

Fair Pay Agreements Bill

Government Bill

Explanatory note

General policy statement

Policy objective

The Fair Pay Agreements Bill provides a framework for bargaining for fair pay agreements. The objective is to improve labour market outcomes in New Zealand by enabling employers and employees to collectively bargain industry-wide or occupation-wide minimum employment terms. The Bill builds on the analysis and recommendations of the Fair Pay Agreement Working Group in December 2018.

While New Zealand's labour market has some strengths, it also has systemic weaknesses. These include a significant prevalence of jobs with inadequate working conditions, low wages, and low labour productivity. For example, Māori, Pacific peoples, young people, and people with disabilities are over-represented in jobs where low pay, job security, health and safety, and upskilling are significant issues. Barriers to good labour market outcomes are particularly prevalent for people who fall within more than 1 of those groups. The Bill will help address these issues.

At present, New Zealand's employment relations and employment standards regulatory system only allows for collective bargaining at an enterprise level (ie, between individual employers and unions. There is no mechanism for parties to co-ordinate collective bargaining across entire occupations or industries.

The Bill creates a framework for bargaining for fair pay agreements by—

- setting out a general duty of good faith, and good faith obligations that apply to bargaining parties (within the same bargaining side and between bargaining sides); and
- prescribing processes for initiating bargaining (including when a default bargaining party may be required), carrying out bargaining, and finalising a fair pay agreement; and

- providing processes to resolve disputes that may arise during bargaining for a fair pay agreement; and
- establishing regulation-making powers to give full effect to fair pay agreements bargained under the Bill.

Fair pay agreement bargaining process

The Bill enables any eligible union to initiate bargaining for a fair pay agreement if it meets either a representation test of at least 1,000 employees or 10% of the employees in proposed coverage, or a public interest test based on specified criteria such as low pay, little bargaining power, or lack of pay progression. The chief executive of the Ministry of Business, Innovation, and Employment (**CE MBIE**) will assess applications based on either test and may request further evidence and information from the initiating union if required.

The Bill requires an initiating union to describe the coverage of a proposed fair pay agreement (a **proposed FPA**) as either an industry-based agreement or an occupation-based agreement. All employers and employees within the proposed coverage will be covered by the fair pay agreement.

Under the Bill, bargaining will take place between bargaining parties representing employees and employers. Employee bargaining parties will be eligible unions. Employer bargaining parties will be eligible employer associations, and could also include certain specified public sector employers who are allowed to participate directly in bargaining. A bargaining party must meet certain requirements, such as having an employee (or an employer who has an employee) within the coverage of the proposed FPA as a member. If one side is unrepresented (or becomes unrepresented during bargaining), default parties will step into bargaining.

The Bill creates notification and communication obligations for eligible unions and affected employers. Employers must allow employees to attend two 2-hour paid meetings for fair pay agreement purposes (1 additional paid meeting must be allowed for a proposed FPA, a proposed renewal, or a proposed replacement if the (initial) 2 meetings have been used). Employee bargaining parties will also be able to access a workplace if there are employees within coverage at that workplace and the visit is for fair pay agreement purposes. The Bill provides safeguards relating to the notification and communication requirements, similar to those under the Employment Relations Act 2000.

The Bill sets out a general obligation of good faith that applies to certain relationships, which is based on similar obligations in the Employment Relations Act 2000. It also outlines specific good faith obligations between parties within the same bargaining side (for example, between 2 bargaining parties), and also between the employee bargaining side and the employer bargaining side. These obligations will support efficient, constructive bargaining that is focused on finalising a fair pay agreement in a timely manner. Each bargaining side will also have obligations to use its best endeavours to represent those within coverage, and to ensure that Māori employees and employers are represented effectively.

The Bill sets out what must, or may, be contained in a fair pay agreement. Each fair pay agreement must specify when it comes into force and when it expires, its coverage (with sufficient clarity), the normal hours of work, minimum base wage rates (including when and how they are adjusted), overtime, penalty rates, any superannuation, the governance arrangements that will apply to the bargaining sides, and the process for each bargaining side to engage with the other bargaining side, if they are bargaining to vary the agreement.

The Bill also sets out several other topics that bargaining parties must discuss whether to include in a fair pay agreement, for example, health and safety requirements or leave entitlements. Those do not need to be included in the fair pay agreement. Bargaining sides will also be able to agree different terms that apply to different employees or classes of employees, for example, the terms of the fair pay agreement may differentiate on the basis of the territorial districts in which the employees work. Bargaining sides can also agree that the fair pay agreement (or certain terms of the fair pay agreement) will have delayed commencement for specified employers. Bargaining sides will be able, but not required, to discuss and include any other employment-related topics they consider to be relevant.

The Bill provides a dispute resolution process based on the Employment Relations Act 2000. Parties may access mediation and support services under the Bill. If parties cannot resolve their dispute using those services, a bargaining party may apply to the Employment Relations Authority (the **Authority**) for a determination. In addition, if parties cannot reach agreement during bargaining and specified criteria are met (for example, exhausting all other reasonable alternatives) or if ratification of a fair pay agreement has failed twice, a bargaining side may apply to the Authority to fix the terms of the fair pay agreement through a determination.

After bargaining, in order to finalise a fair pay agreement it must be—

- assessed and approved by the Authority; and
- ratified by the employees and employers who would be covered by the proposed FPA; and
- verified by the CE MBIE; and
- brought into force by the CE MBIE through secondary legislation.

When a fair pay agreement has been finalised, all employers within coverage will be bound by it, regardless of whether they participated in the bargaining process. Likewise, all employees within coverage will receive the new minimum employment terms set by the fair pay agreement. This will improve outcomes for employees across the labour market.

Enforcement

The Bill includes a penalty regime for non-compliance consistent with other employment legislation.

Consequential amendments

Implementing the Bill requires consequential amendments to the Employment Relations Act 2000, the Equal Pay Act 1972, the Holidays Act 2003, the Judicial Review Procedure Act 2016, and the Minimum Wage Act 1983.

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=2022&no=115>

Regulatory impact statements

The Ministry of Business, Innovation, and Employment produced regulatory impact statements on 7 April 2021 and 3 March 2022 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

Copies of these regulatory impact statements can be found at—

- <https://www.mbie.govt.nz/dmsdocument/15512-fair-pay-agreements-regulatory-impact-statement-pdf>
- <https://www.mbie.govt.nz/dmsdocument/19557-fair-pay-agreements-regulatory-impact-assessment-update-to-account-for-the-expansion-of-li-powers-regulatory-impact-statement-proactiverelease-pdf>
- <https://www.treasury.govt.nz/sites/default/files/2021-07/ria-mbie-fpa-apr21.pdf>
- <https://www.treasury.govt.nz/publications/risa/fair-pay-agreements-regulatory-impact-assessment-update-account-expansion-li-powers>

Clause by clause analysis

Clause 1 is the Title clause.

Part 1

Preliminary provisions

Clause 2 provides that the Bill will come into force 1 month after receiving the Royal assent.

Clause 3 sets out the purpose of the Bill, which is to provide a framework for collective bargaining for fair pay agreements.

Clause 4 provides an overview of the content of the Bill.

Clause 5 defines terms used in the Bill.

Clause 6 provides that the transitional, savings, and related provisions set out in *Schedule 1* have effect according to their terms.

Clause 7 provides that the Bill, when enacted, binds the Crown.

Clause 8 provides that it is not possible to contract out of this Bill.

Part 2

General principles and obligations

Clause 9 states the object of *Part 2* of the Bill.

Subpart 1—Freedom of Association

Voluntary membership

Clause 10 prohibits any contract, agreement, or other arrangement from encouraging or discouraging membership of a union or employer association for the purpose of bargaining.

Clause 11 provides that only an employee bargaining party may represent the collective interest of covered employees.

Clause 12 provides that only an employer bargaining party may represent the collective interests of covered employers.

Prohibition on preference

Clause 13 prohibits a fair pay agreement, or other contract, agreement, or arrangement from giving preference, in relation to employment, to a person because of whether or not the person is a union member. However, a fair pay agreement may provide for an employee to be paid a union member payment, which must be no more than the employee's annual union membership fees.

Clause 14 prohibits a fair pay agreement, or other contract, agreement, or arrangement from giving preference to an employer because of whether or not the employer is a member of an employer association.

Clause 15 provides that a contract, an agreement, or another arrangement that is inconsistent with *clause 13 or 14* has no force or effect.

Undue influence

Clause 16 prohibits exerting undue influence on any person for the purposes of bargaining for a fair pay agreement.

Subpart 2—Good faith obligations

Clause 17 sets out a general obligation of good faith that applies to the listed employment-related relationships when taking part in the listed activities that relate to fair pay agreements.

Clause 18 provides the good faith obligations that apply to bargaining parties that are on the same bargaining side.

Clause 19 provides the good faith obligations that apply to opposing bargaining sides.

Clause 20 provides the penalty that applies for failing to comply with the obligation in *clause 17*.

Clause 21 prohibits an employer from engaging a person as an independent contractor instead of as an employee with the intention of preventing the person from being covered by a fair pay agreement.

Subpart 3—General obligations

Clause 22 provides that if this Bill imposes an obligation on a bargaining side, each bargaining party on the bargaining side must ensure that at least 1 of the bargaining parties on the bargaining side complies with the obligation.

Clauses 23 and 24 provide limitations on the collection, use, and disclosure of personal information under the Bill.

Clause 25 provides that a strike or lockout that relates to bargaining under this Bill is unlawful, unless it is permitted under section 84 of the Employment Relations Act 2000.

Part 3

Initiating bargaining for proposed FPA

Clause 26 provides an overview of the contents of *Part 3*.

Subpart 1—Process for initiating bargaining and forming bargaining sides

Clause 27 provides that bargaining for a proposed FPA may only be initiated under *subpart 1 of Part 3*.

Union to apply for approval to initiate bargaining for proposed FPA

Clause 28 provides that an eligible union may initiate bargaining for a proposed FPA only with the chief executive's approval (which the chief executive must publicly notify under *clause 34*).

Clause 29 sets out 2 alternative tests for initiating bargaining for a proposed FPA: the representation test and the public interest test.

Clause 30 sets out how an application for the chief executive's approval to initiate bargaining must be made, including specifying the coverage of the proposed FPA and whether the application relies on the representation test or the public interest test.

Clause 31 provides that the coverage of a proposed FPA must be based on the occupation of the employees who would be covered (an **occupation-based agreement**) or based on the occupations and the industry of the employees (an **industry-based agreement**).

Chief executive assesses application for approval to initiate bargaining

Clause 32 requires the chief executive to assess an application for approval and to decide whether to grant approval based on specified requirements.

Clause 33 provides that the chief executive may, in certain circumstances, invite public submissions when deciding whether to approve an application to initiate bargaining.

Clause 34 requires the chief executive to publicly notify a decision to approve an application.

Formation of employee bargaining side

Clause 35 provides that an employee bargaining side is formed 3 months after the chief executive notifies having approved an application to initiate bargaining.

Initiating union must notify approval to initiate bargaining

Clause 36 requires a union that has had an application to initiate bargaining approved to notify each union with members who are covered employees, and each employer that employs covered employees, of that approval. The initiating union must also provide a statement and a form for the employers to provide to the covered employees, relating to the bargaining process and the requirement for the employer to provide the employees' contact details to the union.

Clause 37 requires an employer to pass on the statement and the form to the covered employees.

Clause 38 requires a union with members who are covered employees to notify each employer that is a party to a collective agreement with the union, and that has covered employees, that approval has been granted to initiate bargaining.

Employee information

Clause 39 requires an employer to provide each covered employee's contact details to each employee bargaining party for the proposed FPA. However, the obligation does not apply in relation to a covered employee who elects not to have their contact details provided.

Clause 40 provides that an initiating union or an employee bargaining party must use a covered employee's contact details only for purposes related to the proposed FPA.

Clause 41 places limits on how an initiating union or an employee bargaining party may store and access employees' contact details.

Employer bargaining side

Clause 42 defines employer association.

Clause 43 provides that, once the chief executive has approved a union's application to initiate bargaining, an eligible employer association may apply for approval to form or join the employer bargaining side.

Clause 44 requires the chief executive to assess each application from an employer association under *clause 43* and sets out the criteria for the chief executive to decide whether to approve the application.

Clause 45 provides that an employer bargaining side is formed 3 months after the chief executive notifies approval of a union's application to initiate bargaining.

Clause 46 provides that, when bargaining for a proposed FPA, an employer bargaining party must endeavour to represent the collective interests of all covered employers, not just those employers who are members of the employer association.

Clause 47 provides exceptions from *clause 46* that apply to specified employer bargaining parties for a proposed FPA or a fair pay agreement.

Clause 48 requires each employer bargaining party for a proposed FPA to ensure effective representation of Māori employers.

Other union may apply to join employee bargaining side

Clause 49 provides that if the chief executive has approved a union's application to initiate bargaining for a proposed FPA, another eligible union may apply for approval to join the employee bargaining side.

Clause 50 sets out the requirements for an application made under *clause 49*.

Clause 51 requires the chief executive to assess each application made under *clause 49* and notify the applicant of the decision.

Clause 52 requires the chief executive to advise a union whether its application under *clause 49* has been approved or declined and to publicly notify the approval of the union's application.

Clause 53 provides that an employee bargaining party must endeavour to represent the collective interests of all covered employees, whether or not an employee is a member of the union.

Clause 54 requires each employee bargaining party for a proposed FPA to ensure effective representation of Māori employees.

Clause 55 provides that a union that is not an employee bargaining party, but that has members who are covered employees, may provide its members' views to the employee bargaining side, and the employee bargaining side must take those views into account.

Subpart 2—General provisions for initiating bargaining

Notification of bargaining parties

Clause 56 requires the chief executive, 3 months after notifying approval of a union's application to initiate bargaining for a proposed FPA, to provide each bargaining party with the name of each other bargaining party.

Bargaining sides

Clause 57 sets out the employee bargaining parties that make up an employee bargaining side for a proposed FPA.

Clause 58 sets out the employer bargaining parties that make up an employer bargaining side for a proposed FPA.

Clause 59 provides that each bargaining side for a proposed FPA must agree an inter-party side agreement and appoint a bargaining side lead advocate.

Clause 60 provides that an inter-party side agreement must include the process that the bargaining side will follow to make decisions, and requires the bargaining side to provide a copy of the agreement, and any amendments to the agreement, to the chief executive.

Clause 61 provides that if a bargaining party joins a bargaining side that has already provided its inter-party side agreement to the chief executive, the bargaining side need not amend the agreement but must consider whether to amend it.

Specified employer bargaining parties

Clause 62 defines terms used in *clauses 63 to 67*.

Clause 63 sets out the circumstances in which the Public Service Commissioner or the Director-General of Health may be a specified employer bargaining party and provides that each may delegate that function.

Clause 64 provides that *clause 65* applies to the Chief of Defence Force, the Chief Parliamentary Counsel, and the Commissioner of Police.

Clause 65 sets out the circumstances in which an employer listed in *clause 64* may be an employer bargaining party, or may ask the Public Service Commissioner to act on behalf of the employer.

Clause 66 provides that other State services employers may ask the Public Service Commissioner to act on behalf of the employer.

Clause 67 provides that a specified employer bargaining party has the same rights, duties, and obligations as any other employer bargaining party.

Clause 68 requires a specified employer bargaining party to notify the chief executive if it is an employer bargaining party.

Subpart 3—Default bargaining parties

Clause 69 sets out an overview of when default bargaining parties may be required and, for the purposes of *subpart 3 of Part 3*, defines relevant employer to mean an employer that is described in *clause 63, 64, or 66*.

Clause 70 provides that an employer default bargaining party may be an employer bargaining party only if the proposed FPA, proposed variation, proposed renewal, or proposed replacement covers employees who are not employed by a relevant employer.

Clause 71 sets out who the chief executive must notify in various situations where there is no longer a bargaining party on a bargaining side.

Default bargaining parties for proposed FPAs

Clause 72 sets out the circumstances in which the employer default bargaining party is deemed to be an employer bargaining party for a proposed FPA, the obligations that result from being deemed to be an employer bargaining side, and the effects of another employer bargaining party subsequently joining the bargaining side.

Clause 73 sets out the circumstances in which the employee default bargaining party may elect to be an employee bargaining party for a proposed FPA, how it makes that election, the effect of another employee bargaining party subsequently joining the bargaining side, and the outcome if the employee default bargaining party does not make an election.

Default bargaining parties for proposed variations

Clauses 74 and 75 set out the actions that a default bargaining party may take in relation to a proposed variation and provide that a default bargaining party may withdraw from bargaining for a proposed variation.

Default bargaining parties for proposed renewals or proposed replacements

Clause 76 sets out the circumstances in which the employer default bargaining party is deemed to be an employer bargaining party in relation to a proposed renewal or proposed replacement, the obligations that result from being deemed to be an employer bargaining side, and the effects of another employer bargaining party subsequently joining the bargaining side.

Clause 77 sets out the circumstances in which the employee default bargaining party is deemed to be an employee bargaining party for a proposed renewal or proposed replacement, the obligations that result from being deemed to be an employee bargaining side, and the effects of another employee bargaining party subsequently joining the bargaining side.

Clause 78 sets out the circumstances in which a default bargaining party is deemed, or may elect, to be a bargaining party in relation to a proposed renewal or proposed replacement that was initiated by an employer bargaining party.

Clause 79 sets out the circumstances in which a default bargaining party is deemed to be a bargaining party in relation to a proposed renewal or proposed replacement that was initiated by a specified employer bargaining party.

Clause 80 sets out the circumstances in which a default bargaining party is deemed, or may elect, to be a bargaining party in relation to a proposed renewal or proposed replacement that was initiated by an employee bargaining party.

Part 4

FPA meetings and union access to workplaces

Subpart 1—FPA meetings

Clause 81 sets out the circumstances in which an employee bargaining party for a proposed FPA, a proposed renewal, or a proposed replacement may arrange an FPA meeting. It also sets out how the employee bargaining party must make arrangements for the meeting with affected employers.

Clause 82 provides that employees are entitled to attend 2 FPA meetings in relation to a proposed FPA, 1 meeting in relation to a proposed variation, and 2 meetings in relation to a proposed renewal or proposed replacement. Meetings must last no longer than 2 hours.

Clause 83 provides that an employer must allow an employee to attend an FPA meeting on ordinary pay.

Clause 84 provides an entitlement for an employee to attend an additional FPA meeting if the result of the first ratification vote for a proposed FPA, a proposed renewal, or a proposed replacement is against ratification.

Subpart 2—Employee bargaining party may access workplaces

Clause 85 defines dwellinghouse for the purposes of *clauses 86 to 91*.

Clause 86 provides the right for a representative of an employee bargaining party to enter a workplace without the employer's consent to discuss bargaining or a fair pay agreement.

Clause 87 sets out the conditions that apply when a representative of an employee bargaining party enters a workplace.

Clause 88 provides that a representative of an employee bargaining party may be denied access to a workplace for reasons relating to the security or defence of New Zealand or the investigation or detection of offences.

Clauses 89 and 90 provide that a representative of an employee bargaining party may be denied access to a workplace on religious grounds if the chief executive has issued the employer a certificate of exemption.

Clause 91 provides that any person who prevents or obstructs a representative of an employee bargaining party from entering a workplace is liable to a penalty.

Part 5

Bargaining

Subpart 1—Good faith obligation to provide information

Clause 92 sets out the process for a bargaining side to request information from the other bargaining side during bargaining. A bargaining side must provide the requested information to the requesting bargaining side or to an independent reviewer. If the

parties are unable to agree whom to appoint as an independent reviewer, they may apply to the Authority for a determination.

Subpart 2—Obligations during bargaining

Ceasing to be bargaining party

Clause 93 sets out the circumstances in which a bargaining party ceases to be a bargaining party.

Clause 94 provides that a bargaining party, other than a specified employer bargaining party or a default bargaining party, that wishes to cease being a bargaining party must apply to the chief executive for approval to do so.

Clause 95 sets out the circumstances in which a bargaining party is no longer eligible to be a bargaining party and requires a bargaining party to notify the chief executive if the bargaining party is no longer eligible.

Clause 96 requires a bargaining side to appoint a new bargaining side lead advocate if the bargaining side lead advocate is a representative of a bargaining party that ceases to be a bargaining party.

Clause 97 requires an employee bargaining side for a fair pay agreement to provide the employer bargaining side with a new address to which employees' contact details must be provided if the initiating union ceases to be a bargaining party.

Provision of information

Clause 98 requires an employer to provide its employees' contact details to another employee bargaining party if the initiating union is no longer a bargaining party and the employee bargaining side has provided a new address.

Clause 99 requires an employee bargaining side to ensure that it provides a current address to which employers must provide employees' contact details.

Clause 100 provides that, if the coverage of a proposed FPA, a proposed renewal, or a proposed replacement changes during bargaining, the initiating party must apply to the chief executive for approval to continue bargaining. The chief executive must approve the application if it meets the specified criteria.

Clause 101 relates to the information that an employer or employer bargaining side must provide if a new employee comes within coverage during bargaining or there is a new covered employer.

Clause 102 relates to the information that must be provided if, during bargaining, a new employee commences employment in a role that is within the coverage of a proposed FPA, a proposed renewal, or a proposed replacement.

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

Coverage overlap between proposed FPA and fair pay agreement

Clause 103 provides that *clauses 104 and 105* apply when there is coverage overlap between a proposed FPA, a proposed renewal, or a proposed replacement, and a fair pay agreement that is already in place.

Clause 104 provides that if there is coverage overlap between a proposed FPA, a proposed renewal, or a proposed replacement and a fair pay agreement, the chief executive must notify the initiating party of the overlap and the initiating party must notify the bargaining parties.

Clause 105 provides that if there is coverage overlap the Authority must review the terms of the overlapping agreements and determine which provides the covered employees with the better terms overall.

Consolidation of bargaining for fair pay agreements

Clause 106 provides that *clauses 107 to 111* apply when the coverage of 2 agreements being bargained overlaps.

Clause 107 provides that, depending on timing, either bargaining for proposed agreements with coverage overlap is consolidated automatically, or the bargaining sides may elect to do so.

Clause 108 requires the chief executive to notify various parties of the consequences of the timing and possible consolidation of bargaining.

Clause 109 sets out the consequences of two proposed agreements being consolidated, including the combination of the bargaining sides and the extension of the coverage.

Clause 110 provides that when bargaining sides combine, a bargaining party may request that the inter-party side agreement is negotiated for the combined bargaining side.

Clause 111 sets out the effect of a decision not to consolidate 2 overlapping agreements, which includes that the second agreement is validated as a schedule of the first agreement, rather than as a stand-alone agreement.

Addition of occupation to fair pay agreement

Clause 112 provides that if bargaining is initiated for a proposed industry-based FPA that overlaps with an existing industry-based agreement, the second agreement is validated as a schedule of the first agreement rather than as a stand-alone agreement.

Clause 113 places notification requirements on the chief executive in the circumstances described in *clause 112*.

Part 6

Content of fair pay agreements

Content of fair pay agreements

Clause 114 provides a list of terms that must be included in each fair pay agreement.

Clause 115 provides a list of topics that bargaining sides must discuss whether to include in a proposed FPA, a proposed renewal, or a proposed replacement.

Clause 116 provides that a term that is not listed in *clause 114 or 115* may be included in a proposed FPA, a proposed renewal, or a proposed replacement. However, a term is void if it does not relate to the employment of covered employees, is contrary to law, or is inconsistent with the Bill.

Minimum entitlement provisions

Clause 117 provides that a term of a fair pay agreement that relates to 1 or more of the listed topics, is a minimum entitlement provision.

