the Authority:
 - (g) a statement of what the applicant considers the terms listed in accordance with paragraph (f) should contain:
 - (h) a list of all of the documents to be provided with the application in accordance with subclause (3):
 - (i) a statement of whether the bargaining sides have tried to agree the terms of the proposed agreement or the proposed variation by using mediation services provided by the Ministry of Business, Innovation, and Employment (and, if so, the date or dates on which mediations took place):
 - (j) a statement of whether the bargaining sides have tried to agree the terms of the proposed agreement or the proposed variation by using mediation services other than those provided by the Ministry of Business, Innovation, and Employment:
 - (k) if the bargaining sides have not attempted to agree the terms of the proposed agreement or the proposed variation by using mediation services, a statement explaining why not:
 - (l) a description of any other steps taken to agree the terms of the proposed agreement or the proposed variation:
 - (m) if the application is made in relation to a proposed agreement under section 231 of the Fair Pay Agreements Act 2022, a statement of whether the coverage of the proposed agreement has changed since the chief executive approved initiating bargaining.
- (3) The applicant must provide the following, along with the application:

- (a) if the application is made in relation to a proposed variation under section 194 of the Fair Pay Agreements Act 2022,—
 - (i) a copy of the notice issued by the chief executive under section 168 of the Fair Pay Agreements Act 2022 in relation to the fair pay agreement to which the proposed variation relates; and
 - (ii) evidence that both bargaining sides agree to seek a non-binding recommendation from the Authority in relation to the proposed variation:
 - (b) if the application is made in relation to a proposed agreement under section 231 of the Fair Pay Agreements Act 2022,—
 - (i) a copy of the notice issued by the chief executive under section 37 or 207 of the Fair Pay Agreements Act 2022 in relation to the proposed agreement; and
 - (ii) if the chief executive has approved an application to change the coverage of the proposed agreement, a copy of the notice issued by the chief executive under section 111 of the Fair Pay Agreements Act 2022:
 - (c) any other documents that are relevant to the application.
- (4) The application must be dated and signed by the applicant.

26R Statement in reply to application for non-binding recommendation for proposed variation or proposed agreement

- (1) A statement in reply to an application for a non-binding recommendation in relation to a proposed variation under section 194 of the Fair Pay Agreements Act 2022 or in relation to a proposed agreement under section 231 of that Act must be made in accordance with regulations 8 and 12A to 15.
- (2) The statement must include the following information:
 - (a) the full name, address, phone number, and email address of the applicant;
 - (b) the FPA reference number;
 - (c) if the statement relates to an application made under section 194 of the Fair Pay Agreements Act 2022, a statement confirming or disputing that the respondent has agreed to seek a non-binding recommendation from the Authority in relation to the proposed variation;
 - (d) a statement confirming or disputing the terms of the proposed agreement or the proposed variation that the bargaining sides have already agreed;
 - (e) a statement of what the respondent considers the relevant terms of the proposed agreement or the proposed variation should contain;
 - (f) the respondent's view of the relevant facts;
 - (g) any other comments the respondent wishes the Authority to consider:

- (h) a list of all of the documents to be provided with the statement of reply in accordance with subclause (3):
 - (i) a statement of whether the bargaining sides have tried to agree the terms of the proposed agreement or the proposed variation by using mediation services provided by the Ministry of Business, Innovation, and Employment (and, if so, the date or dates on which mediations took place):
 - (j) a statement of whether the bargaining sides have tried to agree the terms of the proposed agreement or the proposed variation by using mediation services other than those provided by the Ministry of Business, Innovation, and Employment:
 - (k) if the bargaining sides have not attempted to agree the terms of the proposed agreement or the proposed variation by using mediation services, a statement explaining why not:
 - (l) a description of any other steps taken to agree the terms of the proposed agreement or the proposed variation.
- (3) The respondent must provide, along with the statement in reply, any other documents that are relevant to the statement.
- (4) The statement in reply must be dated and signed by the respondent.

