

Fair Pay Agreements Act Repeal Bill

Government Bill

Explanatory note

General policy statement

The Fair Pay Agreements Act Repeal Bill (the **FPAA Repeal Bill**) will repeal the Fair Pay Agreements (**FPAs**) legislation. The FPAA Repeal Bill will remove the bargaining framework that enables unions and employer associations to bargain fair pay agreements that specify industry- or occupation-wide minimum employment terms, and that enables the Employment Relations Authority to determine those minimum employment terms in certain circumstances. As no FPAs have been finalised, the impact of the FPAA Repeal Bill will be to remove the ability for any FPAs to be finalised. The objective of the FPAA Repeal Bill is to revert to the previous framework where employers and employees (or unions representing their members) have more flexibility to agree their employment terms (as long as these are above the minimum entitlement provisions specified in the Employment Relations Act 2000). The FPAA Repeal Bill will—

- repeal the Fair Pay Agreements Act 2022; and
- revoke the Fair Pay Agreements Regulations 2022 and the Employment Relations Authority (Fair Pay Agreements) Amendment Regulations 2023; and
- reverse the consequential amendments made to the following Acts by the Fair Pay Agreements Act 2022:
 - Defence Act 1990:
 - Employment Relations Act 2000:
 - Equal Pay Act 1972:
 - Holidays Act 2003:
 - Judicial Review Procedure Act 2016:
 - Minimum Wage Act 1983; and
- reverse the amendments made to the—

- Employment Court Regulations 2000 by the Employment Court (Fair Pay Agreements) Amendment Regulations 2023, with the exception of the technical amendment to express the figures for Employment Court fees in GST-exclusive form; and
- Employment Relations Authority Regulations 2000 by the Employment Relations Authority (Fair Pay Agreements) Amendment Regulations 2023.

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2023&no=3>

Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced a regulatory impact statement in April 2021 to help inform the main policy decisions taken by the Government at that time in relation to the contents of the Fair Pay Agreements Bill. In November 2023, the Ministry of Business, Innovation, and Employment produced a cover sheet to that regulatory impact statement to help inform the main policy decisions in this Bill.

A copy of the 2021 regulatory impact statement and the cover sheet can be found at—

- <https://www.mbie.govt.nz/dmsdocument/15512-fair-pay-agreements-regulatory-impact-statement-pdf>
- <https://www.mbie.govt.nz/dmsdocument/27868-coversheet-to-fair-pay-agreements-regulatory-impact-statement-2023-pdf>
- <https://treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that this Bill comes into force on the day after Royal assent.

Clause 3 provides that any transitional, savings, and related provisions are set out in *Schedule 1*.

Clause 4 provides that this Bill is repealed 28 days after it comes into force.

Clause 5 repeals the Fair Pay Agreements Act 2022.

Clause 6 revokes secondary legislation made under the Fair Pay Agreements Act 2022.

Clause 7 provides that the consequential amendments are as set out in *Schedule 2*.

Hon Brooke van Velden

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Fair Pay Agreements Act Repeal Act **2023**.

2 Commencement

This Act comes into force on the day after Royal assent.

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Part 1

Preliminary provisions

- 3 Transitional, savings, and related provisions**
The transitional, savings, and related provisions (if any) set out in **Schedule 1** have effect according to their terms. 5
- 4 Repeal of this Act**
This Act is repealed on the close of the 28th day after the date on which it comes into force.

Part 2

Repeal and revocations 10

- 5 Repeal of Fair Pay Agreements Act 2022**
The Fair Pay Agreements Act 2022 (2022 No 58) is repealed.
- 6 Revocations of secondary legislation**
The following secondary legislation is revoked: 15
- (a) Employment Relations Authority (Fair Pay Agreements) Amendment Regulations 2023 (SL 2023/66):
 - (b) Fair Pay Agreements Regulations 2022 (SL 2022/307).
- 7 Consequential amendments**
- (1) Amend the Acts specified in **Part 1 of Schedule 2** as set out in that Part.
 - (2) Amend the secondary legislation specified in **Part 2 of Schedule 2** as set out in that Part. 20

Schedule 1
Transitional, savings, and related provisions

s 3

Part 1
Provisions relating to this Act as enacted

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There are no transitional, savings, or related provisions in this Act as enacted.

Schedule 2

Consequential amendments

s 7

Part 1

Consequential amendments to Acts 5

Defence Act 1990 (1990 No 28)

Repeal section 45(5A).

Employment Relations Act 2000 (2000 No 24)

In section 5, definition of **employment standards**, repeal paragraph (ba).

In section 5, definition of **minimum entitlement provisions**, repeal paragraph (aaa). 10

Repeal section 14(1A) and (1B).

In section 24(1), delete “, or for the purposes of section 91 of the Fair Pay Agreements Act 2022”.

Repeal section 33(2)(e).

Repeal section 86(1)(ea). 15

Replace section 132(2) with:

(2) Where evidence of the type referred to in subsection (1) is given, the Authority may, unless the defendant proves that those claims are incorrect, accept as proved all claims made by the employee in respect of—

(a) the wages actually paid to the employee: 20

(b) the hours, days, and time worked by the employee.