Clause 118 sets out how minimum entitlement provisions must be expressed.

Clause 119 specifies how minimum entitlement provisions apply in relation to other employment-related legislation.

Minimum wage rates

Clause 120 explains how entitlements under fair pay agreements relate to entitlements under a minimum wage exemption permit issued under the Minimum Wage Act 1983.

Clause 121 provides that a fair pay agreement may also specify a starting-out rate of wages and a training rate of wages.

Differentiation of application and entitlement

Clause 122 permits fair pay agreements to include terms that apply to a class of employees that differ to terms that apply to another class of employees. However, such a term must not relate to any of the topics listed in this clause.

Clause 123 permits a fair pay agreement to include terms that apply differently in different districts in New Zealand. However, such a term must relate to one of the topics listed in this clause.

Clause 124 provides that if a fair pay agreement includes terms that apply differently in different districts, an employee is bound by the terms that apply in the district in which the employee works for the majority of the time.

Clause 125 permits a fair pay agreement to include a minimum entitlement provision that applies differently to different employees, but only if the difference is based on the employee's district, occupation, or role.

Clause 126 provides that a fair pay agreement must not include a term that is contrary to any other law.

Delayed commencement of term in fair pay agreement

Clause 127 provides that the bargaining sides may consider applications from employers for delayed commencement, but only after bargaining is complete and before the proposed FPA, the proposed renewal, or the proposed replacement is submitted to the Authority for a compliance assessment.

Clause 128 specifies that a term that has delayed commencement must relate to 1 or more of the topics listed in this clause.

Clause 129 specifies the reasons for approving an employer's application for the delayed commencement of 1 or more terms and provides that the delay must be for less than 12 months.

Part 7**Finalisation of proposed agreement**

Clause 130 sets out an overview of *Part 7*.

Clause 131 defines proposed agreement for the purposes of *Part 7* to mean a proposed FPA, a proposed renewal, or a proposed replacement.

Subpart 1—Compliance assessment

Clause 132 provides that when bargaining for a proposed agreement is complete, it must be submitted to the Authority for a compliance assessment.

Clause 133 requires the Authority to assess a proposed agreement to determine whether it complies with this Bill, employment standards, and any other relevant employment law requirements.

Clause 134 sets out the Authority's responsibilities if it does not approve a proposed agreement, including notifying the bargaining sides of the reasons for not approving the proposed agreement.

Clause 135 provides that, as well as assessing a proposed agreement for compliance, the Authority must also check for coverage overlap. If the Authority decides there is coverage overlap, it must determine which agreement provides the better terms overall.

Clause 136 sets out the time frame for the Authority to notify the bargaining sides of the results of a compliance assessment and a check for coverage overlap.

Clause 137 sets out the time frame for the Authority, if it has determined there is coverage overlap, to determine which agreement provides the better terms overall.

Clause 138 explains how the Authority determines which agreement provides the better terms overall.

Clause 139 sets out the consequences of the Authority's determination as to which agreement provides the better terms overall that include the requirement to amend coverage.

Subpart 2—Ratification

Clause 140 provides that once a proposed agreement has been approved and checked for coverage overlap, the proposed agreement must be ratified.

Clause 141 requires the bargaining sides to notify covered employees and covered employers that a ratification vote will soon be held and provide related information. Employers must provide additional information to their covered employees.

Clause 142 sets out the time frame for holding a ratification vote.

Clause 143 provides that, before the ratification vote, further information about the vote must be provided to covered employees and covered employers.

Clause 144 sets out the details of holding a ratification vote. Covered employees are entitled to 1 vote each in the employee vote, and covered employers are entitled to a number of votes determined by the number of covered employees they employ (1 vote per employee over 20 employees, or for 20 or fewer employees, the number specified in *Schedule 2*).

Clause 145 requires a bargaining side that completes a ratification vote to notify the other bargaining side of the outcome of the vote. If both ratification votes are in favour of ratification, the bargaining sides must submit evidence of the outcome to the chief executive. If the first ratification vote for a proposed agreement is against ratification, the bargaining sides must restart bargaining. If the second ratification vote is against ratification, either bargaining side may apply to the Authority to fix the terms of the proposed agreement.

Clause 146 requires each bargaining side to retain records of a ratification vote to demonstrate that the vote was held in accordance with this Bill.

Subpart 3—Verification

Clause 147 provides that, if both bargaining sides vote in favour of ratification, the bargaining sides must submit information relating to the ratification votes and a copy of the proposed agreement to the chief executive.

Clause 148 requires the chief executive, after receiving the information relating to the ratification votes, to verify the proposed agreement if satisfied of the specified requirements.

Clause 149 provides that, 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 and resubmit evidence of the ratification vote for verification.

Clause 150 provides that a bargaining party or a covered employer that intentionally or recklessly provides inaccurate information in relation to a ratification vote is liable to a penalty.

Subpart 4—Chief executive’s assessment of overlapping coverage

Clause 151 requires the chief executive, after verifying a proposed agreement, to assess whether there is coverage overlap between the proposed agreement and any fair pay agreement.

Clause 152 provides that, if the chief executive concludes there is coverage overlap, the bargaining sides must submit the proposed agreement to the Authority for it to determine which agreement provides the better terms overall.

Clause 153 requires the Authority to determine whether a proposed agreement submitted under *clause 152*, or the fair pay agreement, provides the better terms overall.

Clause 154 sets out the consequences if the Authority determines that the proposed agreement provides the better terms overall, including amending the coverage of the fair pay agreement to remove the overlap and the bargaining sides being required to notify covered employees and covered employers.

Clause 155 sets out the consequences if the Authority determines that the fair pay agreement provides the better terms overall, including amending the coverage of the proposed agreement to remove the overlap and the bargaining sides being required to notify covered employees and covered employers.

Subpart 5—Issuing fair pay agreement notice

Chief executive to issue fair pay agreement notice

Clause 156 provides that the chief executive may validate the terms of a fair pay agreement by issuing a fair pay agreement notice or a fair pay agreement amendment notice. A notice is secondary legislation.

Clause 157 sets out the form and content of a fair pay agreement notice issued under *clause 156*.

Clause 158 requires the chief executive to notify the relevant bargaining sides when the chief executive has issued a fair pay agreement notice.

Clause 159 authorises the chief executive to make minor listed changes to a fair pay agreement that the chief executive has validated.

Application and effect of fair pay agreement

Clause 160 provides the date on which a fair pay agreement notice comes into force. From that date it binds the parties specified.

Clause 161 requires each party to a fair pay agreement to comply with the terms of the fair pay agreement.

Clause 162 provides for the effect of a fair pay agreement on an employment agreement.

Clause 163 provides for the relationship between a fair pay agreement and a collective agreement.

Part 8

Variation, renewal, and replacement of fair pay agreements

Subpart 1—Variation

Clause 164 provides that *subpart 1* applies when 1 or both of the bargaining sides proposes to vary a fair pay agreement.

Clause 165 specifies which parties may propose bargaining for a variation to a fair pay agreement.

Clause 166 provides that bargaining for a proposed variation may start only if both bargaining sides agree to do so. If a bargaining side withdraws its agreement to bargain, the bargaining ceases.

Clause 167 requires the bargaining sides that agree to bargain for a proposed variation to notify the chief executive. A bargaining side that withdraws its agreement must notify the chief executive and the other bargaining side, and then the bargaining sides must notify covered employees and covered employers that bargaining has stopped.

Clause 168 provides that a new bargaining party may join bargaining that has started for a proposed variation.

Clause 169 sets out limitations on when a bargaining party may request agreement to bargain for a proposed variation, and limitations on which terms of a fair pay agreement may be varied.

Clause 170 requires the employer bargaining side to notify covered employers if bargaining for a proposed variation has started.

Clause 171 sets out obligations on both bargaining sides to provide information relating to the proposed variation to covered employees and covered employers.

Clause 172 imposes further obligations on a covered employer to provide information about bargaining for a proposed variation when a new employee commences in a role that is within the coverage of the fair pay agreement.

Clause 173 imposes further obligations on the employer bargaining side and a new covered employer to provide information about bargaining for a proposed variation.

Clause 174 sets out the process that must be followed to finalise a proposed variation when bargaining is complete.

Clauses 175 and 176 set out the process and timeframe to be followed to ratify a proposed variation.

Clause 177 specifies which employees and employers are entitled to vote for ratification of a proposed variation if the fair pay agreement has another fair pay agreement attached as a schedule.

Clause 178 provides that the chief executive may validate a variation of a fair pay agreement by issuing a fair pay agreement variation notice. A fair pay agreement variation notice is secondary legislation.

Clause 179 specifies the form and content of a fair pay agreement variation notice.

Clause 180 provides that the bargaining sides for a proposed variation may together seek a non-binding recommendation from the Authority.

Clause 181 prohibits either bargaining side to a proposed variation from seeking a determination from the Authority.

Subpart 2—Renewal and replacement of fair pay agreements

Clause 182 specifies that the purpose of this subpart is to set out the process that must be followed to renew a fair pay agreement.

Clause 183 provides that a specified bargaining side that wishes to renew a fair pay agreement must apply to the chief executive for approval to initiate bargaining.

Timing

Clause 184 sets out when a bargaining party may apply to the chief executive for approval to initiate bargaining for a proposed renewal.

Clause 185 provides that if no application for renewal is made before a fair pay agreement expires, a union or an employer association may apply to the chief executive for approval to initiate bargaining for a replacement fair pay agreement that is based on the expired fair pay agreement.

Clause 186 provides that, if a party applies for approval to initiate bargaining for a proposed renewal, the fair pay agreement remains in force until the later of 4 listed dates.

Clause 187 specifies the dates on which a proposed renewal or a proposed replacement may come into force.

Coverage

Clause 188 provides that an application for approval to initiate bargaining for a proposed renewal or a proposed replacement must have the same, or broader, coverage as the fair pay agreement that is being renewed or replaced.

Application for approval to renew or replace fair pay agreement

Clause 189 sets out the requirements for an application to initiate bargaining for a proposed renewal or a proposed replacement.

Clause 190 requires an application to initiate bargaining for a proposed renewal or a proposed replacement to meet either the representation test or the public interest test and specifies how to meet those tests.

Clause 191 requires the chief executive to assess an application for a proposed renewal or a proposed replacement and notify the applicant of the chief executive's decision.

Notification requirements

Clauses 192 and 193 set out the requirement for the chief executive and other parties to notify the chief executive's decision to approve an application to initiate bargaining for a proposed renewal or a proposed replacement.

Clause 194 provides for the formation of an employer bargaining side for a proposed renewal or a proposed replacement.

Clause 195 provides for the formation of an employee bargaining side for a proposed renewal or a proposed replacement.

Part 9 Penalties

Clause 196 sets out a penalty not exceeding \$20,000 for an individual or not exceeding \$40,000 for any other person for a breach of an obligation that refers to this section.

Clause 197 sets out a penalty not exceeding \$10,000 for an individual or not exceeding \$20,000 for any other person for a breach of an obligation that refers to this section.

Clause 198 provides that the Authority has jurisdiction to recover all penalties for a breach of a fair pay agreement or a breach of this Bill.

Clause 199 provides that if a person breaches this Bill and another Act, proceedings must be brought under the applicable Act specified in this clause.

Clause 200 lists the criteria that the Authority or the Employment Court (the **court**) must have regard to when determining an appropriate penalty under *clause 196 or 197*.

Clause 201 sets out further details relating to recovering a penalty under this Bill.

Clause 202 provides that the chief executive or a Labour Inspector may recover any penalty ordered as a debt due to the Crown.

Clause 203 provides that, unless the Authority or court has ordered that all or part of a penalty must be paid to any person, a penalty must be paid into a Crown Bank Account.

Part 10 Institutions

Subpart 1—Mediation services

Clause 204 requires the chief executive to engage or employ persons to provide mediation services to support specified relationships relating to fair pay agreements.

Clause 205 provides that various sections of the Employment Relations Act 2000 apply, with all necessary modifications, in relation to mediation services.

Clause 206 clarifies that a person may use mediation services other than those provided under this Bill or under the Employment Relations Act 2000.

Subpart 2—Bargaining support services

Clause 207 requires the chief executive to employ or engage persons to provide bargaining support services to support bargaining under this Bill.

Clause 208 provides how a person who wishes to access bargaining support services may access those services.

Clause 209 provides discretion to the chief executive as to how to provide bargaining support services.

Clause 210 clarifies that a person may use bargaining support services other than those provided under this Bill.

Subpart 3—Employment Relations Authority

Clause 211 sets out the role of the Authority and how it must operate.

Determinations and recommendations

Clause 212 sets out which parties may apply to the Authority for a determination, and the nature of that determination.

Clause 213 provides that the Authority has exclusive jurisdiction to make determinations relating to fair pay agreements.

Clause 214 provides that specified parties may apply to the Authority for a determination as to whether a proposed FPA, a proposed renewal, or a proposed replacement should include a term that addresses a topic listed in *clause 115*.

Clause 215 provides that the parties to a proposed FPA, a proposed renewal, or a proposed replacement may apply to the Authority for a non-binding recommendation as to the content of a term to be included in the proposed FPA, the proposed renewal, or the proposed replacement, if the bargaining parties are unable to agree the content of the term.

Clause 216 provides that, in most circumstances, the Authority must consider whether to direct the parties to use mediation before the Authority issues a determination or a recommendation.

Clause 217 provides that the parties are not required to use mediation before applying to the Authority for a determination as to whether an employee is a covered employee or an employer is a covered employer.

Fixing terms of fair pay agreements

Clause 218 provides that bargaining sides may apply to the Authority for a determination to fix the terms of a proposed FPA, a proposed renewal, or a proposed replacement.

Clause 219 lists the terms that the Authority may fix under *clause 218*.

Clause 220 sets out what the Authority must consider when recommending or fixing terms of a proposed FPA, a proposed renewal, or a proposed replacement.

Clause 221 sets out certain limitations on the Authority when fixing terms of a proposed FPA, a proposed renewal, or a proposed replacement.

Clause 222 provides that terms fixed by the Authority are binding and enforceable and are not required to be assessed or ratified under *subparts 1 and 2 of Part 7*.

Clause 223 provides that, when fixing terms, the Authority must consist of a panel of 3 members, 1 of whom must be appointed to be the chairperson.

General provisions relating to Employment Relations Authority

Clause 224 limits the Authority's powers in certain circumstances.

Clause 225 prohibits an Authority member that has fixed terms of a fair pay agreement from hearing any disputes about that agreement.

Clause 226 provides that the decision of a majority of the Authority members is the decision of the Authority.

Clause 227 provides that a person must not obstruct or delay the Authority from performing a function under this Bill.

Provisions that apply when application made to Authority

Clause 228 provides that 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 to the Authority or court when performing a function under this Bill.

Part 11

Miscellaneous provisions

Clause 229 defines document for the purposes of this Part.

Clause 230 provides that an individual employee or employer may choose any person to represent them in relation to actions listed in this clause.

Clause 231 provides that a bargaining party may choose any person to represent them in relation to actions listed in this clause.

Record-keeping requirements

Clause 232 sets out the record-keeping requirements that apply to an employer that has an employee covered by a fair pay agreement that applies to a specific district.

Clause 233 sets out the record-keeping requirements that apply to an employer that has an employee covered by a fair pay agreement that includes a penalty rate or an overtime rate.

Clause 234 provides how a record kept under *clause 232 or 233* may be kept.

Labour Inspector may make determination of coverage by fair pay agreement

Clause 235 provides how an employee or employer may apply to a Labour Inspector for a determination as to whether an employee or group of employees is covered by a fair pay agreement.

Clause 236 provides the circumstances in which a Labour Inspector may determine whether an employee is covered by a fair pay agreement.

Clause 237 provides that a Labour Inspector may seek a determination from the Authority as to whether an employee is covered by a fair pay agreement.

Clause 238 provides that a determination made under *clause 236* is prima facie evidence of the matter, except in the specified circumstances.

Clause 239 provides a limited power to appeal against a determination made under *clause 236*.

Clause 240 sets out a Labour Inspector's extended powers when determining whether an employee is covered by a fair pay agreement.

Clause 241 limits a Labour Inspector's powers under *clause 240*.

Regulations

Clause 242 is the regulation-making provision.

Forms

Clause 243 provides that the chief executive may approve and issue forms for the purposes of this Bill.

Clause 244 provides that the Acts specified in *Schedule 4* are amended as set out in that schedule.

Hon Michael Wood

Fair Pay Agreements Bill

Government Bill

Contents

		Page
1	Title	11
2	Commencement	11
Part 1		
Preliminary provisions		
3	Purpose	11
4	Overview of Act	12
5	Interpretation	13
6	Transitional, savings, and related provisions	18
7	Act binds the Crown	18
8	No contracting out	19
Part 2		
General principles and obligations		
9	Object of this Part	19
	Subpart 1—Freedom of association	
	<i>Voluntary membership</i>	
10	Voluntary membership of union or employer association	19
11	Only employee bargaining party may represent covered employees' interests during bargaining	19
12	Only employer bargaining party may represent covered employers' interests during bargaining	20
	<i>Prohibition on preference</i>	
13	Prohibition on preference: employees	20
14	Prohibition on preference: employers	21

Fair Pay Agreements Bill

15	Contracts, agreements, or other arrangements inconsistent with section 13 or 14	21
	<i>Undue influence</i>	
16	Undue influence	21
	Subpart 2—Good faith obligations	
17	General obligation of good faith	22
18	Good faith obligations between bargaining parties on same bargaining side	23
19	Good faith obligations between bargaining parties on different bargaining sides	24
20	Penalty for breach of duty of good faith	25
21	Treating employee as independent contractor	25
	Subpart 3—General obligations	
22	Obligations imposed on bargaining sides	26
23	Personal information	26
24	Chief executive may collect personal information	26
25	Strikes and lockouts	27
	Part 3	
	Initiating bargaining for proposed FPA	
26	Overview	27
	Subpart 1—Process for initiating bargaining and forming bargaining sides	
27	Limit on initiating bargaining	27
	<i>Union to apply for approval to initiate bargaining for proposed FPA</i>	
28	Criteria for union to initiate bargaining for proposed FPA	27
29	Tests for initiating bargaining	28
30	Application for approval for union to initiate bargaining	29
31	Coverage of proposed FPA	30
	<i>Chief executive assesses application for approval to initiate bargaining</i>	
32	Chief executive must assess application for approval to initiate bargaining	31
33	Chief executive may invite submissions when considering application	32
34	Chief executive to publicly notify decision	32
	<i>Formation of employee bargaining side</i>	
35	Formation of employee bargaining side	33

Fair Pay Agreements Bill

	<i>Initiating union must notify approval to initiate bargaining</i>	
36	Initiating union to notify unions and employers of approval to initiate bargaining	33
37	Employer to notify employees and unions of bargaining being initiated	35
38	Union to notify employers of bargaining being initiated	35
	<i>Employee contact details</i>	
39	Employer to provide employee contact details to employee bargaining side	36
40	Use of employee contact details by initiating union or employee bargaining party	37
41	Storage of employee contact details	37
	<i>Employer bargaining side</i>	
42	Meaning of employer association	38
43	Employer bargaining party must apply to form or join employer bargaining side	38
44	Chief executive to assess application for approval to form or join employer bargaining side	39
45	Formation of employer bargaining side	39
46	Entitlement and obligation to represent covered employers	39
47	Exceptions for specified employer bargaining party	40
48	Obligation to ensure representation of Māori employers	40
	<i>Other union may apply to join employee bargaining side</i>	
49	Other union may apply for approval to join employee bargaining side	41
50	Application for approval for union to join employee bargaining side	41
51	Chief executive to assess application for approval to join employee bargaining side	41
52	Chief executive to notify decision on application for approval to join employee bargaining side	42
53	Entitlement and obligation to represent covered employees	42
54	Obligation to ensure representation of Māori employees	43
55	Union may provide members' views to employee bargaining side	43
	Subpart 2—General provisions for initiating bargaining	
	<i>Notification of bargaining parties</i>	
56	Notification of bargaining parties	43
	<i>Bargaining sides</i>	
57	Employee bargaining side	43
58	Employer bargaining side	44
59	Requirements for each bargaining side	44

Fair Pay Agreements Bill

60	Inter-party side agreement	45
61	When bargaining party subsequently joins bargaining side	45
	<i>Specified employer bargaining parties</i>	
62	Interpretation	45
63	Specified employer bargaining parties	46
64	Specified State employers	47
65	Options for specified State employer	47
66	Other specified State employers	48
67	Rights, duties, and obligations of specified employer bargaining party	49
68	Specified employer bargaining party to notify chief executive	49
	Subpart 3—Default bargaining parties	
69	Overview: when default bargaining party may be required	49
70	Limit on employer default bargaining party being bargaining party	49
71	Chief executive to notify absence of bargaining party	49
	<i>Default bargaining parties for proposed FPAs</i>	
72	Employer default bargaining party deemed to be employer bargaining party	51
73	Employee default bargaining party may elect to join bargaining	52
	<i>Default bargaining parties for proposed variations</i>	
74	Default bargaining party may initiate bargaining for proposed variation	52
75	Default bargaining party may withdraw from bargaining for proposed variation	53
	<i>Default bargaining parties for proposed renewals or proposed replacements</i>	
76	Employer default bargaining party for proposed renewal or proposed replacement	53
77	Employee default bargaining party for proposed renewal or proposed replacement	54
78	Default bargaining parties when bargaining for proposed renewal or proposed replacement initiated by employer bargaining party	54
79	Default bargaining parties when bargaining for proposed renewal or proposed replacement initiated by specified employer bargaining party	56
80	Default bargaining parties when bargaining for proposed renewal or proposed replacement initiated by employee bargaining party	56

Part 4

FPA meetings and union access to workplaces

Subpart 1—FPA meetings

81	Requirements for arranging FPA meeting	58
----	--	----

Fair Pay Agreements Bill

82	Entitlement to attend FPA meetings	58
83	Payment for attending FPA meeting	59
84	Entitlement to attend additional FPA meeting	60
	Subpart 2—Employee bargaining party may access workplaces	
85	Workplace does not include dwellinghouse	60
86	Access to workplaces	60
87	Conditions relating to access	62
88	When access to workplaces may be denied	63
89	When access to workplaces may be denied on religious grounds	63
90	Issue of certificate of exemption	63
91	Duties in relation to accessing workplace	64
	Part 5	
	Bargaining	
	Subpart 1—Good faith obligation to provide information	
92	Providing information when bargaining	64
	Subpart 2—Obligations during bargaining	
	<i>Ceasing to be bargaining party</i>	
93	When bargaining party ceases to be bargaining party	66
94	Bargaining party may apply to cease being bargaining party	66
95	Bargaining party ceases to be eligible	67
96	Appointment of new bargaining side lead advocate	67
97	Initiating union ceases to be bargaining party	68
	<i>Provision of information</i>	
98	Modification to requirement to provide employees' contact details	68
99	Employee bargaining side must update contact address	68
100	Obligation to submit further information if coverage changed during bargaining	68
101	Provision of information: coverage changes or new employers identified	70
102	Provision of information: new employees within coverage	71
	Subpart 3—Coverage overlap, consolidation, and addition of occupation	
	<i>Coverage overlap between proposed FPA and fair pay agreement</i>	
103	Application of sections 104 and 105	71
104	Chief executive must notify initiating party of coverage overlap	72
105	Consequences of coverage overlap	72
	<i>Consolidation of bargaining for fair pay agreements</i>	
106	Application of sections 107 to 111	72
107	When bargaining for fair pay agreements is consolidated	73
108	Chief executive to notify parties	73