26S Submission for compliance assessment

- (1) A submission for a compliance assessment under section 143 of the Fair Pay Agreements Act 2022 must be made in accordance with regulations 12A to 15.
- (2) The submission must include the following information:
 - (a) the FPA reference number:
 - (b) a statement confirming whether the submitters are making an application in relation to a proposed FPA, a proposed renewal, a proposed replacement, or a proposed variation:
 - (c) a statement confirming that both bargaining sides have agreed to the wording of the proposed FPA, the proposed renewal, the proposed replacement, or the proposed variation:
 - (d) a statement confirming that the wording of the proposed FPA, the proposed renewal, the proposed replacement, or the proposed variation is in the form prescribed in any regulations made under the Fair Pay Agreements Act 2022:
 - (e) if the submission relates to a proposed agreement, a statement of whether the coverage of the proposed agreement has changed since the chief executive approved initiating bargaining:
 - (f) a statement of whether the submitters know of any existing fair pay agreements that may apply to any of the industries or occupations covered by the proposed agreement (the submitters may also provide the FPA reference number of each existing fair pay agreement):

- (g) if the submitters are aware of a potential coverage overlap between an existing fair pay agreement and the proposed agreement, a statement containing any information that the submitters consider may assist the Authority, if it determines there is a coverage overlap, to determine which agreement provides the better terms overall.
- (3) The submitters must provide the following, along with the submission:
- (a) a copy of the proposed FPA, the proposed renewal, the proposed replacement, or the proposed variation (as applicable), which must be signed by the bargaining side lead advocate for each bargaining side:
 - (b) if the submission is made in relation to a proposed agreement, a copy of the notice issued by the chief executive under section 37 or 207 of the Fair Pay Agreements Act 2022 in relation to the proposed agreement:
 - (c) if the submission is made in relation to a proposed variation, a copy of the notice issued by the chief executive under section 168 of the Fair Pay Agreements Act 2022 in relation to the fair pay agreement to which the proposed variation relates:
 - (d) if the submission is made in relation to a proposed agreement and the chief executive has approved an application to change the coverage of the proposed agreement, a copy of the notice issued by the chief executive under section 111 of the Fair Pay Agreements Act 2022:
 - (e) if the submitters are aware of a potential coverage overlap between an existing fair pay agreement and the proposed FPA, the proposed renewal, or the proposed replacement (as applicable), any documents the submitters consider may assist the Authority, if it determines there is a coverage overlap, to determine which agreement provides the better terms overall.
- (4) The submission must be dated and signed by both submitters.

26T Submission for determinations relating to coverage overlap

- (1) A submission for a determination relating to coverage overlap under section 164(b) of the Fair Pay Agreements Act 2022 must be made in accordance with regulations 12A to 15.
- (2) The submission must include the following information:
- (a) the FPA reference number:
 - (b) a statement of whether the coverage of the proposed agreement has changed since the chief executive approved initiating bargaining:
 - (c) a statement listing the existing fair pay agreements that may apply to any of the industries or occupations covered by the proposed agreement, including the fair pay agreement indicated by the chief executive and any other fair pay agreements the submitters are aware of (the submitters may also provide the FPA reference number of each existing fair pay agreement):

- (d) a statement containing any information that the submitters consider may assist the Authority, if it determines there is a coverage overlap, to determine which agreement provides the better terms overall.
- (3) The submitters must provide the following, along with the submission:
 - (a) a copy of the proposed agreement:
 - (b) a copy of the notice issued by the chief executive under section 37 or 207 of the Fair Pay Agreements Act 2022 in relation to the proposed agreement:
 - (c) if the chief executive has approved an application to change the coverage of the proposed agreement, a copy of the notice issued by the chief executive under section 111 of the Fair Pay Agreements Act 2022:
 - (d) a copy of the advice from the chief executive under section 164 of the Fair Pay Agreements Act 2022:
 - (e) any other documents that are relevant to the submission.
- (4) The submission must be dated and signed by both submitters.