Repeal section 137(1)(a)(xii).

In section 148A(3), replace “the Support Workers (Pay Equity) Settlements Act 2017, or the Fair Pay Agreements Act 2022” with “or the Support Workers (Pay Equity) Settlements Act 2017”. 25

Repeal section 161(1)(m)(vi).

Repeal section 161(1)(qe).

Repeal section 223(1)(ba).

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 the Minimum Wage Act 1983 or the Holidays Act 2003; and 30

Replace section 228(1) with: 35

Employment Relations Act 2000 (2000 No 24)—*continued*

- (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 the Minimum Wage Act 1983 or the Holidays Act 2003.

Replace section 235A(a) with:

- (a) a failure by an employer to comply with the requirements of section 64(1) or (2) or 130(1) of this Act or section 81(2) of the Holidays Act 2003: 5

Equal Pay Act 1972 (1972 No 118)

Repeal section 13ZNA.

Holidays Act 2003 (2003 No 129)

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Repeal section 6A.

Judicial Review Procedure Act 2016 (2016 No 50)

Replace section 7 with:

- 7 This Act subject to certain provisions of Employment Relations Act 2000**
- (1) This Act is subject to the provisions of the Employment Relations Act 2000 relating to the jurisdiction of the Employment Court and High Court in respect of— 15
- (a) applications for review; or
- (b) proceedings for a writ or order of, or in the nature of, mandamus, prohibition, or certiorari; or 20
- (c) proceedings for a declaration or injunctions against any body constituted by, or any person acting under, the Employment Relations Act 2000.
- (2) In particular, this Act is subject to the following provisions of the Employment Relations Act 2000:
- (a) section 184 (which restricts review proceedings being brought in respect of any matter before the Employment Relations Authority): 25
- (b) section 187(1)(h), (i), (j), and (ka) (which confers on the Employment Court exclusive jurisdiction to hear and determine certain proceedings and applications):
- (c) 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): 30
- (d) section 213 (which confers on the Court of Appeal exclusive jurisdiction in relation to the review of any proceedings before the Employment Court). 35

Compare: 1972 No 130 s 3A

Minimum Wage Act 1983 (1983 No 115)

Repeal section 6(2) and (3).

Replace section 8(4) with:

- (4) While a permit remains in force, the rate of wages stated in the permit is taken to be the minimum rate of wages prescribed under this Act for the worker.

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Replace section 8(6) with:

- (6) In this section, **disability** has the same meaning as in section 21(1)(h) of the Human Rights Act 1993.

Part 2**Consequential amendments to secondary legislation**

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Employment Court Regulations 2000 (SR 2000/250)

In the enacting statement, delete “and section 283 of the Fair Pay Agreements Act 2022”.

Replace regulation 3(2)(a) with:

- (a) any word or expression that is defined in the Act and that is used, but not defined, in these regulations has the same meaning as it has in the Act:

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Revoke regulation 7(1A).

In regulation 11(1)(g), delete “or clause 16 of Schedule 3 of the Fair Pay Agreements Act 2022 (as applicable)”.

Revoke regulation 11A.

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Revoke regulation 13(1)(aa).

In regulation 14(1), delete “, or under clause 14(3) of Schedule 3 of the Fair Pay Agreements Act 2022,”.

In regulation 64(1), delete “or under clause 16 of Schedule 3 of the Fair Pay Agreements Act 2022”.

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Replace regulation 65(2)(a) with:

- (a) must, if it is made in relation to an election under section 179 or clause 5 of Schedule 3 of the Act, be in form 14; and

Revoke regulation 65A.

Revoke regulation 67A.

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In Schedule 1, form 3, under the heading “*Application for special leave to remove matter to Employment Court*”, delete “/Clause 14(3) of Schedule 3, Fair Pay Agreements Act 2022* *Select one”.

In Schedule 3, revoke item 1A.

Employment Relations Authority Regulations 2000 (SR 2000/186)

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

Replace regulation 3(2)(a) with: 5

- (a) any word or expression that is defined in the Act or the Screen Industry Workers 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 10
- (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:

Revoke regulation 4(1)(ab).

In regulation 5(3), replace “26I, 26L, 26O, 26Q, 26S to 26U, and 26W” with “and 26I”. 15

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

Revoke regulation 8(2)(ca), (cb), (cc), and (cd).

In regulation 12, delete “, or under clause 14 of Schedule 3 of the Fair Pay Agreements Act 2022,”. 20

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

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

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

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

In regulation 18(1), delete “, the Fair Pay Agreements Act 2022,”. 25

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

Revoke regulations 26K to 26W and the cross-heading above regulation 26K.

In Schedule 1, form 7, under the heading “Application for removal of matter to Employment Court”, delete “/Clause 14 of Schedule 3, Fair Pay Agreements Act 2022** Select one”. 30

In Schedule 2, revoke items 7, 8, and 9.