Fair Pay Agreements Bill

109	Effect of decision to consolidate	74
110	Bargaining party may request negotiation of inter-party side agreement	75
111	Effect of decision not to consolidate	76

Addition of occupation to fair pay agreement

112	Proposed FPA that adds occupation to fair pay agreement	76
113	Chief executive to notify parties of existing fair pay agreement	77

Part 6

Content of fair pay agreements

Content of fair pay agreements

114	Mandatory content for each fair pay agreement	77
115	Topics that bargaining sides must discuss	79
116	Limit on what fair pay agreement may include	79

Minimum entitlement provisions

117	Minimum entitlement provisions	79
118	How minimum entitlement provisions must be expressed	80
119	How minimum entitlement provisions relate to other legislation	80

Minimum wage rates

120	Minimum wage exemption permits	81
121	Differing minimum wage rates	82

Differentiation of application and entitlement

122	Fair pay agreement may include differentiation	83
123	Fair pay agreement may include district variation for some provisions	83
124	Application of fair pay agreement with district variation	84
125	Permitted differentiation in minimum entitlement provision	84
126	Prohibited differentiation	85

Delayed commencement of term in fair pay agreement

127	When delayed commencement can be considered	85
128	Topics to which delayed commencement can relate	85
129	Delayed commencement provision	86

Part 7

Finalisation of proposed agreement

130	Overview	86
131	Meaning of proposed agreement	87
	Subpart 1—Compliance assessment	
132	Bargaining sides to submit proposed agreement for compliance assessment	87
133	Authority to assess proposed agreement for compliance	87
134	Consequences if Authority does not approve proposed agreement	88

Fair Pay Agreements Bill

135	Authority to check whether coverage overlap exists	88
136	Time frame for Authority to assess proposed agreement	89
137	Time frame for Authority to determine which agreement provides better terms overall	89
138	How Authority determines which agreement provides better terms overall	89
139	Consequences of Authority's determination	90
Subpart 2—Ratification		
140	Approved proposed agreement to be ratified	92
141	Provision of information prior to ratification	92
142	Time frame for holding ratification vote	94
143	Bargaining sides to notify of ratification vote	94
144	Ratification process	95
145	Notification of outcome of ratification vote	95
146	Obligation to keep records of ratification	96
Subpart 3—Verification		
147	Bargaining sides must submit evidence of ratification for verification	96
148	Chief executive to verify ratification	97
149	Consequences if chief executive declines to verify ratification	97
150	Penalty for providing inaccurate information	98
Subpart 4—Chief executive's assessment of overlapping coverage		
151	Chief executive to assess whether coverage overlap exists	98
152	Consequences if coverage overlap exists	98
153	Authority to determine which agreement provides better terms overall	98
154	Consequences of Authority's determination: proposed agreement provides better terms overall	99
155	Consequences of Authority's determination: fair pay agreement provides better terms overall	99
Subpart 5—Issuing fair pay agreement notice		
<i>Chief executive to issue fair pay agreement notice</i>		
156	Chief executive may issue fair pay agreement notice	100
157	Form and content of notice	101
158	Notification to bargaining sides	101
159	Chief executive may make editorial changes	101
<i>Application and effect of fair pay agreement</i>		
160	Application of notice and fair pay agreement	102
161	Obligation to comply with fair pay agreement	103
162	Effect of fair pay agreement on employment agreements	103

Fair Pay Agreements Bill

163	Relationship between fair pay agreements and collective agreements	104
-----	--	-----

Part 8

Variation, renewal, and replacement of fair pay agreements

Subpart 1—Variation

164	Application	104
165	Who may propose agreement to bargain for proposed variation	105
166	Agreement required before bargaining for proposed variation may start	105
167	Notification requirements relating to agreement to bargain for proposed variation	105
168	Ability to join bargaining side during bargaining for proposed variation	106
169	Limitations on requesting variations	106
170	Notice to employers of agreement to bargain for proposed variation	107
171	Obligations to provide information relating to proposed variation	107
172	Employer must provide information to new employee	108
173	Employer bargaining side must provide information to new employer	109
174	Procedure for finalising variation	109
175	Process for ratifying proposed variation	110
176	Further requirements for ratifying proposed variation	111
177	Ratification of proposed variation to agreement attached as schedule	111
178	Chief executive may issue notice to vary fair pay agreement	111
179	Form and content of notice to vary fair pay agreement	112
180	Bargaining sides may seek recommendation from Authority	112
181	Bargaining sides may not seek determination in relation to proposed variation	112

Subpart 2—Renewal and replacement of fair pay agreements

182	Purpose of this subpart	113
183	Approval required to bargain to renew fair pay agreement	113

Timing

184	When application to renew fair pay agreement may be made	113
185	Application for approval to bargain for replacement fair pay agreement	114
186	Effect on expiry date of approval to bargain for renewal	114
187	Commencement of renewed or replacement agreement	114

Coverage

188	Coverage of renewed or replaced fair pay agreement	114
-----	--	-----

Fair Pay Agreements Bill

Application for approval to renew or replace fair pay agreement

189	Contents of application to renew or replace fair pay agreement	115
190	Test for initiating bargaining to renew or replace fair pay agreement	115
191	Chief executive to assess application for approval to renew or replace fair pay agreement	116

Notification requirements

192	Chief executive must notify bargaining parties of approval to bargain for proposed renewal or proposed replacement	117
193	Notification of bargaining for proposed renewal or proposed replacement	117
194	Formation of employer bargaining side for proposed renewal or proposed replacement	119
195	Employee bargaining side for proposed renewal or proposed replacement	120

Part 9

Penalties and enforcement

Penalties

196	Penalty for non-compliance with obligation when bargaining	120
197	Penalty for non-compliance with obligation when fair pay agreement in force	120
198	Jurisdiction concerning penalties	121
199	Priority when overlapping jurisdiction	121
200	Matters Authority and court must have regard to in determining amount of penalty	121
201	Recovery of penalties	122
202	Chief executive or Labour Inspector may enforce payment of penalty	123
203	Application of penalties recovered	123

Part 10

Institutions

Subpart 1—Mediation services

204	Mediation services	123
205	Application of provisions in Employment Relations Act 2000	124
206	Other mediation services	125

Subpart 2—Bargaining support services

207	Bargaining support services	125
208	Access to bargaining support services	125
209	Provision of bargaining support services	125
210	Other bargaining support services	126

Fair Pay Agreements Bill

Subpart 3—Employment Relations Authority		
211	Role of Authority	126
<i>Determinations and recommendations</i>		
212	Parties may apply to Authority for determination	127
213	Jurisdiction of Authority	128
214	Determination relating to topic that bargaining sides must consider for inclusion	129
215	Recommendations on terms of proposed FPA, proposed renewal, or proposed replacement	129
216	Authority must direct use of mediation before making determination or recommendation	130
217	Limitations on issues relating to coverage	130
<i>Fixing terms of fair pay agreements</i>		
218	Authority may fix terms of proposed FPA, proposed renewal, or proposed replacement	131
219	Terms that Authority may fix	131
220	Considerations when Authority recommends or fixes terms	132
221	Limits on Authority fixing terms	132
222	Effect of Authority fixing terms	133
223	Membership of Authority when fixing terms of fair pay agreement	133
<i>General provisions relating to Employment Relations Authority</i>		
224	Powers of Authority under this Act	133
225	Panel member not permitted to hear disputes about same fair pay agreement	133
226	Decision of Authority	134
227	Obligation not to obstruct or delay Authority	134
<i>Provisions that apply when application made to Authority</i>		
228	Application of Employment Relations Act 2000	134
Part 11		
Miscellaneous provisions		
229	Meaning of document	134
<i>Representation</i>		
230	Representation of individuals	135
231	Representation of bargaining parties	135
<i>Record-keeping requirements</i>		
232	Record when minimum entitlement provision has district variation	136
233	Record when agreement includes penalty rate or overtime rate	137
234	How records must be kept	137

	<i>Labour Inspector may make determination of coverage by fair pay agreement</i>	
235	Employee or employer may apply for coverage determination	138
236	Labour Inspector may determine coverage under fair pay agreement	138
237	Actions by Labour Inspector	139
238	Effect of coverage determination	139
239	Appeal against coverage determination	139
240	Extended powers of Labour Inspectors	139
241	Extent of Labour Inspectors' powers	141
	<i>Regulations</i>	
242	Power to make regulations	142
	<i>Forms</i>	
243	Chief executive may approve forms	142
244	Consequential amendments	142
	Schedule 1	143
	Transitional, savings, and related provisions	
	Schedule 2	144
	Ratification process: number of votes for covered employers	
	Schedule 3	145
	Application of provisions of Employment Relations Act 2000 relating to Employment Relations Authority	
	Schedule 4	157
	Consequential amendments	

The Parliament of New Zealand enacts as follows:

1 Title

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

2 Commencement

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

Part 1

Preliminary provisions

3 Purpose

The purpose of this Act is to provide a framework for collective bargaining for fair pay agreements that specify industry-wide or occupation-wide minimum employment terms. 10

4 Overview of Act

- (1) This Act is divided into 11 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. 5
- (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 good faith obligations (set out in **subpart 2**).
- (4) **Part 3** contains the process for initiating bargaining for a fair pay agreement. It includes details about who is eligible to initiate bargaining, how to form and join bargaining sides, and how default bargaining parties may operate when a bargaining side has not been formed or no longer exists. 10
- (5) **Part 4** contains provisions that provide for an entitlement to attend fair pay agreement meetings (set out in **subpart 1**) and for a representative of an employee bargaining party to access workplaces (set out in **subpart 2**). 15
- (6) **Part 5** contains provisions relating to the process of bargaining. It includes obligations on bargaining parties to provide information, the implications of a bargaining party ceasing to meet the criteria for being a bargaining party, and the process to follow when the coverage of 2 agreements overlaps.
- (7) **Part 6** sets out what terms must, or may, be contained in a fair pay agreement. It also includes provisions relating to minimum entitlement provisions, differentiation that is prohibited or permitted (including district variation), and provisions for the delayed commencement of a fair pay agreement. 20
- (8) **Part 7** contains the process for finalising a proposed fair pay agreement (a **proposed FPA**), a proposed renewal of a fair pay agreement (a **proposed renewal**), or a proposed replacement of a fair pay agreement (a **proposed replacement**). The process includes requirements for a proposed FPA to be— 25
 - (a) assessed and approved by the Employment Relations Authority (set out in **subpart 1**); and
 - (b) ratified by the employees and employers who would be covered by the proposed FPA, the proposed renewal, or the proposed replacement (set out in **subpart 2**); and 30
 - (c) verified by the chief executive (set out in **subpart 3**); and
 - (d) assessed by the chief executive for any coverage overlap with a fair pay agreement (set out in **subpart 4**); and 35
 - (e) brought into force by the chief executive issuing a notice (set out in **subpart 5**).
- (9) **Part 8** contains provisions that specify how a fair pay agreement may be varied (set out in **subpart 1**), or renewed or replaced (set out in **subpart 2**).
- (10) **Part 9** relates to penalties. 40

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

5 Interpretation

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

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)** 5

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 FPA, a proposed variation, a proposed renewal, or a proposed replacement,— 10

- (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 15

chief executive means the chief executive of the department

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

coverage has the meaning given in **subsection (2)** 20

coverage overlap means that 1 or more employees are within the coverage of a proposed FPA, a proposed renewal, or a proposed replacement and are also within the coverage of a fair pay agreement

covered employee means an employee who is within the coverage of a proposed FPA, a proposed variation, a proposed renewal, a proposed replacement, or a fair pay agreement (as applicable) 25

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

default bargaining party means the employee default bargaining party or the employer default bargaining party under **subpart 3 of Part 3** 30

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

eligible employer association means, in relation to a proposed FPA, a proposed variation, a proposed renewal, a proposed replacement, or a fair pay agreement, an employer association (as defined in **section 42**) of which at least 1 member is a covered employer 35

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

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

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

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

- (a) an eligible union that has had its application approved under **section 32 or 51**; or
- (b) an employee default bargaining party 15

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

employee default bargaining party means the employee default bargaining party specified in regulations (*see subsection (3)*) 20

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

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

employer bargaining party means a member of an employer bargaining side that is— 25

- (a) an eligible employer association that has had its application approved under **section 44**; or
- (b) a specified employer bargaining party; or
- (c) an employer default bargaining party

employer bargaining side means a bargaining side, formed in accordance with **sections 43 to 45** that represents, and bargains on behalf of, covered employers 30

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

employment agreement has the same meaning as in section 5 of the Employment Relations Act 2000 35

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

- (a) a variation of the fair pay agreement:
- (b) a renewal of the fair pay agreement: 5
- (c) a replacement of the fair pay agreement:
- (d) a schedule of the fair pay agreement

FPA meeting means a meeting held in accordance with **Part 4**

independent contractor has the same meaning as in section 69B of the Employment Relations Act 2000 10

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

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

initiating union means a union that has applied for approval to initiate bargaining for a proposed FPA, a proposed renewal, or a proposed replacement 15

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

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

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

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

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

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

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

penalty rates means any identifiable additional amounts that are payable to an employee under a fair pay agreement to compensate the employee for working 35

on a particular day of the week, or on a public holiday, or outside of their normal hours of work, but excludes—

- (a) any additional payment, for example, for a sixth or seventh day of work; and
- (b) any overtime rates payable under the fair pay agreement; and 5
- (c) wages

personal information has the same meaning as in section 7(1) of the Privacy Act 2020

proposed FPA means a proposed fair pay agreement—

- (a) for which a union has applied for approval under **section 30**; but 10
- (b) that the chief executive has not validated in accordance with **section 156**

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

- (a) the chief executive has, under **section 191**, approved bargaining for the proposed renewal; but 15
- (b) the chief executive has not validated the renewal under **section 156**

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

- (a) the chief executive has, under **section 191**, approved bargaining for the proposed replacement; but 20
- (b) the chief executive has not validated the replacement under **section 156**

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

- (a) both bargaining sides of the fair pay agreement have agreed to bargain for the proposed variation (*see* **section 166**); but 25
- (b) the chief executive has not validated the variation under **section 178**

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

regulations means regulations made under **section 242**

specified employer bargaining party means— 30

- (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; 35
- (d) the Director-General (being the chief executive or acting chief executive of the Ministry of Health under the Public Service Act 2020):

- (e) the Public Service Commissioner
- 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 5
- 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 fair pay agreement, means,—
- (i) the employees who perform work to which the terms of the fair pay agreement apply; and 10
- (ii) the employers of employees described in **subparagraph (i)**; and
- (b) in relation to a proposed FPA, a proposed variation, a proposed renewal, or a proposed replacement, means—
- (i) the employees who perform work to which the terms of the proposed FPA, the proposed variation, the proposed renewal, or the proposed replacement apply; and 15
- (ii) the employers of the employees described in **subparagraph (i)**
- (c) in relation to a proposed FPA, a proposed renewal, or a proposed replacement, is as approved by the chief executive when the chief executive approves initiating bargaining. 20
- (3) Regulations made to specify the employee default bargaining party must specify an organisation that—
- (a) represents unions; and
- (b) is the most representative organisation of unions in New Zealand. 25
- (4) Regulations made to specify the employer default bargaining party must specify an organisation that—
- (a) represents employers; and
- (b) is the most representative organisation of employers in New Zealand.
- (5) Unless the context otherwise requires, any term or expression that is defined in the Employment Relations Act 2000 and used, but not defined, in this Act has the same meaning as in that Act. 30
- 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. 35
- 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

5

General principles and obligations**9 Object of this Part**

The object of this Part is to establish that, in relation to bargaining,—

- (a) a covered employee may only be represented by an employee bargaining party; and 10
- (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 specified good faith obligations apply to the relevant parties. 15

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,— 20
 - (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,— 25
 - (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. 30

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

- (1) For the purposes of bargaining, only an employee bargaining party may represent the collective interests of covered employees. 35

- (2) For the purposes of **subsection (1)**,—
- (a) a union that is an employee bargaining party may represent a covered employee's interests despite the employee not being a member of the union, or of any other union; and
 - (b) an employee default bargaining party may represent a covered employee's interests despite the employee not being a member of the employee default bargaining party or a union. 5
- 12 Only employer bargaining party may represent covered employers' interests during bargaining**
- (1) For the purposes of bargaining, only an employer bargaining party may represent the collective interests of covered employers. 10
- (2) For the purposes of **subsection (1)**,—
- (a) an employer association that is an employer bargaining party may represent a covered employer's interests despite the employer not being a member of the employer association, or of any other employer association; and 15
 - (b) an employer default bargaining party may represent a covered employer's interests despite the employer not being a member of the employer default bargaining party or an employer association.
- Prohibition on preference* 20
- 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 25
 - (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 an employee who— 30
- (a) is within the coverage of the fair pay agreement; and
 - (b) is a member of a union or a particular union.
- (3) **Subsection (1)** is not breached because an employee's individual contract differs from those of other employees employed by the same employer.
- (4) For the purpose of **subsection (2)**, **union member payment** means a payment, agreed in a fair pay agreement, that— 35
- (a) an employer pays to each of its employees who are—
 - (i) within the coverage of the agreement; and

- (ii) a member of a union or of a particular union; and
- (b) is a separate payment from the employer to its employee; and
- (c) is not part of the employee's base wage; and
- (d) is no more, in total, over the period covered by the fair pay agreement, than the total amount of the employee's union membership fees (for 1 union only) for the period covered by the fair pay agreement. 5

14 **Prohibition on preference: employers**

A fair pay agreement or any other contract, agreement, or arrangement must not confer any benefit or opportunity on an employer because the employer is or is not a member of an employer association or a particular employer association (for example, an arrangement must not offer an employer a more favourable contract on the condition that the employer not join an employer association). 10

15 **Contracts, agreements, or other arrangements inconsistent with section 13 or 14** 15

A 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, exert undue influence, directly or indirectly, on another person with the intention of inducing the other person— 20
 - (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 25
 - (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 30
 - (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. 35
- (3) A person who contravenes **subsection (1)** is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**.

Subpart 2—Good faith obligations

17 General obligation 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 5
 - (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— 10
- (a) an employer and an employee employed by the employer:
 - (b) an employer and a union that is an employee bargaining party but not an 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 FPA, proposed variation, proposed renewal, or proposed replacement: 15
 - (e) a union bargaining party and a member of another union bargaining party, where both union bargaining parties are parties to the same fair pay agreement: 20
 - (f) an employee bargaining party and another employee bargaining party, where both employee bargaining parties are bargaining for the same proposed FPA, proposed variation, proposed renewal, or proposed replacement: 25
 - (g) an employee bargaining party and another employee bargaining party, where both employee bargaining parties are parties to 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 FPA, proposed variation, proposed renewal, or proposed replacement: 30
 - (i) an employer bargaining party and another employer bargaining party, where both employer bargaining parties are parties to the same fair pay agreement: 35
 - (j) the employee bargaining parties on the employee bargaining side and the employer bargaining parties on the employer bargaining side, where both bargaining sides are bargaining for the same proposed FPA, proposed variation, proposed renewal, or proposed replacement:

- (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 parties to the same fair pay agreement.
- (3) The activities are—
- (a) bargaining for— 5
- (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: 10
- (c) any activity relating to bargaining for—
- (i) a proposed FPA:
- (ii) a proposed variation:
- (iii) a proposed renewal: 15
- (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. 20
- (5) This section does not prevent an employer from communicating with the employer's employees during bargaining (including, for example, the employer's proposals for the proposed FPA) as long as communication is consistent with the obligation of good faith in **subsection (1)(a) and (b)**. 25

Compare: 2000 No 24 s 4

18 Good faith obligations between bargaining parties on same bargaining side

- (1) The good faith obligations set out in this section apply as part of (but do not limit) the general obligation of good faith in **section 17**. 30
- (2) The good faith obligations in **subsection (3)** apply to bargaining parties that—
- (a) are bargaining for the same proposed FPA, proposed renewal, or proposed replacement; and 35
- (b) are on the same bargaining side; and

- (c) have formed or joined the bargaining side within 3 months of the chief executive notifying approval of an application to initiate bargaining for the proposed FPA, the proposed renewal, or the proposed replacement.
- (3) The good faith obligations for the bargaining parties described in **subsection (2)** are— 5
- (a) to agree the inter-party side agreement in accordance with **section 59(2)(a)**; and
- (b) to appoint a bargaining side lead advocate for the bargaining side.
- 19 Good faith obligations between bargaining parties on different bargaining sides** 10
- (1) The good faith obligations set out in this section apply as part of (but do not limit) the general obligation of good faith in **section 17**.
- (2) The good faith obligations in **subsection (3)** apply to bargaining parties that are bargaining for the same proposed FPA, proposed variation, proposed renewal, or proposed replacement but that are not on the same bargaining side. 15
- (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 for the proposed FPA, the proposed variation, the proposed renewal, or the proposed replacement, to use their best endeavours to enter into an arrangement that sets out a process for conducting the bargaining in an effective and efficient manner; and 20
- (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 25
- (d) to continue to bargain with the other bargaining side on any matter on which the bargaining sides have not reached agreement, even if either side considers that the bargaining has reached a deadlock on that, or any other, matter; and 30
- (e) to use their best endeavours to agree the terms of the proposed FPA, the proposed variation, the proposed renewal, or the proposed replacement 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 35
- (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 **section 92**, with any information that— 40

- (i) the other bargaining side requests in accordance with **section 92**; 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. 5

20 Penalty for breach of duty of good faith

- (1) An employer who fails to comply with the obligation of good faith in **section 17** by doing anything that is intended to persuade 1 or more of the employer's employees not to participate in initiating, bargaining for, or ratifying a proposed FPA, a proposed variation, a proposed renewal, or a proposed replacement is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**. 10
- (2) A party who fails to comply with the obligation of good faith in **section 17** while bargaining for a proposed FPA, a proposed variation, a proposed renewal, or a proposed replacement, is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196** if the failure to comply with the duty of good faith— 15
- (a) is deliberate, serious, and sustained; or
 - (b) is intended to undermine the process of bargaining. 20
- (3) A party who fails to comply with the obligation of good faith in **section 17** with the intention of undermining a fair pay agreement, is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 197**.

21 Treating employee as independent contractor 25

- (1) The obligation set out in this section applies as part of the general obligation of good faith in **section 17**.
- (2) An employer must not engage a person as an independent contractor if—
- (a) the real nature of the relationship is that the person is the employer's employee; and 30
 - (b) the employer engages the person as an independent contractor, rather than as an employee, to prevent the person from being within the coverage of a fair pay agreement.
- (3) An employer who fails to comply with **subsection (2)** is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 197**. 35
- (4) For the purposes of **subsection (3)**, the presumption in **subsection (5)** applies if, in any matter before the Authority or the court, a person establishes that—

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

Subpart 3—General obligations

22 Obligations imposed on bargaining sides 10

- (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. 15

23 Personal information

- (1) Personal information that is provided to a bargaining side for the purpose of bargaining under this Act (excluding contact details provided under **section 39, 101, 102, 141(3), 171(4), 172(2)(c), 173(4), or 193(8)**)— 20
 - (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 right of an individual to access or disclose information about them under the Privacy Act 2020 or any other Act (including the right to complain under Part 5 of the Privacy Act 2020 if personal information is collected, held, used, or disclosed contrary to this Act). 25
- (3) In this section, **personal information** has the same meaning as in section 7(1) of the Privacy Act 2020. 30

24 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: 35
- (b) verifying that a ratification vote complies with the requirements set out in this Act:
- (c) monitoring compliance with this Act.