26U Application for determination in relation to other matters

- (1) An application for a determination under section 229(a) to (c), (g), or (h) or 230 of the Fair Pay Agreements Act 2022 must be made in accordance with regulations 12A to 15.
- (2) The application must include the following information:
 - (a) the full name, address, phone number, and email address of the respondent:
 - (b) the FPA reference number:
 - (c) a statement of the matter on which the applicant wants the Authority to make a determination:
 - (d) a statement of the facts that have given rise to the matter:
 - (e) a statement of how the applicant would like the matter to be resolved:
 - (f) if the application is for a determination under section 230 of the Fair Pay Agreements Act 2022, a statement of the topic the applicant considers the proposed agreement should include, and why:
 - (g) a list of all of the documents to be provided with the application in accordance with subclause (3):
 - (h) a statement of whether the parties have tried to resolve the matter by using mediation services provided by the Ministry of Business, Innovation, and Employment (and, if so, the date or dates on which mediations took place):
 - (i) a statement of whether the parties have tried to resolve the matter by using mediation services other than those provided by the Ministry of Business, Innovation, and Employment:

- (j) if the parties have not attempted to resolve the matter by using mediation services, a statement explaining why not:
 - (k) a description of any other steps taken to resolve the matter:
 - (l) if the application relates to a proposed agreement, a statement of whether the coverage of the proposed agreement has changed since the chief executive approved initiating bargaining.
- (3) The application must provide the following, along with the application:
- (a) if the application relates to a proposed agreement, a copy of the notice issued by the chief executive under section 37 or 207 of the Fair Pay Agreements Act 2022 in relation to the proposed agreement:
 - (b) if the application relates to a fair pay agreement, a copy of the notice issued by the chief executive under section 168 of the Fair Pay Agreements Act 2022 in relation to the fair pay agreement:
 - (c) if the application relates to a proposed variation, a copy of the notice issued by the chief executive under section 168 of the Fair Pay Agreements Act 2022 in relation to the fair pay agreement to which the proposed variation relates:
 - (d) if the application relates to a proposed agreement and the chief executive has approved an application to change the coverage of the proposed agreement, a copy of the notice issued by the chief executive under section 111 of the Fair Pay Agreements Act 2022:
 - (e) any other documents that are relevant to the application.
- (4) The application must be dated and signed by the applicant.

26V Statement in reply to application for determination in relation to other matters

- (1) A statement in reply to an application for a determination under section 229(a) to (c), (g), or (h) or 230 of the Fair Pay Agreements Act 2022 must be made in accordance with regulations 8 and 12A to 15.
- (2) The statement must include the following information:
 - (a) the full name, address, phone number, and email address of the applicant:
 - (b) the FPA reference number:
 - (c) the respondent's view in relation to the matter:
 - (d) the respondent's view of the relevant facts:
 - (e) if the application is for a determination under section 230 of the Fair Pay Agreements Act 2022, the respondent's view on whether the relevant topic should be included in the proposed agreement:
 - (f) any other comments the respondent wishes the Authority to consider:

- (g) a list of all of the documents to be provided with the statement of report in accordance with subclause (3):
 - (h) a statement of whether the parties have tried to resolve the matter by using mediation services provided by the Ministry of Business, Innovation, and Employment (and, if so, the date or dates on which mediations took place):
 - (i) a statement of whether the parties have tried to resolve the matter by using mediation services other than those provided by the Ministry of Business, Innovation, and Employment:
 - (j) if the parties have not attempted to resolve the matter by using mediation services, a statement explaining why not:
 - (k) a description of any other steps taken to resolve the matter.
- (3) The respondent must provide, along with the statement in reply, any other documents that are relevant to the statement.
- (4) The statement in reply must be dated and signed by the respondent.

26W Application for removal of matter to court

An application to remove a matter, or part of a matter, to the court under clause 14 of Schedule 3 of the Fair Pay Agreements Act 2022 must be made in accordance with regulation 12.