25 Strikes and lockouts

- (1) Participation in a strike or lockout that relates to bargaining for a proposed FPA, a proposed variation, a proposed renewal, or a proposed replacement is unlawful, unless the strike or lockout is otherwise lawful under section 84 of the Employment Relations Act 2000 (lawful strikes and lockouts on grounds of safety or health). 5
- (2) In this section, **strike** and **lockout** have the meanings provided in Part 8 of the Employment Relations Act 2000.

Part 3**Initiating bargaining for proposed FPA** 10**26 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. 15
- (3) Once the chief executive has approved a union to initiate bargaining, a union that wishes to join the employee bargaining side, or an employer association that wishes to form or join an employer bargaining side, must apply to the chief executive for approval to do so. 20
- (4) Once a bargaining side is formed, it has obligations that include—
- (a) the good faith obligations specified in **Part 2**; and
 - (b) obligations relating to representation; and
 - (c) the requirement to appoint a bargaining side lead advocate; and
 - (d) the requirement to enter into an inter-party side agreement under **section 59(2)(a)**. 25

Subpart 1—Process for initiating bargaining and forming bargaining sides

27 Limit on initiating bargaining

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

Union to apply for approval to initiate bargaining for proposed FPA

28 Criteria for union to initiate bargaining for proposed FPA

- (1) A union may initiate bargaining for a proposed FPA if—

- (a) the union is an eligible union; and
- (b) in respect of the proposed FPA, the chief executive is satisfied that the union's application meets one of the following initiation tests:
- (i) the representation test for initiating bargaining (*see section 29(1)*); or 5
 - (ii) the public interest test for initiating bargaining (*see section 29(4)*); and
- (c) the chief executive has notified, under **section 34**, approval of the union's application to initiate bargaining for the proposed FPA.
- (2) Despite **subclause (1)**, a union is not permitted to initiate bargaining if the proposed FPA and a fair pay agreement have exactly the same coverage. 10
- 29 Tests for initiating bargaining**
- (1) For the purposes of **section 28(1)(b)(i)**, the chief executive must be satisfied that a union's application meets the representation test if—
- (a) at least 1,000 covered employees support initiating bargaining for the proposed FPA; or 15
 - (b) 10% of all covered employees support initiating 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 covered employees support initiating bargaining. 20
- (3) Demonstrating that an employee is a member of the union that is initiating bargaining is not, of itself, sufficient evidence that the employee supports initiating bargaining for the proposed FPA.
- (4) For the purposes of **section 28(1)(b)(ii)**, the chief executive must be satisfied that a union's application meets the public interest test if the employees within the coverage of the proposed FPA— 25
- (a) receive low pay for their work; or
 - (b) have little bargaining power in their employment; or
 - (c) have a lack of pay progression in their employment (for example, pay rates only increase to comply with minimum wage requirements); or 30
 - (d) are not adequately paid, taking into account factors such as—
 - (i) working long or unsocial hours (for example, working weekends, night shifts, or split shifts):
 - (ii) contractual uncertainty, including performing short-term seasonal work or working on an intermittent or irregular basis. 35
- (5) A union's application for approval may, if it is made on the basis that it meets the public interest test under **subsection (4)**, include evidence of any of the following:

-
- (a) the coverage of the proposed FPA includes a high proportion of migrant employees:
 - (b) there is systemic exploitation of migrant workers who are or would be covered employees:
 - (c) most of the covered employees are employed on a temporary basis: 5
 - (d) there is systemic failure to comply with minimum employment standards for the covered employees:
 - (e) a high proportion of the covered employees are employed by small-to-medium-sized employers:
 - (f) there is systemic health and safety issues for the covered employees. 10
- (6) **Subsection (4)** must be applied in accordance with any regulations, which may include 1 or more of the following:
- (a) further details as to how to satisfy the criteria specified in **subsection (4)**:
 - (b) further details about the evidence that may be included, in accordance with **subsection (5)**, with an application that is made on the basis of meeting the public interest test. 15
- (7) For the purposes of this section, **small-to-medium-sized employer** means an employer who employs fewer than 20 employees at the beginning of the day on which the union submits the application to the chief executive. 20
- 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: 25
 - (i) the name of the union;
 - (ii) the name of a primary contact person for the union;
 - (iii) the email address of the primary contact person; and
 - (c) specify the coverage of the proposed FPA (*see* **section 31**), including,— 30
 - (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 35

- (B) the occupation, including the work or the type of work, that is intended to be within the coverage of the proposed FPA; and
- (d) specify which initiation test the union’s application meets; and
- (e) provide evidence of— 5
- (i) the applicant being an eligible union; and
- (ii) how the application meets the relevant initiation test; and
- (f) be signed by an authorised representative of the union; and
- (g) include any other information required by regulations.
- (2) Evidence provided to demonstrate how the application meets the relevant initiation test must— 10
- (a) be no more than 12 months old as at the date on which the union submits the application; and
- (b) align with the coverage of the proposed FPA.
- (3) A union that intentionally or recklessly provides inaccurate information as part of an application is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**. 15

31 Coverage of proposed FPA

- (1) The coverage of a proposed FPA must be described according to—
- (a) the occupation of the employees whom the proposed FPA would cover (an **occupation-based agreement**); or 20
-
- Example**
Coverage of occupation-based agreement
 A proposed FPA that would cover all commercial cleaners is an occupation-based agreement. 25
-
- (b) the occupations, including the work or the type of work, of the employees whom the proposed FPA would cover and the industry in which the covered employees are employed (an **industry-based agreement**). 30
-
- Example**
Coverage of industry-based agreement
 A proposed FPA that would cover butchers and bakers in the supermarket and grocery industry is an industry-based agreement. 30
-
- (2) An occupation-based agreement must apply to all employees who are employed in the occupation covered by the agreement. 35
- (3) An industry-based agreement must apply to all employees who are employed in the occupation and industry covered by the agreement.

- (4) The coverage of a proposed FPA must be specified with sufficient clarity so that all employees and employers are able to determine whether they are within the coverage of the proposed FPA.

Chief executive assesses application for approval to initiate bargaining

- 32 Chief executive must assess application for approval to initiate bargaining** 5
- (1) As soon as practicable 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 or not the chief executive has approved the application; 10
and
 - (ii) if the chief executive has approved the application, the coverage of the proposed FPA that the chief executive has approved.
- (2) The chief executive may require the applicant to provide additional information or evidence if the chief executive considers the application does not contain enough information for the chief executive to decide whether to approve the application. 15
- (3) If, after considering any additional information or evidence provided under **subsection (2)**, the chief executive considers that the application does not define the coverage of the proposed FPA with sufficient clarity, the chief executive must assist the union to define the coverage of the proposed FPA more clearly. 20
- (4) The chief executive must approve the application only if satisfied that the application meets the following requirements:
- (a) the application complies with the requirements in **section 30(1)**; and 25
 - (b) based on the information provided in the application,—
 - (i) the coverage of the proposed FPA is defined with sufficient clarity (as required by **section 31(4)**); and
 - (ii) the applicant has met one of the initiation tests for the coverage of the proposed FPA; and 30
 - (iii) the coverage of the proposed FPA is not exactly the same as the coverage of—
 - (A) a fair pay agreement; or
 - (B) a proposed FPA for which bargaining has already been initiated. 35
- (5) The chief executive must decline an application if,—

- (a) after assisting the union under **subsection (3)**, the chief executive considers the application does not define the coverage of the proposed FPA with sufficient clarity; or
 - (b) after considering any additional information or evidence provided under **subsection (2)**, the chief executive is not satisfied that the application meets the requirements listed in **subsection (4)**. 5
- (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.

33 Chief executive may invite submissions when considering application

- (1) When considering whether to approve an application for approval to initiate bargaining that relies on one of the following initiation tests, the chief executive may invite public submissions on whether the application meets the test: 10
 - (a) the public interest test specified in **section 29(4)**;
 - (b) the representation test specified in **section 29(1)(b)**.
- (2) An invitation to make submissions must specify the date by which the chief executive must receive any submissions, which must be at least 20 working days after the chief executive invites submissions. 15
- (3) The chief executive must consider any submissions received by the specified date before deciding whether to approve the application.
- (4) If the chief executive receives an application that includes personal information, the chief executive must not disclose that personal information to any other person, except in a form in which the individual concerned is not identified. 20

34 Chief executive to publicly notify decision

- (1) Within 5 working days after approving an application to initiate bargaining for a proposed FPA, the chief executive must publicly notify the following information: 25
 - (a) the fact that the chief executive has approved the application;
 - (b) the name of the applicant;
 - (c) whether the application relied on the representation test or the public interest test for initiating bargaining (*see section 29*): 30
 - (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— 35
 - (a) state that each covered employee and each covered employer (as at the date on which the chief executive approved the application to initiate bargaining)—

- (i) may be represented in the bargaining for the proposed FPA; and
- (ii) unless the coverage of the proposed FPA changes during bargaining, will be bound by the fair pay agreement; and
- (b) state where to find a plain language explanation of the next steps for bargaining. 5
- (3) If the chief executive approves an application to initiate bargaining for a proposed FPA with coverage that overlaps with the coverage of another proposed FPA or a fair pay agreement,—
 - (a) the chief executive must also comply with **sections 104, 108, and 111**; and 10
 - (b) **sections 105 to 111** apply.

Formation of employee bargaining side

35 Formation of employee bargaining side

- (1) An employee bargaining side for a proposed FPA is formed 3 months after the date on which the chief executive notifies, under **section 34**, that the chief executive has approved the application from an eligible union to initiate bargaining for the proposed FPA. 15
- (2) There is no limit to the number of eligible unions that may join an employee bargaining side after it is formed.

Initiating union must notify approval to initiate bargaining 20

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

- (1) Within 15 working days after receiving notice that the chief executive has approved its application to initiate bargaining, an initiating union must—
 - (a) identify each other union that the initiating union considers is likely to have members who are covered employees, and notify it that the initiating union has received approval to initiate bargaining; and 25
 - (b) identify each employer that the initiating union considers is likely to be a covered employer, and notify it that the initiating union has received approval to initiate bargaining. 30
- (2) A notification under **subsection (1)** must—
 - (a) be in writing; and
 - (b) state where to find the notice issued by the chief executive under **section 34**; and
 - (c) include a statement for an employer to provide to each of its covered employees; and 35

- (d) include a form, approved and issued by the chief executive under **section 243**, that sets out the following information:
- (i) that an employer is required to provide contact details for each of the employer's covered employees to the initiating union, unless the employee elects not to have their contact details provided: 5
 - (ii) the process by which an employee who does not want their contact details to be provided to the initiating union can elect not to have their contact details provided:
 - (iii) the reason for providing the employee's contact details to the initiating union: 10
 - (iv) an explanation of to whom the initiating union is able to provide the employee's contact details:
 - (v) an explanation of the purposes for which the employee's contact details may be used:
 - (vi) the consequences of the employee electing not to have their contact details provided: 15
 - (vii) how an employee who has elected not to have their contact details provided can rescind that election so that the employer must provide the employee's contact details to the initiating union.
- (3) A statement provided under **subsection (2)(c)** must— 20
- (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: 25
 - (i) that the 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: 30
 - (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: 35
 - (v) where to find further information about the proposed FPA and the bargaining process:

- (vi) how to contact the initiating union to request any further information.

37 Employer to notify employees and unions of bargaining being initiated

- (1) Within 15 working days after receiving notice from a union under **section 36**, a covered employer must notify each union that has a member who is a covered employee employed by the employer— 5
- (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 34**.
- (2) As soon as possible, but no later than 30 working days after being advised 10 (whether in accordance with this Act or otherwise) that the chief executive has approved initiating bargaining for the proposed FPA, a covered employer must provide each of its covered employees with a copy of the form provided under **section 36(2)(d)** and—
- (a) a copy of the statement provided under **section 36(2)(c)**; or 15
- (b) if the employer has not received a statement from the union, the information required to be contained in that statement (*see section 36(3)(d)*) in the format required under **section 36(3)(a) and (b)**.
- (3) An employer must provide the information required by **subsection (2)** in writing and individually to each covered employee (for example, by emailing 20 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 36(2)(c)** and a form under **section 36(2)(d)**, the employer—
- (a) must not amend the wording of the statement or the form before providing 25 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 30 the applicable amount specified in **section 196**.

38 Union to notify employers of bargaining being initiated

- (1) Within 15 working days after being notified under **section 36(1)(a) or 37(1)**, a union that has members within the coverage of the proposed FPA must send a notice to each employer that is a party to a current collective agreement with 35 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 34**; and
 - (c) include the statement provided under **section 36(2)(c)**; and 5
 - (d) include the form provided under **section 36(2)(d)**.
- (3) If a union provides an employer with a statement under **subsection (2)(c)** and a form under **subsection (2)(d)**, the union—
- (a) must not amend the wording of the statement or the form before providing it to the employer; but 10
 - (b) may provide information to the employer that is additional to the information contained in the statement and the form.

Employee contact details

39 Employer to provide employee contact details to employee bargaining side

- (1) Subject to **subsection (3)**, an employer who is advised (whether in accordance with this Act or otherwise) that the chief executive has approved initiating bargaining for a proposed FPA must provide the following contact details for each of the employer's covered employees to the initiating union (or to the updated contact address for the employee bargaining side provided under **section 99**) and any other employee bargaining party for the proposed FPA: 15 20
- (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 email address:
 - (e) if the employee does not have an email address at work but has a telephone number at work, that telephone number: 25
 - (f) if the employee does not have a telephone number or an email address at work, but has provided a personal email address to the employer, that personal email address.
- (2) The employer must provide the contact details as soon as is reasonably practicable after the date that is 20 working days after the employer provided the relevant information to its employees under **section 37(2)**. 30
- (3) The employer must not provide the contact details of an employee who has elected, in accordance with **section 36(2)(d)(ii)**, not to have their contact details provided. 35
- (4) An employer who intentionally or recklessly fails to comply with this section is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**.

- 40 Use of employee contact details by initiating union or employee bargaining party**
- (1) An initiating union or employee bargaining party that receives employees' contact details under **section 39, 101, 102, 141(3), 171(4), 172(2)(c), 173(4), or 193(8)** must not use the contact details for a purpose that is not related to the proposed FPA, the proposed variation, the proposed renewal, the proposed replacement, or the fair pay agreement. 5
- (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 10
- (b) the contact details provided by the employee as part of being or becoming a member of the initiating union or the employee bargaining party match those provided under a section listed in **subsection (1)**.
- (3) Any communication from an initiating union or employee bargaining party using the contact details received under **section 39, 101, 102, 141(3), 171(4), 172(2)(c), 173(4), or 193(8)**— 15
- (a) may, if the primary purpose of the communication is related to the proposed FPA, the proposed variation, the proposed renewal, the proposed replacement, or the fair pay agreement, also provide supplementary information to the employee despite **subsection (1)**; and 20
- (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)** may, without limitation, include information about how to join a union. 25
- 41 Storage of employee contact details**
- (1) An initiating union or an employee bargaining party that receives employees' contact details under **section 39, 101, 102, 141(3), 171(4), 172(2)(c), 173(4), or 193(8)** must ensure that— 30
- (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). 35
- (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. 40

*Employer bargaining side***42 Meaning of employer association**

In this Act, **employer association** means an association that—

- (a) is an incorporated society registered under the Incorporated Societies Act 1908; and 5
- (b) has at least 1 member that is a covered employer; and
- (c) has a purpose that enables the association to promote the collective work interests of covered employers for the purposes of—
 - (i) bargaining for a proposed FPA; and
 - (ii) a fair pay agreement; and 10
- (d) has rules that are democratic, not unreasonable, not unfairly discriminatory or unfairly prejudicial, and not contrary to any law; and
- (e) is independent from, and is constituted and operates at arm's length from, any union or worker organisation.

43 Employer bargaining party must apply to form or join employer bargaining side 15

- (1) If the chief executive notifies, under **section 34**, that the chief executive has approved a union's application to initiate bargaining for a proposed FPA, an eligible employer association that wishes to form or join the employer bargaining side for the proposed FPA must apply to the chief executive for approval to do so. 20
- (2) An application must—
 - (a) be in writing; and
 - (b) state the following details:
 - (i) the name of the employer association: 25
 - (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 30
 - (d) be signed by an authorised representative of the employer association; and
 - (e) include any other information required by regulations.
- (3) An eligible employer association may only form or join an employer bargaining side between— 35
 - (a) the date on which the chief executive approves the initiation of bargaining for the proposed FPA; and

- (b) the date on which the chief executive validates the proposed FPA under **section 156**.

44 Chief executive to assess application for approval to form or join employer bargaining side

- (1) The chief executive may require an applicant for approval to form or join 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. 5
- (2) The chief executive must, as soon as practicable,—
- (a) assess each application and,— 10
- (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 15
- (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,—
- (a) advise the employer association of the reasons for declining the application; and 20
- (b) advise the employer association how to make a new application that the chief executive would be able to approve.
- (4) If the chief executive declines an application, the employer association may make another application. 25

45 Formation of employer bargaining side

- (1) An employer bargaining side for a proposed FPA is formed 3 months after the date on which the chief executive notifies, under **section 34**, that the chief executive has approved the application from an eligible union to initiate bargaining for the proposed FPA. 30
- (2) There is no limit to the number of eligible employer associations that may join an employer bargaining side after it is formed.
- (3) However, to form or join an employer bargaining side, an eligible employer association must have an application approved under **section 44**.

46 Entitlement and obligation to represent covered employers 35

- (1) When bargaining for a proposed FPA, an employer bargaining party for the proposed FPA is entitled to represent, and must use its best endeavours to rep-

- resent, 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)**, an employer bargaining party must, at least,—
- (a) provide regular updates about bargaining to all covered employers; and 5
 - (b) give all covered employers the opportunity to provide feedback to the employer bargaining side in relation to the bargaining; and
 - (c) consider, during bargaining, all feedback received from covered employers; and
 - (d) advise all covered employers of any ratification vote (*see section 143*); and 10
 - (e) consider whether all interest groups of covered employers are recognised and given the opportunity to provide feedback to the employer bargaining side in relation to bargaining; and
 - (f) if the proposed FPA covers employees of a private sector employer and the employer bargaining party is aware that the private sector employer regularly receives government funding to deliver public services, provide regular updates about bargaining to the department responsible for that funding. 15
- (3) An employer bargaining party must not, whether directly or indirectly, do anything to mislead or deceive or that is likely to mislead or deceive a covered employer. 20
- (4) In **subsection (2)(f)**, **department** has the meaning given in section 5 of the Public Service Act 2020.
- 47 Exceptions for specified employer bargaining party** 25
- Despite **section 46**, if a specified employer bargaining party is a bargaining party for a proposed FPA 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 for the proposed FPA or the fair pay agreement must not represent the interests of the specified employer bargaining party or of any employer that the specified employer bargaining party is representing. 30
- 48 Obligation to ensure representation of Māori employers**
- Each employer bargaining party for a proposed FPA must use its best endeavours to ensure that Māori employers are represented effectively in the bargaining process, including by— 35
- (a) seeking and considering feedback from representatives of Māori employers; and

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

Other union may apply to join employee bargaining side

49 Other union may apply for approval to join employee bargaining side

- (1) If the chief executive notifies, in accordance with **section 34**, that the chief executive has approved a union's application to initiate bargaining for a proposed FPA, a union (other than the union that submitted the approved application) that wishes to join the employee bargaining side must apply to the chief executive for approval to do so. 5
- (2) A union may make an application only if it is an eligible union. 10
- (3) A union may only form or join an employee bargaining party between—
- (a) the date on which the chief executive approves the initiation of bargaining for the proposed FPA; and
- (b) the date on which the chief executive validates the proposed FPA under **section 156**. 15

50 Application for approval for union to join employee bargaining side

A union's application for approval to join the employee bargaining side for a proposed FPA must—

- (a) be in writing; and
- (b) state the following details: 20
- (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 25
- (e) include any other information required by regulations.

51 Chief executive to assess application for approval to join employee bargaining side

- (1) The chief executive must, as soon as practicable,—
- (a) assess each application for approval to join an employee bargaining side for a proposed FPA; and 30
- (b) notify the applicant of the chief executive's decision.
- (2) The chief executive may require a union to provide further information or evidence if the chief executive considers the application does not contain enough information for the chief executive to decide whether to approve the application. 35

- (3) The chief executive must approve the union joining the employee bargaining side only if satisfied that the application complies with **section 50**.
- (4) The chief executive must decline an application if, after considering the application and any further information or evidence provided in response to a request made under **subsection (2)**, the chief executive is not satisfied that the application complies with **section 50**. 5
- (5) If the chief executive declines an application, the union may make another application.
- 52 Chief executive to notify decision on application for approval to join employee bargaining side** 10
- (1) As soon as practicable after receiving an application to join 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,— 15
- (a) advise the union of the reasons for declining the application; and
- (b) advise the union how to make a new application that the chief executive would be able to approve.
- (3) Within 5 working days of approving an application, the chief executive must publicly notify— 20
- (a) that it has approved a union’s application to join the employee bargaining side; and
- (b) the name of the union that it has approved.
- 53 Entitlement and obligation to represent covered employees**
- (1) When bargaining for a proposed FPA, an employee bargaining party for the proposed FPA is entitled to represent, and must use its best endeavours to represent, the collective interests of all covered employees, whether or not each employee is a member of the union. 25
- (2) To comply with **subsection (1)**, an employee bargaining side must, at least,—
- (a) provide regular updates about the bargaining to all covered employees; and 30
- (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 35
- (d) advise all covered employees of any ratification vote (*see section 143*); and

- (e) consider whether all interest groups of covered employees are recognised and given the opportunity to provide feedback to the employee bargaining side in relation to the bargaining.
- (3) An employee bargaining party must not, whether directly or indirectly, do anything to mislead or deceive or that is likely to mislead or deceive a covered employee. 5
- (4) A union's role as a member of an employee bargaining side is in addition to, and does not detract from, its right to represent its members' interests under section 18 of the Employment Relations Act 2000.
- 54 Obligation to ensure representation of Māori employees** 10
- Each employee bargaining party for a proposed FPA must use its best endeavours to ensure that Māori employees are represented effectively in the bargaining process, including by—
- (a) seeking and considering feedback from representatives of Māori employees; and 15
- (b) considering whether the bargaining side should include a member to represent the interests of Māori employees.
- 55 Union may provide members' views to employee bargaining side**
- If a union is not a bargaining party for a proposed FPA, but has members that are within the coverage of the proposed FPA,— 20
- (a) the union may provide its members' views to the employee bargaining side; and
- (b) the employee bargaining side must take those views into account when bargaining for the proposed FPA.
- Subpart 2—General provisions for initiating bargaining 25
- Notification of bargaining parties*
- 56 Notification of bargaining parties**
- The chief executive must, 3 months after the date on which the chief executive publicly notifies approval of an eligible union's application to initiate bargaining for a proposed FPA, provide each bargaining party for the proposed FPA with the name of each other bargaining party for the proposed FPA. 30
- Bargaining sides*
- 57 Employee bargaining side**
- (1) The employee bargaining side for a proposed FPA consists of the following bargaining parties: 35

- (a) the union that is approved under **section 32** to initiate bargaining for the proposed FPA; and
 - (b) any other union that is approved under **section 51** to join the employee bargaining side; and
 - (c) any other union that joins the bargaining side as a result of 2 proposed FPA's being consolidated in accordance with **section 107**; and 5
 - (d) the employee default bargaining party if it becomes a bargaining party under **subpart 3**.
- (2) The bargaining parties of an employee bargaining side are not able to prevent an additional eligible union that has been approved under **section 51** from joining the employee bargaining side. 10

58 Employer bargaining side

- (1) The employer bargaining side for a proposed FPA consists of the following parties:
- (a) each employer association that is approved, under **section 44**, to form or join an employer bargaining side for the proposed FPA; and 15
 - (b) any other employer association that joins the bargaining side as a result of 2 proposed FPA's being consolidated in accordance with **section 107**; and
 - (c) the employer default bargaining party if it becomes a bargaining party under **subpart 3**. 20
- (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.

59 Requirements for each bargaining side 25

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

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

60 Inter-party side agreement

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

61 When bargaining party subsequently joins bargaining side

If the chief executive approves a bargaining party to join a bargaining side after the bargaining side has provided its inter-party side agreement to the chief executive, the bargaining side— 20

- (a) is not required to amend its inter-party side agreement; but
- (b) must consider whether to amend the inter-party side agreement as a result of the bargaining party joining the bargaining side.

Specified employer bargaining parties

62 Interpretation 25

In **sections 63 to 66**,—

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

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

Director-General means the chief executive or acting chief executive of the Ministry of Health under the Public Service Act 2020 30

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 35

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 5

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. 10

63 Specified employer bargaining parties

- (1) The Public Service Commissioner is a specified employer bargaining party for a proposed FPA, a proposed variation, a proposed renewal, or a proposed replacement if—
 - (a) the chief executive has publicly notified, in accordance with **section 34**, that the chief executive has approved an application to initiate bargaining for a proposed FPA, a proposed variation, a proposed renewal, or a proposed replacement; and 15
 - (b) the coverage of the proposed FPA, the proposed variation, the proposed renewal, or the proposed replacement includes at least 1 employee of a public service agency or the education service. 20
- (2) The Public Service Commissioner may, under clause 6 of Schedule 3 of the Public Service Act 2020, delegate the role of specified employer bargaining party to—
 - (a) a public service chief executive of a department if at least 1 employee of the department is within the coverage of the proposed FPA, the proposed variation, the proposed renewal, or the proposed replacement: 25
 - (b) the Secretary for Education if at least 1 employee of the education service is within the coverage of the proposed FPA, the proposed variation, the proposed renewal, or the proposed replacement. 30
- (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. 35
- (4) The Director-General is a specified employer bargaining party for a proposed FPA, a proposed variation, a proposed renewal, or a proposed replacement if—
 - (a) the chief executive has publicly notified, in accordance with **section 34**, that the chief executive has approved an application to initiate bar-

- gaining for a proposed FPA, a proposed variation, a proposed renewal, or a proposed replacement; and
- (b) the coverage of the proposed FPA, the proposed variation, the proposed renewal, or the proposed replacement includes at least 1 employee of a DHB. 5
- (5) The Director-General—
- (a) may delegate the role of specified employer bargaining party to the chief executive of Health New Zealand; or
- (b) must consult—
- (i) the chief executive of a DHB when acting as an employer bargaining party on behalf of that DHB; and 10
- (ii) the chief executive of Health New Zealand.
- (6) If delegated the role of specified employer bargaining party under **subsection (5)**, the chief executive of Health New Zealand must consult the chief executive of a DHB when acting as an employer bargaining party on behalf of that DHB. 15
- 64 Specified State employers**
- Section 65** 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 FPA, a proposed variation, a proposed renewal, a proposed replacement, or a fair pay agreement that covers at least 1 member of the Civil Staff: 20
- (b) the Chief Parliamentary Counsel (holding that office under section 135 of the Legislation Act 2019), in relation to a proposed FPA, a proposed variation, a proposed renewal, a proposed replacement, or a fair pay agreement that covers at least 1 employee appointed under section 136 or 138 of the Legislation Act 2019: 25
- (c) the Commissioner of Police (holding office under section 12 of the Policing Act 2008) in relation to a proposed FPA, a proposed variation, a proposed renewal, a proposed replacement, or a fair pay agreement that covers at least 1 Police employee. 30
- 65 Options for specified State employer**
- (1) An employer listed in **section 64** may be an employer bargaining party for a proposed FPA, a proposed variation, a proposed renewal, or a proposed replacement if— 35
- (a) the chief executive has publicly notified, in accordance with **section 34**, that the chief executive has approved an application to initiate bar-

- gaining for the proposed FPA, the proposed variation, the proposed renewal, or the proposed replacement; and
- (b) the coverage of the proposed FPA, the proposed variation, the proposed renewal, or the proposed replacement includes at least 1 employee of the employer. 5
- (2) An employer listed in **section 64**—
- (a) may ask the Public Service Commissioner to act as an employer bargaining party on the employer’s behalf; but
- (b) the Public Service Commissioner is not obliged to act as an employer bargaining party if requested to do so under **paragraph (a)**. 10
- (3) If an employer listed in **section 64** 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 FPA.
- (4) If an employer listed in **section 64** decides not to act as an employer bargaining party and is not represented by the Public Service Commissioner, no other employer association for the proposed FPA, the proposed variation, the proposed renewal, or the proposed replacement is required to represent the employer’s interests. 15
- (5) **Subsection (4)** applies despite **section 46**.
- 66 Other specified State employers** 20
- (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: 25
- (iii) an employer that is a DHB.
- (2) **Subsection (3)** applies to an employer described in **subsection (1)** if—
- (a) the chief executive has publicly notified, in accordance with **section 34**, that the chief executive has approved an application to initiate bargaining for the proposed FPA, the proposed variation, the proposed renewal, or the proposed replacement; and 30
- (b) the coverage of the proposed FPA, the proposed variation, the proposed renewal, or the proposed replacement includes at least 1 employee of the employer.
- (3) An employer described in **subsection (1)**— 35
- (a) may ask the Public Service Commissioner to act as an employer bargaining party on the employer’s behalf; but

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

- 67 Rights, duties, and obligations of specified employer bargaining party**
- (1) If a specified employer bargaining party acts as an employer bargaining party, it has all the rights, duties, and obligations of an employer bargaining party. 5
- (2) **Subsection (1)** is subject to **section 47(1)**.
- (3) **Subsection (1)** applies despite a specified employer bargaining party not otherwise being an eligible employer association and therefore not otherwise being eligible to join a bargaining side.
- 68 Specified employer bargaining party to notify chief executive** 10
- A specified employer bargaining party must notify the chief executive if it is an employer bargaining party for a proposed FPA, a proposed variation, a proposed renewal, or a proposed replacement.
- Subpart 3—Default bargaining parties
- 69 Overview: when default bargaining party may be required** 15
- (1) The circumstances in which a default bargaining party may be required include the following:
- (a) no employer bargaining party forms an employer bargaining side:
- (b) each bargaining party in a bargaining side ceases to be a bargaining party during bargaining: 20
- (c) a proposed FPA, a proposed variation, a proposed renewal, or a proposed replacement covers employees who are employed by a relevant employer and other employees, but 1 or more specified employer bargaining parties are the only employer bargaining parties on the employer bargaining side. 25
- (2) In this subpart, **relevant employer** means an employer that is described in **section 63, 64, or 66**.
- 70 Limit on employer default bargaining party being bargaining party**
- Despite anything to the contrary in this subpart, an employer default bargaining party is deemed to be, or may elect to be, an employer bargaining party for a proposed FPA, a proposed variation, a proposed renewal, or a proposed replacement only if the proposed FPA, the proposed variation, the proposed renewal, or the proposed replacement covers employees who are not employed by a relevant employer. 30
- 71 Chief executive to notify absence of bargaining party** 35
- (1) **Subsection (2)** applies if the chief executive—

- (a) grants approval under **section 94(2)** for a bargaining party for a proposed FPA, a proposed renewal, a proposed replacement, or a fair pay agreement to cease to be a bargaining party, with the result that there are no other bargaining parties on the bargaining side (**bargaining side A**) other than (in the case of an employer bargaining side) a specified employer bargaining party; or 5
- (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) a specified employer bargaining party.
- (2) If this subsection applies, the chief executive must notify— 10
- (a) the lead advocate for the other bargaining side for the proposed FPA, the proposed renewal, the proposed replacement, 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 15
- (ii) in all other cases, that there is no bargaining party on bargaining side A; and
- (b) the relevant default bargaining party that, in respect of the proposed FPA, the proposed renewal, the proposed replacement, or the fair pay agreement, there is no bargaining party on bargaining side A and, the default bargaining party must comply with its obligations under this sub-part. 20
- (3) **Subsection (4)** applies if the chief executive—
- (a) has notified under **section 34** that the chief executive has approved an application to initiate bargaining for a proposed FPA but, within 3 months of the chief executive’s notification, the chief executive has not approved an eligible employer association to form or join an employer bargaining side under **section 44**; or 25
- (b) has notified under **section 192** that the chief executive has approved an application to initiate bargaining for a proposed renewal or a proposed replacement but, within 3 months of the chief executive’s notification, the chief executive has not approved a bargaining party for the other bargaining side (other than a specified employer bargaining party). 30
- (4) If this subsection applies, the chief executive must notify—
- (a) the bargaining party that the chief executive approved to initiate bargaining that the chief executive has not approved a bargaining party for the other bargaining side (other than a specified employer bargaining party); and 35
- (b) the relevant default bargaining party—
- (i) that the chief executive has not approved a bargaining party for the other bargaining side (other than a specified employer bargain- 40

ing party), and that the default bargaining party is now the bargaining party for the proposed FPA; and

- (ii) whether a specified employer bargaining party is a bargaining party for the bargaining.

Default bargaining parties for proposed FPAs

5

72 Employer default bargaining party deemed to be employer bargaining party

- (1) The employer default bargaining party is deemed to be an employer bargaining party for a proposed FPA if—
 - (a) the chief executive has publicly notified, in accordance with **section 34**, that the chief executive has approved a union’s application to initiate bargaining for the proposed FPA; and 10
 - (b) either,—
 - (i) within 3 months of the chief executive’s notice of approval, an eligible employer association has not formed an employer bargaining side under **section 45**; or 15
 - (ii) during bargaining for the proposed FPA, all employer bargaining parties have ceased to be bargaining parties.
- (2) However, the employer default bargaining party is not deemed to be the employer bargaining party if the proposed FPA only covers employees who are employed by— 20
 - (a) a specified employer bargaining party; or
 - (b) an employer described in **section 66** who is represented by the Public Service Commissioner.
- (3) The employer default bargaining party must use its best endeavours to encourage an eligible employer association to form an employer bargaining side for the proposed FPA— 25
 - (a) during the 3 months after the chief executive’s notice of approval; but
 - (b) only until an eligible employer association forms a bargaining side for the proposed FPA. 30
- (4) Despite **subsection (1)**, if the chief executive approves an eligible employer association’s application to join the employer bargaining side for a proposed FPA for which the employer default bargaining party has been deemed to be an employer bargaining party from the date on which bargaining for the proposed FPA first started,— 35
 - (a) the employer default bargaining party is no longer deemed to be an employer bargaining party; and
 - (b) the eligible employer association becomes the employer bargaining side for the proposed FPA.

- (5) However, in the circumstances described in **subsection (4)**, if the default bargaining party is deemed to be an employer bargaining party part-way through the bargaining process for the proposed FPA, the default employer bargaining party continues to be the default employer bargaining party if the chief executive subsequently approves an eligible employer association's application to join the employer bargaining side. 5
- (6) **Subsection (1)** applies despite the default employer bargaining party not otherwise being an eligible employer association and therefore not otherwise being eligible to join a bargaining side.
- 73 Employee default bargaining party may elect to join bargaining** 10
- (1) The employee default bargaining party may elect to be an employee bargaining party for a proposed FPA if, during bargaining for the proposed FPA, all the employee bargaining parties cease to be bargaining parties.
- (2) The employee default bargaining party elects to be an employee bargaining party by notifying the chief executive of its election— 15
- (a) in writing; and
- (b) within 1 month after receiving notification from the chief executive under **section 71(2)**.
- (3) If the employee default bargaining party elects to be an employee bargaining party,— 20
- (a) it remains an employee bargaining party until bargaining for the proposed FPA stops; and
- (b) if an employee bargaining party joins the employee bargaining side after the employee default bargaining party has elected to be an employee bargaining party, the employee default bargaining party remains on the employee bargaining side with the employee bargaining party. 25
- (4) If the employee default bargaining party does not elect to be an employee bargaining party within 1 month after receiving notification from the chief executive under **section 71(2)**, bargaining for the proposed FPA stops.
- Default bargaining parties for proposed variations* 30
- 74 Default bargaining party may initiate bargaining for proposed variation**
- If there is no other bargaining party on the relevant bargaining side (other than a specified bargaining party), a default bargaining party may, in accordance with **Part 8**,—
- (a) request the other bargaining side's agreement to initiate bargaining for a proposed variation: 35
- (b) agree to initiate bargaining for a proposed variation:

- (c) if both bargaining sides agree to initiate bargaining, bargain for the proposed variation.

75 Default bargaining party may withdraw from bargaining for proposed variation

A default bargaining party that is bargaining for a proposed variation may withdraw from bargaining at any time. 5

Default bargaining parties for proposed renewals or proposed replacements

76 Employer default bargaining party for proposed renewal or proposed replacement

- (1) The employer default bargaining party is deemed to be an employer bargaining party for a proposed renewal or a proposed replacement if— 10
- (a) the proposed renewal or the proposed replacement is initiated by the employee bargaining side or a specified employer bargaining party; and
- (b) within 3 months of the chief executive’s notice of approval, an eligible employer association has not formed an employer bargaining side to bargain for the proposed renewal or the proposed replacement. 15
- (2) However, the employer default bargaining party is not deemed to be the employer bargaining party if the proposed FPA only covers employees who are employed by—
- (a) a specified employer bargaining party; or 20
- (b) an employer described in **section 66** who is represented by the Public Service Commissioner.
- (3) The employer default bargaining party must use its best endeavours to encourage an eligible employer association to form or join an employer bargaining side for the proposed renewal or the proposed replacement— 25
- (a) during the 3 months after the chief executive’s notice of approval to start bargaining for the proposed renewal or the proposed replacement (*see section 192*); but
- (b) only until an eligible employer association forms or joins the employer bargaining side. 30
- (4) Despite **subsection (1)**, if the chief executive approves an eligible employer association’s application to join the employer bargaining side for the proposed renewal or the proposed replacement,—
- (a) the employer default bargaining party is no longer deemed to be an employer bargaining party unless it was deemed to be an employer bargaining party part-way through the bargaining process for the proposed renewal or the proposed replacement; and 35
- (b) the eligible employer association becomes an employer bargaining party.

- (5) **Subsection (1)** applies despite the default employer bargaining party not otherwise being an eligible employer association and therefore not otherwise being eligible to join a bargaining side.
- 77 Employee default bargaining party for proposed renewal or proposed replacement** 5
- (1) The employee default bargaining party is deemed to be an employee bargaining party for a proposed renewal or a proposed replacement if—
- (a) an eligible employer association or a specified employer bargaining party initiates bargaining for the proposed renewal or the proposed replacement; and 10
- (b) within 3 months of the chief executive’s notice of approval, an eligible union has not formed an employee bargaining side to bargain for the proposed renewal or the proposed replacement.
- (2) The employee default bargaining party must use its best endeavours to encourage an eligible union to form or join an employee bargaining side for the proposed renewal or the proposed replacement— 15
- (a) during the 3 months after the chief executive’s notice of approval to start bargaining (*see section 192*); but
- (b) only until an eligible union forms or joins the bargaining side.
- (3) Despite **subsection (1)**, if the chief executive approves an eligible union’s application to join the employee bargaining side for the proposed renewal or the proposed replacement,— 20
- (a) the employee default bargaining party is no longer deemed to be an employee bargaining party unless it was deemed to be an employee bargaining party part-way through bargaining for the proposed renewal or the proposed replacement; and 25
- (b) the eligible union becomes an employee bargaining party for the proposed renewal or the proposed replacement.
- (4) **Subsection (1)** applies despite the default employee bargaining party not otherwise being an eligible union and therefore not otherwise being eligible to join a bargaining side. 30
- 78 Default bargaining parties when bargaining for proposed renewal or proposed replacement initiated by employer bargaining party**
- (1) **Subsections (2) and (3)** apply if an employer bargaining party (other than a specified employer bargaining party) initiates bargaining for a proposed renewal or a proposed replacement but, during bargaining,— 35
- (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) ceases to be a bargaining party, and the fair pay agreement covers employees who are not employed by—
- (i) a specified employer bargaining party or 5
 - (ii) an employer who is, or may be, represented by a specified employer bargaining party.
- (2) In the situation described in **subsection (1)(a)**,—
- (a) the employee default bargaining party is deemed to be an employee bargaining party for the proposed renewal or the proposed replacement; and 10
 - (b) if an employee bargaining party joins the employee bargaining side after the employee default bargaining party has been deemed to be an employee bargaining party, the employee default bargaining party remains on the employee bargaining side with the employee bargaining party. 15
- (3) In the situation described in **subsection (1)(b)**, if the fair pay agreement covers employees who are not employed by an employer described in **section 63, 64, or 66**, the employer default bargaining party may elect to be an employer bargaining party for the proposed renewal or the proposed replacement. 20
- (4) The employer default bargaining party elects to be an employer bargaining party by notifying the chief executive of its election—
- (a) in writing; and
 - (b) within 1 month after receiving notification from the chief executive under **section 71(2)**. 25
- (5) If the employer default bargaining party elects to be an employer bargaining party,—
- (a) it remains a bargaining party until bargaining for the proposed renewal or the proposed replacement stops; and
 - (b) if an employer bargaining party joins the employer bargaining side after the employer default bargaining party has elected to be an employer bargaining party, the employer default bargaining party remains on the employer bargaining side with the employer bargaining party. 30
- (6) If the employer default bargaining party does not elect to be an employer bargaining party within 1 month after receiving notification from the chief executive under **section 71(2)**, bargaining for the proposed renewal or the proposed replacement stops. 35

- 79 Default bargaining parties when bargaining for proposed renewal or proposed replacement initiated by specified employer bargaining party**
- (1) This section applies if a specified employer bargaining party initiates bargaining for a proposed renewal or a proposed replacement and, during bargaining,— 5
- (a) every employee bargaining party ceases to be a bargaining party for the proposed renewal or the proposed replacement; or
- (b) every employer bargaining party, other than a specified employer bargaining party, ceases to be a bargaining party for the proposed renewal or the proposed replacement, and the fair pay agreement covers employees who are not employed by an employer who is, or may be, represented by a specified employer bargaining party. 10
- (2) In the situation described in **subsection (1)(a)**, the employee default bargaining party is deemed to be the employee bargaining party for the purpose of bargaining for the proposed renewal or the proposed replacement. 15
- (3) In the situation described in **subsection (1)(b)**, the employer default bargaining party is deemed to be the employer bargaining party for the purpose of bargaining for the proposed renewal or the proposed replacement.
- (4) If the employer default bargaining party or the employee default bargaining party is deemed to be a bargaining party,— 20
- (a) it remains a bargaining party until bargaining for the proposed renewal or the proposed replacement stops; and
- (b) if an employer bargaining party joins the employer bargaining side after the employer default bargaining party has been deemed to be an employer bargaining party, the employer default bargaining party remains on the employer bargaining side with the employer bargaining party; and 25
- (c) if an employee bargaining party joins the employee bargaining side after the employee default bargaining party has been deemed to be an employee bargaining party, the employee default bargaining party remains on the employee bargaining side with the employee bargaining party. 30
- 80 Default bargaining parties when bargaining for proposed renewal or proposed replacement initiated by employee bargaining party**
- (1) This section applies if an employee bargaining party for a fair pay agreement initiates bargaining for a proposed renewal or a proposed replacement and, during bargaining,— 35
- (a) every employee bargaining party ceases to be a bargaining party for the proposed renewal or the proposed replacement; or

- (b) every employer bargaining party, other than a specified employer bargaining party, withdraws from bargaining for the proposed renewal or the proposed replacement, and the fair pay agreement covers employees who are not employed by a specified employer bargaining party.
- (2) In the situation described in **subsection (1)(a)**, the employee default bargaining party may elect to be an employee bargaining party for the purpose of bargaining for the proposed renewal or the proposed replacement. 5
- (3) In the situation described in **subsection (1)(b)**, the employer default bargaining party is deemed to be the employer bargaining party for the purpose of bargaining for the proposed renewal or the proposed replacement. 10
- (4) The employee default bargaining party may elect to be an employee bargaining party by notifying the chief executive of its election—
- (a) in writing; and
- (b) within 1 month after receiving notification from the chief executive under **section 71(2)**. 15
- (5) If the employee default bargaining party elects to be an employee bargaining party, or the employer default bargaining party is deemed to be an employer bargaining party,—
- (a) it remains a bargaining party until bargaining for the proposed renewal or the proposed replacement stops; and 20
- (b) if an employee bargaining party joins the employee bargaining side after the employee default bargaining party has elected to be an employee bargaining party, the employee default bargaining party remains on the employee bargaining side with the employee bargaining party; and
- (c) if an employer bargaining party joins the employer bargaining side after the employer default bargaining part has been deemed to be an employer bargaining party, the employer default bargaining party remains on the employer bargaining side with the employer bargaining party. 25
- (6) If the employee default bargaining party does not elect to be an employee bargaining party within 1 month after receiving notification from the chief executive under **section 71(2)**, bargaining for the proposed renewal or the proposed replacement stops. 30

Part 4

FPA meetings and union access to workplaces

Subpart 1—FPA meetings

81 Requirements for arranging FPA meeting

- (1) An employee bargaining party on an employee bargaining side for a proposed FPA, a proposed renewal, or a proposed replacement may arrange an FPA meeting if— 5
- (a) the chief executive has publicly notified, in accordance with **section 34 or 192**, that the chief executive has approved an application to initiate bargaining for the proposed FPA, the proposed renewal, or the proposed replacement; and 10
 - (b) both bargaining sides for the proposed FPA, the proposed renewal, or the proposed replacement have been formed; and
 - (c) the employee bargaining party has received approval from the employee bargaining side to hold the meeting on behalf of the employee bargaining side. 15
- (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 20
 - (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 25
 - (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. 30

82 Entitlement to attend FPA meetings

- (1) An employer must allow each employee who—
- (a) is within the coverage of a proposed FPA to attend 2 FPA meetings in relation to the proposed FPA; and
 - (b) is within the coverage of a fair pay agreement to attend 1 FPA meeting in relation to a proposed variation to that fair pay agreement; and 35

- (c) is within the coverage of a proposed renewal or a proposed replacement to attend 2 FPA meetings in relation to the proposed renewal or the proposed replacement.
- (2) Each FPA meeting must—
- (a) last no longer than 2 hours; and 5
 - (b) relate to the proposed FPA, the proposed variation, the proposed renewal, or the proposed replacement (as applicable); and
 - (c) take place during bargaining for the proposed FPA, the proposed variation, the proposed renewal, or the proposed replacement; and
 - (d) be arranged in accordance with **section 81**. 10
- (3) An employee who is within the coverage of a fair pay agreement is entitled to attend only 1 FPA meeting under **subclause (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) An employee is entitled to attend an FPA meeting despite not being a member of— 15
- (a) the union that arranges the meeting; or
 - (b) a union on the employee bargaining side; or
 - (c) any other union.
- (5) An 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. 20
- (6) An employer who fails to comply with this section is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**. 25
- 83 Payment for attending FPA meeting**
- (1) If an employee is within the coverage of a proposed FPA, a proposed variation, a proposed renewal, or a proposed replacement that will be discussed at an FPA meeting, the employee’s employer must allow the employee to attend the meeting on ordinary pay, to the extent that the employee would otherwise be working for the employer during the meeting. 30
- (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 35
 - (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 196**. 5

84 Entitlement to attend additional FPA meeting

- (1) An employer must allow each employee who is within the coverage of a proposed FPA, a proposed renewal, or a proposed replacement to attend 1 additional FPA meeting in relation to the proposed FPA, the proposed renewal, or the proposed replacement if— 10
- (a) the employee has already attended 2 FPA meetings under **section 82(1)(a) or (c)** (as applicable); and
- (b) in relation to the proposed FPA, the proposed renewal, or the proposed replacement, the result of either the first ratification vote of the covered employees, or the first ratification vote of the covered employers, is against ratification (*see subpart 2 of Part 7*). 15
- (2) The following sections apply to an FPA meeting held under this section, with all necessary modifications:
- (a) **section 81(1) and (3)**;
- (b) **section 82(2), (4), (5), and (6)**; 20
- (c) **section 83**.
- (3) An employer who fails to comply with this section is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**.