15 Schedule 1, form 7 amended

In Schedule 1, form 7, replace the authorisation with:

*Section 178, Employment Relations Act 2000/Clause 14 of Schedule 3, Fair Pay Agreements Act 2022**

*Select one

16 Schedule 2 amended

In Schedule 2, after item 6, insert:

7	Lodging an application under regulation 26O for the Authority to fix the terms of a proposed agreement under the Fair Pay Agreements Act 2022 (bargaining sides' inability to agree)	62.22
8	Lodging an application under regulation 26Q for a non-binding recommendation for a proposed agreement or a proposed variation under the Fair Pay Agreements Act 2022	62.22
9	Lodging an application under regulation 26U for a determination to resolve another specified matter under the Fair Pay Agreements Act 2022	62.22

Rachel Hayward,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 8 June 2023, amend the Employment Relations Authority Regulations 2000 (the **principal regulations**) to insert details of the requirements for certain applications to the Employment Relations Authority under the Fair Pay Agreements Act 2022 (the **FPA Act**).

Regulation 4 updates the enacting statement of the principal regulations, to record that some of the principal regulations are made under empowering provisions in the FPA Act.

Regulation 5 provides for terms used in the principal regulations and defined in the FPA Act to have the same meaning as in that Act for the purpose of any matter relating to that Act.

Regulation 6 adds a paragraph to regulation 4 of the principal regulations, to provide that the regulations are to be applied in a way that best supports the development of fair pay agreements under the FPA Act and the good faith and other obligations that underpin them.

Regulation 7 amends regulation 5 of the principal regulations to insert cross-references to new regulations relating to applications under the FPA Act.

Regulation 8 amends regulation 8 of the principal regulations to insert requirements for statements in reply in respect of certain applications under the FPA Act.

Regulation 9 amends regulation 12 of the principal regulations to add a reference to an application for a matter to be removed to the Employment Court under the FPA Act.

Regulation 10 amends regulation 16 of the principal regulations to insert cross-references to new regulations relating to applications under the FPA Act.

Regulations 11, 12 and 13 amend regulations 17, 18, and 19 of the principal regulations to add references to documents being served under the FPA Act.

Regulation 14 inserts *new regulations 26K to 26W* into the principal regulations. Those new regulations do the following:

- *new regulation 26K* defines FPA reference number for the purpose of *new regulations 26L and 26N to 26V*;
- *new regulation 26L* specifies what must be included in an application to the Employment Relations Authority (the **Authority**) for a determination to fix the terms of a proposed agreement under the FPA Act when there is no opposing bargaining side;
- *new regulation 26M* specifies who may make a statement in reply to an application made under *new regulation 26L*;
- *new regulation 26N* specifies what must be included in a statement in reply to an application made in accordance with *new regulation 26L*;

- *new regulation 26O* specifies what must be included in an application to the Authority for a determination to fix the terms of a proposed agreement under the FPA Act when the bargaining sides are unable to agree on those terms:
- *new regulation 26P* specifies what must be included in a statement in reply to an application made in accordance with *new regulation 26O*:
- *new regulation 26Q* specifies what must be included in an application to the Authority for a non-binding recommendation in relation to a proposed variation or a proposed agreement under the FPA Act:
- *new regulation 26R* specifies what must be included in a statement in reply to an application made in accordance with *new regulation 26Q*:
- *new regulation 26S* specifies what must be included in a submission to the Authority for a compliance assessment under the FPA Act:
- *new regulation 26T* specifies what must be included in a submission to the Authority for a determination in relation to coverage overlap under the FPA Act:
- *new regulation 26U* specifies what must be included in an application to the Authority for a determination in relation to various other matters under the FPA Act:
- *new regulation 26V* specifies what must be included in a statement in reply to an application made in accordance with *new regulation 26U*:
- *new regulation 26W* specifies that an application to remove a matter under the FPA Act to the Employment Court must be made in accordance with regulation 12.

Regulation 15 amends form 7 in Schedule 1 of the principal regulations, by adding a reference to the Fair Pay Agreements Act 2022.

Regulation 16 amends Schedule 2 of the principal regulations, to insert 3 new fees for lodging applications with the Authority in relation to the Fair Pay Agreements Act 2022.

Notes

1 *General*

This is a consolidation of the Employment Relations Authority (Fair Pay Agreements) Amendment Regulations 2023 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 6(a)