Subpart 2—Employee bargaining party may access workplaces 25

85 Workplace does not include dwellinghouse

- (1) For the purposes of **sections 86 to 91**, **workplace** does not include a dwellinghouse.
- (2) In this section, **dwellinghouse** has the meaning given in section 5 of the Employment Relations Act 2000. 30

86 Access to workplaces

- (1) A representative of an employee bargaining party is entitled, in accordance with this subpart, to enter a workplace without the employer's consent if the primary purpose of entering the workplace is to discuss with a covered employee (or an employee who may be affected by) 1 or more of the following: 35
- (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 is within the scope of **subsection (1)(a), (b), (c), or (d)** if, for example, it relates to—
- (a) communicating to employees any progress in bargaining for the proposed FPA, the proposed variation, the proposed renewal, or the proposed replacement; or
 - (b) seeking feedback from covered employees about any aspect of the proposed FPA, the proposed variation, the proposed renewal, or the proposed replacement.
- (3) A purpose for entering a workplace is within the scope of **subsection (1)(e)** if, for example, it 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) A representative of an employee bargaining party may, under **subsection (1)**, enter a workplace to meet with an employee who is not a covered employee if, for example, a proposed amendment would exclude the employee from coverage.
- (5) However, the representative is entitled to enter a workplace in accordance with **subsection (1)** only if—
- (a) 1 or more employees at the workplace are covered employees (whether or not the employees are members of a union); and
 - (b) the employee bargaining party is a bargaining party for the proposed FPA, the proposed variation, the proposed renewal, the proposed replacement, or the fair pay agreement.
- (6) A discussion in a workplace between an employee and a representative of an employee bargaining party who is entitled under this subpart to enter the workplace for the purpose of the discussion—
- (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 82 or 84** of this Act.
- (7) An employer must not deduct from an employee's wages any amount in respect of the period during which the employee is engaged in a discussion referred to in **subsection (6)**. 5
- (8) In this section and **sections 87 to 91**, if a default employee bargaining party is a bargaining party for a proposed FPA, a proposed variation, a proposed renewal, a proposed replacement, or a fair pay agreement, each reference to a representative of an employee bargaining party must be read as a reference to a representative of the default employee bargaining party. 10

Compare: 2000 No 24 s 20

87 Conditions relating to access

- (1) A representative of an employee bargaining party exercising the right to enter a workplace— 15
- (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— 20
 - (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,— 25
- (a) state the purpose of the entry; and
 - (b) produce evidence of the representative's identity and authority to represent the employee bargaining party. 30
- (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— 35
- (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.
- (5) A representative of an employee bargaining party who wilfully fails to comply with this section is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**. 5

Compare: 2000 No 24 s 21

88 When access to workplaces may be denied

- (1) A representative of an employee bargaining party may be denied access to a workplace if entry to the premises or any part of the premises might prejudice— 10
- (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. 15
- (3) A certificate is given in accordance with this subsection if—
- (a) it is given by the Attorney-General; and
 - (b) it certifies, in respect of the premises or part of the premises concerned, that permitting entry under **section 86** might prejudice— 20
 - (i) the security or defence of New Zealand; or
 - (ii) the investigation or detection of offences.

Compare: 2000 No 24 s 22

89 When access to workplaces may be denied on religious grounds

- A representative of an employee bargaining party may be denied access to a workplace if— 25
- (a) all the employees employed in the workplace are employed by an employer who holds a current certificate of exemption issued under **section 90**; and
 - (b) none of the employees employed in the workplace is a member of a union; and 30
 - (c) there are no more than 20 employees employed to work in the workplace.

Compare: 2000 No 24 s 23

90 Issue of certificate of exemption 35

- (1) The chief executive may, for the purposes of **section 89**, issue a certificate of exemption to an employer who is an individual if the chief executive is satisfied that the employer is a practising member of a religious society or order

whose doctrines or beliefs preclude membership of any organisation or body other than the religious society or order of which the employer is a member.

- (2) The chief executive may revoke a certificate of exemption if—
- (a) the employer to whom it has been issued agrees; or
 - (b) it was issued in error; or
 - (c) the chief executive is satisfied that the employer has ceased to be a person eligible to be issued with the certificate.

Compare: 2000 No 24 s 24

91 Duties in relation to accessing workplace

- (1) A person must not—
- (a) refuse to permit a representative of an employee bargaining party to enter a workplace; or
 - (b) obstruct a representative of an employee bargaining party from entering a workplace, or from doing anything reasonably necessary for, or incidental to, the purpose of entering the workplace; or
 - (c) wilfully fail to comply with **section 87**.
- (2) A person who fails, without lawful excuse, to comply with **subsection (1)** is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**.

Compare: 2000 No 24 s 25

Part 5 Bargaining

Subpart 1—Good faith obligation to provide information

92 Providing information when bargaining

- (1) This section applies for the purposes of **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.

-
- (3) A bargaining side that receives a request for information must provide the requested information—
- (a) directly to the bargaining side that requested the information; or
 - (b) to an independent reviewer if the bargaining side providing the information reasonably considers that it should be treated as confidential information. 5
- (4) A person must not act as an independent reviewer unless—
- (a) appointed by mutual agreement of the employee bargaining side and the employer bargaining side; or
 - (b) if the bargaining sides are unable to agree on who to appoint, following a determination from the Authority. 10
- (5) For the purposes of **subsection (4)**, if the bargaining sides are unable to agree on whom to appoint as an independent reviewer, either bargaining side may apply to the Authority under **section 212** for a determination as to whom the bargaining sides should appoint. 15
- (6) As soon as practicable after receiving information under **subsection (3)(b)**, an independent reviewer must—
- (a) decide whether, and if so to what extent, the information should be treated as confidential; and
 - (b) advise the bargaining sides of its decision. 20
- (7) If an independent reviewer decides that information should be treated as confidential, the independent reviewer must—
- (a) decide whether, and if so to what extent, the information supports or substantiates the claim, or the response to a claim, in respect of which the information is requested; and 25
 - (b) advise the bargaining sides of its decision in a way that maintains the confidentiality of the information; and
 - (c) answer any questions from the bargaining side that requested the information in a way that maintains the confidentiality of the information.
- (8) Unless the employee bargaining side and the employer bargaining side agree, information provided under **subsection (3)(a)** and advice and answers provided under **subsections (5) and (6)**— 30
- (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 35
 - (c) must not be disclosed by those persons to anyone else, including persons who would be bound by the proposed FPA to which the bargaining relates.
- (9) This section does not limit or affect the Privacy Act 2020.

- (10) Nothing in the Official Information Act 1982 (except section 6) enables an employer that is subject to that Act to withhold information that is requested under **section 19(3)(h)**.

Compare: 1972 No 118 s 13ZC

Subpart 2—Obligations during bargaining 5

Ceasing to be bargaining party

93 When bargaining party ceases to be bargaining party

A bargaining party ceases to be a bargaining party if—

- (a) the chief executive has approved the bargaining party ceasing to be a bargaining party by meeting one of the criteria in **section 94(1)**; or 10
- (b) the bargaining party is no longer eligible to be a bargaining party (*see section 95*).

94 Bargaining party may apply to cease being bargaining party

- (1) A bargaining party may apply to the chief executive for approval to cease being a bargaining party if— 15
 - (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. 20
- (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 FPA, the proposed variation, the proposed renewal, the proposed replacement, or the fair pay agreement for which it is a bargaining party; and 25
 - (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 FPA, the proposed variation, the proposed renewal, the proposed replacement, or the fair pay agreement; and 30
 - (d) whether any of the remaining bargaining parties is a specified employer bargaining party; and
 - (e) any other information required by regulations. 35
- (4) A bargaining party ceases to be a bargaining party on the date on which the chief executive approves the application.

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

95 Bargaining party ceases to be eligible

- (1) A bargaining party is no longer eligible to be a bargaining party if,— 5
- (a) in the case of an employee bargaining party, it ceases to be an eligible union; or
 - (b) in the case of an employer bargaining party, it ceases to be an eligible employer association; or
 - (c) in the case of a specified employer bargaining party, if coverage changes and the specified employer bargaining party no longer represents any covered employer; or 10
 - (d) in the case of a default bargaining party, if the default bargaining party is no longer deemed to be a bargaining party under **section 72, 76, or 77**, or if coverage changes and the default bargaining party no longer represents any covered employees or covered employers (as applicable). 15
- (2) A bargaining party (other than a default bargaining party or a specified employer bargaining party) must notify the chief executive that it is no longer eligible to be a bargaining party—
- (a) as soon as practicable after it becomes aware that it will cease to be eligible; but 20
 - (b) no later than 5 working days after it ceases, or becomes aware that it has ceased, to be eligible.
- (3) A bargaining party's notification to the chief executive must include—
- (a) details of the proposed FPA, the proposed variation, the proposed renewal, the proposed replacement, or the fair pay agreement for which it is a bargaining party; and 25
 - (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 FPA, the proposed variation, the proposed renewal, the proposed replacement, or the fair pay agreement; and 30
 - (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. 35

96 Appointment of new bargaining side lead advocate

If a bargaining side lead advocate for a proposed FPA is a representative of a bargaining party that ceases to be a bargaining party for the proposed FPA, the

relevant bargaining side for the proposed FPA must appoint a new bargaining side lead advocate under **section 59**.

97 Initiating union ceases to be bargaining party

If the initiating union for bargaining for a fair pay agreement ceases to be a bargaining party, the employee bargaining side must provide the employer bargaining side with a new address to which employers must provide their employees' contact details under **section 39**. 5

Provision of information

98 Modification to requirement to provide employees' contact details

An employer must provide its covered employee's contact details specified in **section 39** to an employee bargaining party other than the initiating union if— 10

- (a) the employer is required under this subpart to provide those contact details to the initiating union but the initiating union is no longer an employee bargaining party; and 15
- (b) the employee bargaining side has provided the employer with the address of the other employee bargaining party to which the employer must send the contact details.

99 Employee bargaining side must update contact address

- (1) The employee bargaining side for a proposed FPA, a proposed renewal, or a proposed replacement must ensure that the employer bargaining side for the proposed renewal or the proposed replacement has a current contact address to which an employer must send its employees' contact details when required to do so under this subpart. 20
- (2) The employer bargaining side must ensure that it provides the current contact address provided under **subsection (1)** to each employer within 5 working days of receiving the address. 25

100 Obligation to submit further information if coverage changed during bargaining

- (1) This section applies when— 30
 - (a) the chief executive has publicly notified, in accordance with **section 34 or 192**, that it has approved an application to initiate bargaining for a proposed FPA, a proposed renewal, or a proposed replacement; and
 - (b) bargaining has started and, as part of that bargaining, the bargaining sides have agreed to change the coverage of the proposed FPA, the proposed renewal, or the proposed replacement. 35
- (2) The initiating party (or if that party has ceased to be a bargaining party, another bargaining party on the same bargaining side as the initiating party) must pro-

- vide further evidence to the chief executive of how the proposed FPA, the proposed renewal, or the proposed replacement meets an initiation test in respect of the changed coverage if the application to initiate bargaining relied on 1 of the following initiation tests:
- (a) the representation test, on the basis that 10% of all covered employees support initiating bargaining (*see* **section 29(1)**); or 5
 - (b) the public interest test (*see* **section 29(4)**).
- (3) In the circumstances described in **subsection (1)**,—
- (a) the initiating party (or if that party has ceased to be a bargaining party, another bargaining party on the same bargaining side as the initiating party) must apply to the chief executive for approval to continue bargaining with the changed coverage; and 10
 - (b) the application must include evidence that the other bargaining side supports the changed coverage.
- (4) As soon as practicable after receiving an application for approval, the chief executive must— 15
- (a) assess the application; and
 - (b) notify the applicant in writing—
 - (i) whether or not the chief executive has approved the application; and 20
 - (ii) if the chief executive has approved the application, the coverage of the proposed FPA, the proposed renewal, or the proposed replacement that the chief executive has approved.
- (5) The chief executive must approve the application only if satisfied that, on the basis of the information provided in the application, both bargaining parties have agreed to the changed coverage of the proposed FPA, the proposed renewal, or the proposed replacement, and that the changed coverage— 25
- (a) is defined with sufficient clarity; and
 - (b) is not the same as the coverage of—
 - (i) a fair pay agreement that is already in force; or 30
 - (ii) a proposed FPA for which bargaining has already been initiated; and
 - (c) meets 1 of the initiation tests specified in **section 29(1) or (4) or 190**.
- (6) The chief executive may require the applicant to provide further information or evidence if the chief executive considers that the application does not contain sufficient information to decide whether to approve the application. 35
- (7) If, after considering any further information or evidence provided under **subsection (6)**, the chief executive considers that the application does not define

the changed coverage with sufficient clarity, the chief executive must assist the applicant to define the changed coverage more clearly.

- (8) The chief executive must decline an application if, after considering any further information or evidence provided under **subsection (6)**, the chief executive is not satisfied that the application meets the requirements listed in **subsection (5)**. 5
- (9) If the chief executive declines an application, the chief executive must also, by written notice, advise the applicant of the reasons for declining the application.

101 Provision of information: coverage changes or new employers identified

- (1) This section applies if,— 10
- (a) as a result of the coverage of a proposed FPA, a proposed renewal, or a proposed replacement changing during the bargaining process, an additional employee comes within the coverage of the proposed FPA, the proposed renewal, or the proposed replacement; or
- (b) during bargaining, the employer bargaining side becomes aware of a new employer that employs 1 or more employees who are within the coverage of a proposed FPA, a proposed renewal, or a proposed replacement. 15
- (2) In the circumstances described in **subsection (1)**,—
- (a) the employer bargaining side must provide a statement that complies with **section 36(3)** and the form required under **section 36(2)(d)** to each employer that has an employee described in **subsection (1)** (a newly covered employee); and 20
- (b) an employer with a newly covered employee must,—
- (i) unless it has already done so in respect of the proposed FPA, the proposed renewal, or the proposed replacement, comply with each requirement in **section 37(1)**; and 25
- (ii) no later than 30 working days after the change to the coverage or the new employer employing at least 1 covered employee (as applicable), comply with **section 37(2), (3), and (4)** in respect of each newly covered employee; and 30
- (c) an employer must provide the contact details of each newly covered employee (except for the details of an employee who elects not to have their contact details provided) to the employee bargaining side within 20 working days of providing the information required under **section 37(2)** to the employee. 35
- (3) The employer bargaining side must comply with **subsection (2)(a)** within 5 working days of,—
- (a) in the circumstances described in **subsection (1)(a)**, the chief executive approving the changed coverage; or 40

- (b) in the circumstances described in **subsection (1)(b)**, the employer bargaining side becoming aware of the new employee.
- (4) This section does not apply after the fair pay agreement has been validated.
- (5) An employer that intentionally or recklessly fails to comply with **subsection (2)(b) or (c)** is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**. 5

102 Provision of information: new employees within coverage

- (1) This section applies if, during bargaining, a new employee commences employment in a role that is within the coverage of the proposed FPA, the proposed renewal, or the proposed replacement. 10
- (2) In the circumstances described in **subsection (1)**,—
- (a) an employer with a new employee described in **subsection (1)** must,—
- (i) unless it has already done so in respect of the proposed FPA, the proposed renewal, or the proposed replacement, comply with each requirement in **section 37(1)**; and 15
- (ii) no later than 30 working days after the new employee commencing, comply with **section 37(2), (3), and (4)** in respect of the new employee; and
- (b) an employer must provide the contact details of each new employee (except for the details of an employee who elects not to have their contact details provided) to the employee bargaining side within 90 days of providing the information required under **section 37(2)** to the employee. 20
- (3) This section does not apply after the fair pay agreement has been validated.
- (4) An employer that intentionally or recklessly fails to comply with **subsection (2)(b) or (c)** is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**. 25

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

Coverage overlap between proposed FPA and fair pay agreement

- 103 Application of **sections 104 and 105** 30
- Sections 104 and 105** apply when—
- (a) the chief executive has publicly notified, in accordance with **section 34**, that the chief executive has approved—
- (i) a 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 35

- (b) there is coverage overlap between a fair pay agreement and the proposed FPA, the proposed renewal, or the proposed replacement.

104 Chief executive must notify initiating party of coverage overlap

- (1) If the chief executive approves bargaining for a proposed FPA, a proposed renewal, or a proposed replacement for which there is coverage overlap, the chief executive must notify the initiating party of the proposed FPA, the proposed renewal, or the proposed replacement— 5
 - (a) that the coverage of the proposed FPA, the proposed renewal, or the proposed replacement will result in coverage overlap; and
 - (b) of the consequences of the coverage overlap (*see section 105*). 10
- (2) The initiating party must, after being notified of the coverage overlap under **subsection (1)**, notify—
 - (a) any employee bargaining party on the employee bargaining side; and
 - (b) any employer bargaining party on the employer bargaining side.

105 Consequences of coverage overlap 15

The consequences of coverage overlap are that—

- (a) before the chief executive validates a proposed FPA, proposed renewal, or a proposed replacement under **section 156**, the Authority must, in accordance with **sections 135 and 138**,—
 - (i) review the terms of the proposed FPA, the proposed renewal, or the proposed replacement and the fair pay agreement; and 20
 - (ii) determine which agreement provides the better terms overall for the employees within the coverage of both agreements; and
- (b) depending on whether the Authority determines that the proposed FPA, the proposed renewal, or the proposed replacement (as applicable) or the fair pay agreement provides the better terms overall, either **section 154 or 155** applies. 25

Consolidation of bargaining for fair pay agreements

106 Application of sections 107 to 111

- (1) **Sections 107 to 111** apply when— 30
 - (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 occu- 35

pation group within the industry that the first proposed agreement covers (the **second proposed agreement**).

- (2) In **sections 107 to 111**, the terms **first proposed agreement** and **second proposed agreement** have the meanings given in **subsection (1)**.

107 When bargaining for fair pay agreements is consolidated 5

- (1) After the chief executive approves the application to initiate bargaining for the second proposed agreement,—
- (a) if the chief executive approves the application to initiate bargaining for the second proposed agreement less than 6 months after the chief executive approved the application to initiate bargaining for the first proposed agreement, bargaining for the 2 agreements must be consolidated and **section 109** applies; or 10
- (b) 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 agreements will be consolidated. 15
- (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 agreements, within 20 working days of the chief executive publicly notifying in accordance with **section 34** that the chief executive has approved the application to initiate bargaining for the second proposed agreement. 20
- (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 agreements, the bargaining sides for the first proposed agreement are deemed to have decided not to consolidate bargaining for the 2 agreements. 25

108 Chief executive to notify parties

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

- (c) if the chief executive publicly notified the approval of the application to initiate bargaining for the first proposed agreement less than 6 months before notifying the approval of the application to initiate bargaining for the second proposed agreement, both bargaining sides for the first proposed agreement and the initiating party for the second proposed agreement that the 2 agreements must be consolidated; and 5
- (d) if the chief executive publicly notified the approval of the application to initiate bargaining for the first proposed agreement 6 months or more before notifying the approval of the initiating party's application to initiate bargaining for the second proposed agreement, both bargaining sides for the first proposed agreement that they must— 10
- (i) decide whether to consolidate bargaining for the first proposed agreement and the second proposed agreement; and
- (ii) notify the initiating party for the second proposed agreement of that decision within 20 working days of the chief executive notifying the bargaining parties under **section 34**; and 15
- (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 agreements. 20
- (2) The chief executive's notification must explain the effects of—
- (a) consolidating bargaining (*see section 109*); and
- (b) not consolidating bargaining (*see section 111*).

109 Effect of decision to consolidate

- (1) If a first proposed agreement and a second proposed agreement are consolidated into one consolidated proposed agreement (the **consolidated proposed agreement**),— 25
- (a) the coverage of the consolidated proposed agreement is the coverage of the first proposed agreement, but extended to include the coverage of the second proposed agreement (unless both bargaining sides for each of the first and second proposed agreements agree otherwise); and 30
- (b) the employee bargaining parties for the first proposed agreement and the second proposed agreement combine into one employee bargaining side for the consolidated proposed agreement; and
- (c) the employer bargaining parties for the first proposed agreement and the second proposed agreement combine into one employer bargaining side for the consolidated proposed agreement (without the need to submit new applications under **Part 3**); and 35
- (d) new bargaining parties may join the combined employee bargaining side or the combined employer bargaining side (as applicable); and 40

- (e) the obligations in **sections 36 to 41** (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 a union's application to initiate bargaining for the consolidated proposed agreement. 5
- (2) Bargaining for the first proposed agreement may continue while the first proposed agreement and the second proposed agreement are in the process of being consolidated.
- (3) If a first proposed agreement and a second proposed agreement are consolidated, the consolidation takes effect,— 10
- (a) if the chief executive notified the chief executive's approval to initiate bargaining for the second proposed agreement under **section 34** less than 6 months after the chief executive notified the chief executive's approval to initiate bargaining for the first proposed agreement under **section 34**, on the date on which the chief executive notifies the bargaining parties under **section 108(1)(c)**; or 15
- (b) on the date on which the bargaining sides for the first proposed agreement notify the initiating party for the second proposed agreement of the bargaining sides' decision to consolidate bargaining (under **section 108(1)(d)(ii)**). 20
- 110 Bargaining party may request negotiation of inter-party side agreement**
- (1) When a bargaining side for a first proposed agreement and a bargaining side for a second proposed agreement combine into a bargaining side for a consolidated proposed agreement, a bargaining party on the bargaining side for the second proposed agreement may make a request to the bargaining side for the first proposed agreement that the combined bargaining side negotiate an inter-party side agreement for the combined bargaining side. 25
- (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— 30
- (i) the date on which the chief executive provides notice under **section 108(1)(c)**; or
- (ii) the date on which a bargaining side of the first proposed agreement notifies, under **section 108(1)(d)(ii)**, the initiating party of the second proposed agreement of the bargaining side's decision to consolidate bargaining for the agreements; and 35
- (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.

111 Effect of decision not to consolidate

- (1) If the bargaining sides for the first proposed agreement decide not to consolidate bargaining for the first proposed agreement with bargaining for the second proposed agreement (*see* **section 107(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 5
- (b) the chief executive—
- (i) must not verify the later of the 2 proposed FPAs to be submitted under **section 147** as a stand-alone fair pay agreement; but 10
- (ii) may verify the later proposed FPA, and validate it under **section 156**, in the form of an amendment that adds the later proposed FPA as a schedule of the fair pay agreement that is submitted for verification first.
- (2) Before validating a later proposed FPA as a schedule of an earlier fair pay agreement, the chief executive must— 15
- (a) assess the proposed FPA for coverage overlap in accordance with **section 151**; and
- (b) be satisfied that the later proposed FPA—
- (i) meets all of the requirements for a fair pay agreement; and 20
- (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.

Addition of occupation to fair pay agreement 25

112 Proposed FPA that adds occupation to fair pay agreement

- (1) This section applies if—
- (a) an industry-based agreement has been validated under **section 156** and is in force in an industry; and
- (b) an initiating union initiates bargaining for an industry-based agreement that covers employees in 1 or more other occupations within the same industry. 30
- (2) In the circumstances described in **subsection (1)**, the chief executive—
- (a) must not validate the additional agreement as a stand-alone fair pay agreement under **section 156**; but 35
- (b) may validate the additional agreement under **section 156** in the form of an amendment that adds the additional agreement as a schedule of the fair pay agreement that was in force earlier.

- (3) Before validating the additional agreement as a schedule of the earlier fair pay agreement, the chief executive must be satisfied that the additional agreement—
- (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 5
 - (c) has the same expiry date as the fair pay agreement of which it will become a schedule.

113 Chief executive to notify parties of existing fair pay agreement

When a union initiates bargaining for a proposed FPA in the circumstances set out in **section 112(1)**, the chief executive must— 10

- (a) notify the union that initiates bargaining for the additional agreement—
 - (i) that a fair pay agreement has already been validated for the industry intended to be covered by the additional agreement; and
 - (ii) that the additional agreement, once verified under **section 148**, will be validated as a schedule of the fair pay agreement that has already been validated under **section 156**; and 15
- (b) explain to the union that **section 112** applies and how **section 112** applies.

Part 6

20

Content of fair pay agreements

Content of fair pay agreements

114 Mandatory content for each fair pay agreement

- (1) Each fair pay agreement must specify the following:
- (a) the date on which the agreement comes into force: 25
 - (b) the coverage of the agreement (with sufficient clarity to determine which class or classes of employees are covered by the agreement):
 - (c) the normal hours of work required of each class of employees covered by the agreement:
 - (d) the following details of wages to be paid to each class of employees covered by the agreement: 30
 - (i) the minimum base wage rates, and when the rates apply:
 - (ii) whether the minimum base wage rates include or exclude the employer's contribution for superannuation (if any):
 - (iii) the rates of payment for any overtime worked, and when the rates apply: 35

- (iv) penalty rates, and when the rates apply:
- (v) in relation to minimum base wage rates, overtime rates, and penalty rates—
 - (A) the specified amount by which they must be adjusted; or
 - (B) the calculation that must be used to adjust them: 5
- (e) the governance arrangements that will apply, in addition to the requirements set out in this Act, to the bargaining sides when the agreement is in force:
- (f) the process for each bargaining side to engage with the other bargaining side if a bargaining side requests agreement to bargain for a proposed variation or if bargaining to vary the agreement in accordance with **Part 8**: 10
- (g) the date on which the agreement expires.
- (2) For the purpose of determining the dates required under **subsection (1)(a) and (g)**,— 15
 - (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 20
 - (ii) 1 date on which it expires, which must apply to each provision in the fair pay agreement.
- (3) Despite **subsection (1)(d)**, a fair pay agreement may, in relation to minimum entitlement provisions (as defined in section 5 of the Employment Relations Act 2000), state that the minimum entitlements in the Minimum Wage Act 1983 and the Holidays Act 2003 apply without specifying the minimum entitlement in the agreement. 25
- (4) For the purpose of **subsection (1)(d)**, if the minimum base wage rates specified in a fair pay agreement include a starting-out rate of wages or a training rate of wages, the rates must be set in accordance with the requirements in sections 4A and 4B of the Minimum Wage Act 1983, except that the rates are specified in the agreement and not prescribed by Order in Council. 30
- (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. 35
- (6) **Subsection (2)(b)(i)** is subject to the bargaining sides approving an employer's application for delayed commencement under **section 129**.

115 Topics that bargaining sides must discuss

- (1) When bargaining for a proposed FPA, a proposed renewal, or a proposed replacement, the bargaining sides must discuss whether the proposed FPA, the proposed renewal, or the proposed replacement will specify the following topics: 5
- (a) the objectives of the proposed FPA, the proposed renewal, or the proposed replacement (as applicable):
 - (b) health and safety requirements:
 - (c) arrangements relating to training and development:
 - (d) arrangements relating to flexible working: 10
 - (e) leave entitlements:
 - (f) arrangements relating to any redundancy.
- (2) A fair pay agreement is not required to include a provision that relates to a topic listed in **subsection (1)**, but may include such a provision if— 15
- (a) the bargaining parties to the proposed FPA, the proposed renewal, or the proposed replacement agree to include it; or
 - (b) the Authority determines under **section 214** that the proposed FPA, the proposed renewal, or the proposed replacement must include such a provision.
- (3) If a term that relates to the topic in **subsection (1)(e)** is included in a fair pay agreement, it must— 20
- (a) be specified in the form required in regulations; and
 - (b) include all details required in regulations.

116 Limit on what fair pay agreement may include

- (1) The bargaining parties to a proposed FPA, a proposed renewal, or a proposed replacement may agree to include a term that is not related to mandatory content listed in **section 114** or a topic listed in **section 115**. 25
- (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. 30

*Minimum entitlement provisions***117 Minimum entitlement provisions**

- A term of a fair pay agreement that relates to 1 or more of the following topics is, in relation to a covered employee, a minimum entitlement provision for the purposes of the Employment Relations Act 2000: 35
- (a) minimum base wage rates:

- (b) how minimum base wage rates, overtime rates, or penalty rates may be adjusted by applying a calculation or a specified amount:
 - (c) increases to the minimum entitlements provided under the Holidays Act 2003:
 - (d) payment for any increases to the minimum entitlements provided under the Holidays Act 2003: 5
 - (e) rates of payment for any overtime worked:
 - (f) penalty rates.
- 118 How minimum entitlement provisions must be expressed**
- A minimum entitlement provision in a fair pay agreement must— 10
- (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. 15
- 119 How minimum entitlement provisions relate to other legislation**
- (1) A minimum entitlement provision in a fair pay agreement must not be contrary to a provision of, or an entitlement under, any of the following Acts:
- (a) the Holidays Act 2003:
 - (b) the Minimum Wage Act 1983: 20
 - (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 25
 - (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. 30
- (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. 35

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 an employee covered by the agreement is \$21 per hour, the employee is entitled to be paid the minimum base wage rate of \$21 per hour. 5

However, if the minimum wage under the Minimum Wage Act 1983 subsequently increases to \$22 per hour, an adult employee covered by the fair pay agreement is entitled to receive \$22 per hour, despite the agreement still providing a minimum base wage rate of \$21 per hour. 10

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

- (1) If a Labour Inspector issues, under section 8 of the Minimum Wage Act 1983, a minimum wage exemption permit to an employee who is within the coverage of a fair pay agreement, the rate from which the permit exempts the employee is the higher of— 15
 - (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. 20
- (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 within the coverage of a fair pay agreement; and 25
 - (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,— 30
 - (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. 35

121 Differing minimum wage rates

- (1) Subject to **subsections (2) and (4)**, 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 5
 - (b) a training rate of wages.
- (2) A fair pay agreement may specify a starting-out rate of wages if the rate—
- (a) is payable only to an employee described in section 4A(1) of the Minimum Wage Act 1983; and
 - (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. 10
- (3) If a fair pay agreement specifies a starting-out rate of wages by reference to a factor specified in section 4A(1)(c)(i) or (ii), or both, of the Minimum Wage Act 1983, an employer of a covered employee to whom the rate applies—
- (a) may pay the employee in accordance with that rate only until the earlier of— 15
 - (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): 20
 - (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) then must pay the employee no less than the minimum base wage rate specified in the fair pay agreement. 25
- (4) To avoid doubt, if more than 1 starting-out rate specified in a fair pay agreement applies to an employee, only the higher or highest rate applies.
- (5) In **subsection (3), continuous employment**, in relation to a covered employee,—
- (a) means a continuous period of employment starting on the employee's first day of work; and 30
 - (b) includes any employment undertaken by the employee before—
 - (i) the employee turns 16;
 - (ii) the commencement of this Act.
- (6) A fair pay agreement may specify a minimum training rate only if the rate— 35
- (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.
- (7) The minimum base wage rates payable under a fair pay agreement are not payable to— 5
 - (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. 10

Differentiation of application and entitlement

122 Fair pay agreement may include differentiation

- (1) Subject to **sections 13, 123, 125, and 126**, a fair pay agreement may include terms that apply to a class of covered employees that are different from the terms that apply to another class of employees who are within the coverage of the same fair pay agreement. 15
- (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: 20
 - (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. 25

123 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: 30
 - (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) the normal hours of work required of each employee covered by the agreement: 35
 - (d) whether the base wage rate includes or excludes the employer's contribution for superannuation (if any):

- (e) rates of payment for any overtime worked and when the rates apply:
 - (f) penalty rates and when they apply:
 - (g) leave entitlements:
 - (h) arrangements relating to any redundancy:
 - (i) training and development arrangements: 5
 - (j) health and safety requirements:
 - (k) arrangements for flexible working.
- (3) **Subsection (1)** does not apply to a term of a fair pay agreement that relates to—
- (a) the objectives of the agreement; or 10
 - (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 8**; or 15
 - (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 this section must— 20
- (a) be specified in the form required in regulations; and
 - (b) include all details required in regulations.

124 Application of fair pay agreement with district variation

- (1) This section applies if a fair pay agreement includes terms that apply to a specific district. 25
- (2) A covered employee is bound by the terms that apply in the district in which the employee works for the majority of the time that the employee is performing the work covered by the fair pay agreement.
- (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. 30

125 Permitted differentiation in minimum entitlement provision

A fair pay agreement may include a minimum entitlement provision that applies differently to an employee or class of employees, but only if the difference is based on— 35

- (a) the district in which the employee or class of employee is employed (for example, terms may differ depending on whether the employee is employed in a role or occupation in the South Taranaki district or in the same role or occupation in the Whanganui district); or
- (b) the occupation of the employee or class of employee (for example, if an agreement applies to all hospital employees, the terms may differ depending on whether an employee is employed as a nurse or a cook); or 5
- (c) the role of the employee or class of employee within an occupation (for example if an agreement applies to all sales staff, the terms may differ depending on whether an employee is employed as an assistant sales consultant, a senior sales consultant, or a sales manager). 10

126 Prohibited differentiation

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

- (a) the Employment Relations Act 2000 (*see* sections 103, 104, 105, and 106 of that Act); 15
- (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

127 When delayed commencement can be considered 20

- (1) This section and **sections 128 and 129** apply—
 - (a) after the bargaining sides for a proposed FPA, a proposed renewal, or a proposed replacement have agreed that bargaining is complete; but
 - (b) before the bargaining sides jointly submit the proposed FPA, the proposed renewal, or the proposed replacement to the Authority for compliance assessment under **section 132**. 25
- (2) This section and **sections 128 and 129** apply to a proposed FPA, a proposed renewal, or a proposed replacement only if the bargaining sides for the proposed FPA, the proposed renewal, or the proposed replacement agree—
 - (a) to consider applications from employers that wish to delay the commencement date of 1 or more terms of the proposed FPA, the proposed renewal, or the proposed replacement for the employer; and 30
 - (b) a process by which an employer may apply for the commencement date of 1 or more terms of the proposed FPA, the proposed renewal, or the proposed replacement to be delayed for the employer. 35

128 Topics to which delayed commencement can relate

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

- (a) minimum base wage rates and when the rates apply:
 - (b) how minimum base wage rates, overtime rates, or penalty rates may be adjusted by applying a calculation or a specified amount:
 - (c) whether the minimum base wage rate includes or excludes the employer's contribution for superannuation (if any): 5
 - (d) rates of payment for any overtime worked, and when the rates apply:
 - (e) penalty rates and when they apply:
 - (f) leave entitlements.
- 129 Delayed commencement provision**
- (1) The bargaining sides must approve an employer's application for delayed commencement of 1 or more terms only if satisfied that— 10
 - (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 FPA, the proposed renewal, or the proposed replacement will no longer result in a less favourable outcome for the employer's employees. 15
 - (2) A delay to the commencement of 1 or more terms of a proposed FPA, a proposed renewal, or a proposed replacement must be for less than 12 months. 20
 - (3) If the bargaining sides approve an employer's application, the proposed FPA, the proposed renewal, or the proposed replacement 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 25
 - (ii) the date on which the term will commence for the employer; and
 - (b) the commencement date for the remainder of the proposed FPA, the proposed renewal, or the proposed replacement.

Part 7

Finalisation of proposed agreement 30

130 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. 35

- (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
- (5) **Subpart 4** requires the chief executive to assess 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.

131 Meaning of proposed agreement 10

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

Subpart 1—Compliance assessment

132 Bargaining sides to submit proposed agreement for compliance assessment

- (1) When the bargaining sides for a proposed agreement agree that bargaining for the proposed agreement is complete, the bargaining side lead advocate for each bargaining side must— 15
- (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. 20
- (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 25
- (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 30
- (ii) is signed by the bargaining side lead advocate of each bargaining side.

133 Authority to assess proposed agreement for compliance

- (1) The Authority must assess a proposed agreement that is submitted to the Authority, and must approve the proposed agreement only if— 35
- (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. 5
- (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. 10

134 Consequences if Authority does not approve proposed agreement

- (1) If the Authority does not approve a proposed agreement, it must advise the bargaining sides for the proposed agreement—
 - (a) that it has not approved the proposed agreement; and
 - (b) of the reasons for not approving the proposed agreement, including details of which part or parts of the proposed agreement do not comply with the requirements in **section 133**; and 15
 - (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. 20
- (2) The bargaining sides may resubmit the proposed agreement as many times as necessary until the Authority approves the proposed agreement.

135 Authority to check whether coverage overlap exists

- (1) The Authority must, when a proposed agreement is submitted for a compliance assessment, check whether there is coverage overlap between the proposed agreement and a fair pay agreement. 25
- (2) The Authority must, after fixing the terms of a proposed agreement under **section 218**, check if there is coverage overlap between the proposed agreement (including the terms fixed by the Authority) and any fair pay agreement. 30
- (3) If the Authority decides that there is coverage overlap, it must determine which agreement provides the better terms overall.
- (4) For the purpose of this section, the coverage of 2 agreements overlap if 1 or more employees are within the coverage of the proposed agreement and the fair pay agreement in respect of the same work. 35

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

139 Consequences of Authority's determination

- (1) If a fair pay agreement (**agreement A**) and a proposed agreement (**agreement B**) have coverage overlap and, as a result, the Authority determines which agreement has the better terms overall, **subsections (2) and (3)** set out the consequences for the coverage of each agreement. 5
- (2) If the Authority determines that agreement A provides better terms overall,—
- (a) the Authority must advise both bargaining sides for agreement B—
- (i) of the need to change the coverage of agreement B; and
- (ii) of the requirements set out in **paragraphs (b) to (f)**; and
- (b) the bargaining sides for agreement B must amend the coverage of agreement B to remove the employees who are within the coverage of both agreement A and agreement B; and 10
- (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 15
- (ii) remains within the coverage of agreement A; and
- (d) each employer who, as a result of **paragraph (b)**, no longer employs an employee who is within the coverage of agreement B—
- (i) is not entitled to vote in the ratification process for agreement B; and 20
- (ii) remains within the coverage of agreement A; and
- (e) the employee bargaining side for agreement B must use its best endeavours to advise each employee who, as a result of **paragraph (b)**, is no longer within the coverage of agreement B (other than an employee who has elected, in accordance with **section 36(2)(d)(ii)**, not to have their contact details provided) that the employee is not entitled to vote in the ratification process for agreement B; and 25
- (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. 30
- (3) If the Authority determines that agreement B provides better terms overall,—
- (a) the Authority must advise both bargaining sides for agreement B— 35
- (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 employee who is within the coverage of agreement B is entitled to vote in the ratification process, despite also being within the coverage of agreement A; and 5
 - (d) each employer of an employee who is within the coverage of agreement B is entitled to vote in the ratification process, despite the employee also being within the coverage of agreement A; and
 - (e) on the date on which agreement B comes into force, the employees who are within the coverage of both agreement A and agreement B will be removed from the coverage of agreement A; and 10
 - (f) the employee bargaining side for agreement B must use its best endeavours to advise each employee who is within the coverage of both agreement A and agreement B (other than an employee who has elected, in accordance with **section 36(2)(d)(ii)**, not to have their contact details provided) that— 15
 - (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 20
 - (iii) if agreement B is ratified, the employee would no longer be covered by agreement A but would be covered by agreement B; and
 - (g) the employer bargaining side for agreement B must use its best endeavours to advise each employer that employs an employee who is within the coverage of both agreement A and agreement B that— 25
 - (i) the Authority has determined that agreement B provides better terms overall; and
 - (ii) as a result of the determination, the employer is entitled to vote in the ratification process for agreement B; and 30
 - (iii) if agreement B is ratified, the employer's employees who were within the coverage of both agreement A and agreement B would no longer be covered by agreement A but would be covered by agreement B; and 35
 - (h) if the chief executive verifies the ratification process and ratification vote for Agreement B (in accordance with **subpart 3**), the chief executive must also amend agreement A to remove the employees who are within the coverage of both agreement A and agreement B, from the coverage of agreement A. 40

Subpart 2—Ratification

140 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 133**; and
 - (b) has checked, under **section 135**, if there is coverage overlap between the proposed agreement and a fair pay agreement and, if so, determined which agreement provides the better terms overall. 5
- (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— 10
- (a) this subpart; and
 - (b) the ratification process set by the relevant bargaining side.

141 Provision of information prior to ratification

- (1) No later than 5 working days after the Authority has approved a proposed agreement under **section 133** or 5 working days after the Authority has notified the bargaining sides of its determination under **section 137**,— 15
- (a) the employee bargaining side must use its best endeavours to notify all covered employees (other than employees who have elected, in accordance with **section 36(2)(d)(ii)**, not to have their contact details provided to the initiating union) that a ratification vote will soon be held; and 20
 - (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— 25
 - (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 30
 - (iii) that the employee may, within 5 working days of being advised, elect not to have their details provided under this section by completing and returning the form provided by the employer under **paragraph (b)**; and
 - (iv) of the name and contact details of the initiating union or the name and updated contact address of the employee bargaining side if provided to the employer under **section 99**; and 35

- (b) provide a form, approved and issued by the chief executive under **section 243** that sets out the following information:
- (i) that an employer is required to provide contact details for each of the employer's covered employees to the employee bargaining side, unless the employee elects not to have their contact details provided; and 5
 - (ii) the process by which an employee who does not want their contact details to be provided to the employee bargaining side can elect not to have their contact details provided; and
 - (iii) the name of the employee bargaining side; and 10
 - (iv) the reason for providing the employee's contact details to the employee bargaining side; and
 - (v) an explanation of to whom the employee bargaining side is able to provide the employee's contact details; and
 - (vi) an explanation of the purposes for which the employee's contact details may be used; and 15
 - (vii) the consequences of the employee electing not to have their contact details provided; and
 - (viii) how an employee who has elected not to have their contact details provided can rescind that election so that the employer must provide the employee's contact details to the employee bargaining side. 20
- (3) The employer must provide the details specified in **section 39(1)(a) to (f)** about each of its covered employees to 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. 25
- (4) The employer must provide the contact details to the employee bargaining side no later than 10 working days after the date on which the employer complies with **subsection (2)**.
- (5) At least 5 working days before the covered employees and covered employers vote whether to ratify a proposed agreement,— 30
- (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 35
 - (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 196**.

142 Time frame for holding ratification vote

- (1) When setting the date on which covered employees will vote whether to ratify a proposed agreement, the employee bargaining side must set a date that is at least 40 working days after the date on which the Authority notifies the bargaining sides—
- (a) that it has approved the proposed agreement under **section 136(1)**; or
 - (b) of the outcome of the coverage overlap assessment under **section 137**.
- (2) When setting the date on which covered employers will vote whether to ratify a proposed agreement, the employer bargaining side must set a date that is at least 10 working days after the date on which the Authority notifies the bargaining sides—
- (a) that it has approved the proposed agreement under **section 136(1)**; or
 - (b) of the outcome of the coverage overlap assessment under **section 137**.

143 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 is entitled to vote for or against ratifying the proposed agreement; and
 - (b) the first date on which the recipient is able to cast their vote; and
 - (c) the final date by which the recipient may cast their vote; and
 - (d) the methods by which the recipient is able to cast their vote; and
 - (e) the consequences of the ratification vote for the proposed agreement.

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

144 Ratification process

- (1) For a proposed agreement to be ratified, there must be— 5
- (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 is entitled to 1 vote:
 - (b) the covered employees ratify the proposed agreement if more than half 10 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 within the coverage of the proposed agreement is entitled to the number of votes set out in the second 15 column of **Schedule 2** that is opposite the number of the employer's covered employees set out in the first column:
 - (ii) 21 or more employees within the coverage of the proposed agreement is entitled to 1 vote for each of the employer's employees who are within the coverage of the agreement (for example, if a 20 covered employer has 25 employees within the coverage of the proposed agreement, the employer has 25 votes):
 - (b) the covered employers ratify the proposed agreement if more than half of the votes from those employers are in favour of ratification.

145 Notification of outcome of ratification vote 25

- (1) As soon as is reasonably practicable after a bargaining side completes its ratification vote for a proposed agreement, it must inform the other bargaining side for the proposed agreement of the outcome of the ratification vote.
- (2) If the results of both the ratification vote of the covered employees and the ratification vote of the covered employers are in favour of ratification, each bargaining side must submit evidence of the results of its ratification vote to the chief executive under **section 147**. 30
- (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 35

- (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.
- 146 Obligation to keep records of ratification** 5
- (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— 10
- (a) the bargaining side held the ratification vote in accordance with this Act and any process agreed by the bargaining side; and
- (b) each vote was cast by a person who was eligible to vote.
- Subpart 3—Verification** 15
- 147 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. 20
- (2) Each bargaining side for the proposed agreement must, as soon as is reasonably practicable, submit—
- (a) evidence of the following to the chief executive:
- (i) the ratification process followed; and 25
- (ii) the results of the ratification vote; and
- (iii) if the bargaining side is an employer bargaining side, the number of covered employees employed by each employer who voted, and the number of votes cast by each covered employer; and
- (b) a declaration to the chief executive that the bargaining side held its ratification vote in accordance with a process agreed by the bargaining side; and 30
- (c) a copy of the proposed agreement, which must include the title of the proposed agreement.

148 Chief executive to verify ratification

- (1) The chief executive must, after receiving the evidence submitted under **section 147** from both bargaining sides for a proposed agreement, verify the proposed agreement if satisfied that—
- (a) each bargaining side has followed the ratification process—
 - (i) required under this Act; and
 - (ii) agreed by the bargaining parties on the bargaining side; and
 - (b) each vote was cast by a person who was eligible to vote; and
 - (c) each covered employer cast the number of votes determined under **section 144(3)**; and
 - (d) the result of each ratification vote is to ratify the proposed agreement.
- (2) The chief executive may, if not satisfied that a bargaining side has submitted sufficient evidence to enable the chief executive to decide whether to verify the proposed agreement, require the bargaining side to provide further evidence (for example, further evidence that each employer or employee who voted in the ratification vote was eligible to vote).
- (3) A bargaining side, if required to provide further evidence, must provide the evidence in writing and as soon as is reasonably practicable.
- (4) Before deciding whether to verify a proposed agreement, the chief executive must remove any inaccurate information from the evidence provided by a bargaining side, and decide whether to verify the proposed agreement based on the remaining evidence.
- (5) 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 147** from both bargaining sides for the proposed agreement; and
 - (b) 20 working days after the date on which the chief executive receives any further evidence required to be provided under **subsection (2)**.

149 Consequences if chief executive declines to verify ratification

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

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

150 Penalty for providing inaccurate information

- (1) A bargaining party that intentionally or recklessly provides inaccurate information to the chief executive under this subpart is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**. 5
- (2) A covered employer is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196** if the employer intentionally or recklessly provides the employer bargaining side for a proposed agreement with inaccurate information about— 10
- (a) the number of covered employees that the employer employs:
- (b) the number of votes that the employer is entitled to cast or has cast.

Subpart 4—Chief executive’s assessment of overlapping coverage

151 Chief executive to assess whether coverage overlap exists

- (1) The chief executive must, after verifying a proposed agreement under **section 148** but before issuing a fair pay agreement notice under **section 156**, assess whether there is coverage overlap between the proposed agreement and any fair pay agreement. 15
- (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**. 20

152 Consequences if coverage overlap exists

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

- (a) the chief executive has concluded that there is coverage overlap between the proposed agreement and the fair pay agreement; and 25
- (b) the bargaining side lead advocate for each bargaining side must submit the proposed agreement to the Authority for the Authority to determine, in accordance with **section 138**, whether the proposed agreement or the fair pay agreement provides the better terms overall. 30

153 Authority to determine which agreement provides better terms overall

- (1) The Authority must, when a proposed agreement is submitted under **section 152**, determine, in accordance with **section 138**, whether the proposed agreement or the fair pay agreement provides the better terms overall.
- (2) The Authority must make its determination in accordance with the time frame specified in **section 137**. 35

- 154 Consequences of Authority’s determination: proposed agreement provides better terms overall**
- (1) If the Authority determines, in accordance with **section 153(1)** that the proposed agreement provides better terms overall than the fair pay agreement, the Authority must notify the chief executive of that fact. 5
- (2) After being notified under **subclause (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 10
- (ii) as a result of that determination, the chief executive will amend the coverage of the fair pay agreement so that the employees who were within the coverage of the proposed agreement and the fair pay agreement will only be covered by the proposed agreement; and 15
- (b) must issue a fair pay agreement notice that amends the coverage of the fair pay agreement so that it no longer covers any employees who are covered by the proposed agreement; and
- (c) after amending the coverage of the fair pay agreement, may validate the proposed agreement in accordance with **subpart 5**. 20
- (3) The employee bargaining side for the proposed agreement must inform each covered employee who is also covered by the fair pay agreement—
- (a) that the Authority has determined that the proposed agreement provides better terms overall than the fair pay agreement; and
- (b) of the consequences of that determination. 25
- (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 proposed agreement provides better terms overall than the fair pay agreement; and 30
- (b) of the consequences of that determination.
- (5) For the purposes of **subsection (2)(a) and (b)**, 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.
- 155 Consequences of Authority’s determination: fair pay agreement provides better terms overall** 35
- (1) If the Authority determines, in accordance with **section 153(1)** that the fair pay agreement provides better terms overall than the proposed agreement, the Authority must notify the chief executive of that fact.

- (2) After being notified under **subclause (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 any employees who are covered by the fair pay agreement; and
 - (b) must amend the coverage of the proposed agreement so that it no longer covers any employees who are 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 25

156 Chief executive may issue fair pay agreement notice

- (1) The chief executive may, in accordance with this subpart,—
- (a) validate the terms of a fair pay agreement by issuing a fair pay agreement notice; or
 - (b) for the purpose of **section 139 or 154**, validate a variation of a fair pay agreement by issuing a fair pay agreement notice that amends the coverage of a fair pay agreement.
- (2) However, 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 assessed whether there is coverage overlap between the proposed agreement and any other fair pay agreement; and
- (iii) is satisfied that the chief executive and the Authority have complied with the requirements of **subpart 4**; or
- (b) the Authority has fixed the terms of the proposed agreement in accordance with **section 218**. 5
- (3) A notice issued under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

157 Form and content of notice

- (1) Each notice issued under **section 156(1)(a)** must set out the terms of a fair pay agreement, which must be in the form prescribed by any regulations and,— 10
 - (a) for the purpose of **section 156(2)(a)**, must be the terms that were ratified by the ratification vote that the chief executive verified under **subpart 3**; or
 - (b) for the purpose of **section 156(2)(b)**, must be the terms determined by the Authority. 15
- (2) However, a notice issued under **section 156(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. 20

158 Notification to bargaining sides

- (1) If the chief executive issues a notice under **section 156(1)(a)**, the chief executive must notify each bargaining side for the fair pay agreement that the chief executive has issued the notice.
- (2) If the chief executive issues a notice under **section 156(1)(b)**, the chief executive must notify each bargaining side for the fair pay agreement that the chief executive has issued the notice to amend the coverage of the fair pay agreement. 25

159 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 156**: 30
 - (a) language that indicates or could be taken to indicate a particular gender may be changed to gender-neutral language:
 - (b) a reference to the name or title of a body, an office, a person, a place, or a thing that has been changed may be replaced with a reference to the name or title as changed: 35
 - (c) a reference to a body, an office, a person, a place, or a thing that has been replaced by another body, office, person, place, or thing may be

- changed to a reference to the replacement body, office, person, place, or thing:
- (d) unnecessary referential words may be omitted:
 - (e) changes may be made to words in the Māori language (te reo Māori) to reflect current orthographic conventions: 5
 - (f) punctuation may be changed or omitted, or new punctuation inserted, so as to be consistent with current drafting practice:
 - (g) conjunctives and disjunctives may be inserted, omitted, or changed so as to be consistent with current drafting practice:
 - (h) changes may be made to the way numbers, dates, times, quantities, measurements, and similar matters, ideas, or concepts are referred to or expressed so as to be consistent with current drafting practice: 10
 - (i) obvious errors of the following kinds may be corrected:
 - (i) typographical and clerical errors:
 - (ii) grammatical and spelling errors, and errors of punctuation: 15
 - (iii) errors in numbering, cross-referencing, and alphabetical ordering:
 - (iv) any other errors of a similar nature:
 - (j) changes may be made that are purely consequential on any other change authorised by this section:
 - (k) changes may be made to the format of a fair pay agreement so that the format is easier to read or use. 20
- (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

- 160 Application of notice and fair pay agreement** 25
- (1) A notice issued under **section 156** comes into force on the later of—
 - (a) the date set out in the fair pay agreement as the date on which the agreement comes into force (excluding any delayed commencement approved under **section 129**); and
 - (b) the date on which the chief executive issues the notice. 30
 - (2) From the date on which the notice comes into force, a fair pay agreement specified in the notice binds—
 - (a) each employee who is within the coverage of the agreement (whether or not the employee is a union member); and
 - (b) each employer that employs at least 1 employee described in **paragraph (a)**. 35

- (3) After the date on which the notice comes into force, a fair pay agreement also binds—
- (a) an employee who was not within the coverage of the fair pay agreement on the commencement date but who subsequently commences employment in a role that is within the coverage of the agreement, in which case the agreement binds the employee from the date on which the employee commences the employment: 5
 - (b) an employer who on the commencement date did not employ any covered employees, but who subsequently employs a covered employee, in which case the agreement applies to the employer from the date on which the employer commences to employ the covered employee: 10
 - (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. 15
- (4) However, if, after the commencement date,—
- (a) an employee ceases to be employed in a role that is within the coverage of the agreement, the agreement ceases to cover the employee from the date on which they cease to be employed within the coverage of the agreement: 20
 - (b) an employer ceases to employ any covered employees, the fair pay agreement ceases to cover the employer from the date on which they cease to employ any covered employees.
- 161 Obligation to comply with fair pay agreement** 25
- (1) A party to a fair pay agreement must comply with each term of the fair pay agreement.
 - (2) A failure to comply with a term of a fair pay agreement is deemed to be a breach of this Act.
 - (3) A party to a fair pay agreement that fails to comply with the fair pay agreement is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 197**, but is not liable to a penalty under the Employment Relations Act 2000. 30
 - (4) A person who incites, instigates, aids, or abets any breach of a fair pay agreement is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 197**, but is not liable to a penalty under the Employment Relations Act 2000. 35
- 162 Effect of fair pay agreement on employment agreements**
- (1) To the extent that a fair pay agreement provides a term that is more favourable to a covered employee than a corresponding term in the employee's employ- 40

ment 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 covers the employee, to have been amended accordingly. 5
- (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). 10

163 Relationship between fair pay agreements and collective agreements

- (1) Entering into, or bargaining for, a collective agreement in accordance with the collective bargaining provisions of the Employment Relations Act 2000 does not prevent the initiation of bargaining, or bargaining, for a proposed agreement or a proposed variation that would cover either party to the collective agreement. 15
- (2) The existence of bargaining for a proposed agreement or a proposed variation, or the existence of a fair pay agreement between an employer and a union 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. 20
- (3) However, if a covered employee is also covered by a collective agreement under the Employment Relations Act 2000,—
- (a) if a term of the collective agreement is more favourable to the covered employee than a corresponding term in the fair pay agreement, the term of the collective agreement applies and the corresponding term of the fair pay agreement does not apply; or 25
 - (b) if a term of the collective agreement is less favourable to the covered employee than a corresponding term in the fair pay agreement, the term of the fair pay agreement applies and the corresponding term of the collective agreement does not apply. 30

Part 8

Variation, renewal, and replacement of fair pay agreements

Subpart 1—Variation

- 164 Application** 35
- (1) This subpart applies if—
- (a) the chief executive has issued a fair pay agreement notice under **section 156** in relation to a fair pay agreement; but

- (b) 1 or both of the bargaining sides for the fair pay agreement proposes that the agreement is varied.
- (2) A fair pay agreement may be varied only in accordance with—
- (a) the process set out in this subpart; and
- (b) the terms of the fair pay agreement that specify how the agreement may be varied. 5
- (3) In accordance with **section 116(2)**, if there is any inconsistency, in relation to how to vary a fair pay agreement, between this subpart and the terms of the fair pay agreement, the process set out in this subpart prevails.
- 165 Who may propose agreement to bargain for proposed variation 10**
- A proposal for agreement to bargain for a proposed variation may be made only by—
- (a) a bargaining side that consists of each bargaining party that is a member of the bargaining side on the date on which the proposal is made; or
- (b) if there are no bargaining parties on that date, the relevant default bargaining party. 15
- 166 Agreement required before bargaining for proposed variation may start**
- (1) If a bargaining side requests agreement to bargain for a variation of a fair pay agreement, bargaining for the proposed variation may start only if both bargaining sides that bargained for the fair pay agreement agree to do so. 20
- (2) If a bargaining side that has agreed to bargain for a proposed variation of a fair pay agreement withdraws its agreement at any stage of the bargaining, the bargaining for the proposed variation must stop.
- 167 Notification requirements relating to agreement to bargain for proposed variation 25**
- (1) If, in accordance with **section 166(1)**, both bargaining sides for a fair pay agreement agree to bargain for a variation to the fair pay agreement, the bargaining side lead advocates for each bargaining side must jointly notify the chief executive of that agreement.
- (2) The bargaining side lead advocate for a bargaining side that withdraws its agreement to bargain for a proposed variation must notify the following parties of the bargaining side's withdrawal: 30
- (a) the chief executive; and
- (b) the bargaining side lead advocate of the other bargaining side.
- (3) If either bargaining side withdraws its agreement to bargain for a proposed variation,— 35

- (a) the employee bargaining side must notify all employees for whom it has contact details and who are covered by the fair pay agreement that bargaining for the proposed variation has stopped; and
- (b) the employer bargaining side must notify all employers that it knows to be covered by the fair pay agreement that bargaining for the proposed variation has stopped. 5

168 Ability to join bargaining side during bargaining for proposed variation

- (1) A new bargaining party may join a bargaining side at any time after bargaining for a proposed variation has started if it makes an application and the application is approved in accordance with the following sections (with all necessary modifications): 10
 - (a) **sections 49(2) and 50 to 52** (for an employee bargaining party joining the employee bargaining side); or
 - (b) **sections 43(2) and 44** (for an employer bargaining party joining the employer bargaining side). 15
- (2) If a bargaining party joins a bargaining side after bargaining for a proposed variation has started, **section 61** applies.
- (3) During bargaining for a proposed variation,—
 - (a) **sections 53 to 55 and 57** apply to the employee bargaining side with all necessary modifications; and 20
 - (b) **sections 46 to 48 and 58** apply to the employer bargaining side with all necessary modifications.

169 Limitations on requesting variations

- (1) A bargaining party must not request agreement to bargain for a variation of a fair pay agreement— 25
 - (a) before the fair pay agreement has commenced;
 - (b) after a bargaining party has requested that the fair pay agreement be renewed (*see* **section 183**);
 - (c) if the bargaining sides for the fair pay agreement are bargaining to renew the agreement: 30
 - (d) after the agreement has expired.
- (2) If bargaining for a proposed variation of a fair pay agreement has not been completed by the date on which the fair pay agreement expires, bargaining for the proposed variation must stop on that date.
- (3) A variation of a fair pay agreement can relate to any term of the agreement, except for a term that specifies— 35
 - (a) the date from which the fair pay agreement applies; or
 - (b) the coverage of the agreement; or

- (c) the date on which the agreement expires.

170 Notice to employers of agreement to bargain for proposed variation

- (1) If the bargaining sides for a fair pay agreement agree to bargain for a proposed variation, the employer bargaining side must provide written notice, to each employer that it knows to have at least 1 covered employee, that bargaining for the proposed variation has started. 5
- (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.

171 Obligations to provide information relating to proposed variation 10

- (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 address to which an employer must provide its employees' contact details under **subsection (4)** (the **address**); and 15
- (c) a form, approved and issued by the chief executive under **section 243**, that sets out the information listed in **section 141(2)(b)**.
- (2) The employer bargaining side—
- (a) must, within 5 working days of receiving the information, the address, and the form from the employee bargaining side, provide them to each employer that it knows to employ at least 1 covered employee; but 20
- (b) must not amend the wording of the information, the address, or the form before providing it to an employer.
- (3) Each employer that receives the information, the address, and the form— 25
- (a) must, within 15 working days of receiving them, provide them to each of its covered employees; but
- (b) must not amend the wording of the information, the address, or the form before providing them to a covered employee.
- (4) After providing the information, the address, and the form to its covered employees, each employer must provide each covered employee's contact details (listed in **section 39(1)(a) to (f)**) to the employee bargaining side, except for the contact details of an employee who has elected not to have their details provided. 30
- (5) An employer must comply with **subclause (4)** no earlier than 5 working days after the date on which it provides the information to its covered employees, but no later than 10 working days after that date. 35
- (6) The information is—

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

172 Employer must provide information to new employee

- (1) This section applies in relation to a new employee who commences employment—
- (a) in a role that is within the coverage of a fair pay agreement; and 20
 - (b) during the bargaining process for a proposed variation of the fair pay agreement.
- (2) The employer of an employee described in **subsection (1)**—
- (a) must, within 15 working days of the new employee commencing employment in the role, provide the employee with— 25
 - (i) the information specified in **section 171(6)**; and
 - (ii) the form specified in **section 171(1)(c)**; and
 - (b) must not amend the wording of the information or the form before providing the information and the form to the employer; and
 - (c) must provide the employee's contact details (listed in **section 39(1)(a) to (f)**) to the employee bargaining side (unless the employee elects not to have their contact details provided). 30
- (3) An employer must comply with **subsection (2)(b)** within 60 working days of the new employee commencing employment in the role.
- (4) An employer who intentionally or recklessly fails to comply with this section is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**. 35

- 173 Employer bargaining side must provide information to new employer** 5
- (1) If, after the bargaining sides for a fair pay agreement have agreed to bargain for a variation of the fair pay agreement, the employer bargaining side becomes aware of a new employer that employs 1 or more covered employees, it must provide the new employer with—
- (a) the information listed in **section 171(6)**; and
 - (b) the form specified in **section 171(1)(c)**; and
 - (c) the 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. 10
- (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 15
 - (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 each covered employee's contact details (listed in **section 39(1)(a) to (f)**) to the employee bargaining side, except for the contact details of an employee who has elected not to have their contact details provided. 20
- (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. 25
- (6) An employer who intentionally or recklessly fails to comply with this section is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**.
- 174 Procedure for finalising variation** 30
- When bargaining for a proposed variation of a fair pay agreement is complete, the process for finalising the variation is as follows:
- (a) first, the bargaining side lead advocates for each bargaining side must jointly submit the proposed variation to the Authority for a compliance assessment, and **sections 132 to 136** apply with all necessary modifications; 35
 - (b) second, if the Authority approves the proposed variation under **section 133**, the proposed variation must be ratified in accordance with the requirements set out in **sections 175 and 177**:

- (c) third, if the proposed variation is ratified by both bargaining sides for the proposed variation, the bargaining side lead advocate for each bargaining side must submit the proposed variation to the chief executive for verification of ratification, in accordance with **sections 147, 148, 149(3), and 150**, with all necessary modifications: 5
- (d) fourth, if the chief executive verifies ratification, the chief executive may set the terms of the variation by issuing a notice in accordance with **sections 178 and 179**.

175 Process for ratifying proposed variation

- (1) This section applies when the Authority has approved a proposed variation under **section 133** (as that section applies in accordance with **section 174(a)**). 10
- (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— 15
- (a) this section and **section 176**; and
- (b) the ratification process set by the relevant bargaining side.
- (3) No later than 5 working days after the Authority has approved the proposed variation under **section 133**,—
- (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 20
- (b) the employer bargaining side must use its best endeavours to notify all covered employers that a ratification vote will soon be held. 25
- (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,— 30
- (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— 35
- (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 196**.

176 Further requirements for ratifying proposed variation

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

177 Ratification of proposed variation to agreement attached as schedule

- (1) This section applies when a proposed variation is to a fair pay agreement that has another fair pay agreement attached as a schedule (*see sections 111 and 112*). 25
- (2) If the proposed variation is to the fair pay agreement to which the schedule is attached, only employees and employers who are covered by that fair pay agreement are entitled to vote on the ratification of the proposed variation.
- (3) If the proposed variation is to the fair pay agreement that is attached as a schedule, only employees and employers who are covered by that fair pay agreement are entitled to vote on the ratification of the proposed variation. 30

178 Chief executive may issue notice to vary fair pay agreement

- (1) For the purpose of **section 174(d)**, the chief executive may validate a proposed variation of a fair pay agreement by issuing a fair pay agreement variation notice. 35
- (2) However, the chief executive must not issue a notice varying the terms of a fair pay agreement if—
- (a) the process set out in **section 174** has not been followed; or

- (b) the fair pay agreement to which the proposed variation relates has expired.
- (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. 5
- (4) A notice issued under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- 179 Form and content of notice to vary fair pay agreement**
- Each notice under **section 178** must—
- (a) set out the terms of the variation of the fair pay agreement, which must be in the form prescribed by any regulations; and 10
- (b) be for the variation that was ratified by the ratification vote that the chief executive verified under **section 148**.
- 180 Bargaining sides may seek recommendation from Authority**
- (1) When bargaining for a proposed variation of a fair pay agreement, the employee bargaining side and the employer bargaining side may agree to seek a non-binding recommendation from the Authority in relation to the proposed variation. 15
- (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. 20
- (3) If the bargaining sides for a proposed variation seek a recommendation from the Authority in relation to a matter,—
- (a) **section 216** applies with any necessary modifications; and
- (b) before making a recommendation, the Authority must consider the considerations listed in **section 220**. 25
- (4) If the bargaining sides accept a recommendation from the Authority, it may be incorporated into the proposed variation, and becomes part of the variation that follows the process set out in **section 174**.
- (5) There is no limit to the number of recommendations that the bargaining sides may seek from the Authority. 30
- 181 Bargaining sides may not seek determination in relation to proposed variation**
- When bargaining for a proposed variation of a fair pay agreement, neither bargaining side may seek a determination from the Authority in relation to the proposed variation. 35

Subpart 2—Renewal and replacement of fair pay agreements

182 Purpose of this subpart

This subpart sets out the process that must be followed to renew a fair pay agreement that has been notified under **subpart 5 of Part 7**.

183 Approval required to bargain to renew fair pay agreement

5

(1) Bargaining to renew 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 a fair pay agreement:

(a) a bargaining party that—

10

(i) was a member of a bargaining side on the date on which the fair pay agreement was notified; or

(ii) the chief executive approved to join the bargaining side during bargaining of a variation to the fair pay agreement:

(b) an eligible union that was not a member of the employee bargaining side when the fair pay agreement was notified:

15

(c) an eligible employer association that was not a member of the employer bargaining side when the fair pay agreement was notified:

(d) a specified employer bargaining party that was not a member of the employer bargaining side when the fair pay agreement was notified, and that employs at least 1 covered employee.

20

(3) Despite **subsection (2)**, a default bargaining party may not apply to the chief executive for approval to start bargaining to renew a fair pay agreement.

Timing

184 When application to renew fair pay agreement may be made

25

(1) An application to the chief executive for approval to initiate bargaining to renew a fair pay agreement may be made no earlier than,—

(a) in the case of an application from an eligible union or employee bargaining party, 180 days before the expiry date specified in the fair pay agreement; or

30

(b) in the case of an application from an eligible employer association, an employer bargaining party, or a specified employer bargaining party, 160 days before the expiry date specified in the fair pay agreement.

(2) If a fair pay agreement has expired,—

(a) an application to renew the fair pay agreement may not be made; but

35

(b) an application for approval to bargain for a replacement fair pay agreement may be made under **section 185**.

185 Application for approval to bargain for replacement fair pay agreement

- (1) If no application for approval under **section 184(1)** is made before the expiry date specified in the fair pay agreement (so that the agreement has expired), an eligible union or an eligible employer association may apply for approval to initiate bargaining for a replacement fair pay agreement based on the coverage of the expired fair pay agreement. 5
- (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.

186 Effect on expiry date of approval to bargain for renewal

Despite the expiry date specified in a fair pay agreement, if a party applies for approval to initiate bargaining for renewal under **section 184(1)**, the agreement continues in force until the later of— 10

- (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 start bargaining to renew the agreement; and 15
- (d) the date on which bargaining for the proposed renewal stops under **section 78(6) or 80(6)**.

187 Commencement of renewed or replacement agreement 20

- (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. 25

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

- (1) An application to initiate bargaining to renew a fair pay agreement must be to renew the fair pay agreement with the same coverage as, or a broader coverage than, that provided by the fair pay agreement being renewed on the date on which the application is made. 30
- (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. 35
- (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***189 Contents of application to renew or replace fair pay agreement**

- (1) An application to initiate bargaining to renew or replace a fair pay agreement must—
- (a) be in writing; and 5
 - (b) state the following:
 - (i) the name of the applicant; and
 - (ii) the name of the primary contact person for the applicant; and
 - (iii) the email address of the primary contact person; and
 - (c) specify which renewal test the application meets (*see section 190*); and 10
 - (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— 15
 - (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— 20
 - (i) the applicant being either an eligible union or an eligible employer association; and
 - (ii) how the application meets the renewal test; and
 - (f) be signed by an authorised representative of the applicant; and
 - (g) include any other information required by regulations. 25
- (2) An applicant who intentionally or recklessly provides inaccurate information as part of an application to the chief executive for approval to initiate bargaining for a proposed renewal or a proposed replacement is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**. 30

190 Test for initiating bargaining to renew or replace fair pay agreement

- (1) An application for approval to initiate bargaining to renew or replace a fair pay agreement must meet—
- (a) the representation test; or
 - (b) the public interest test. 35
- (2) An application meets the representation test if,—

-
- (a) for an application from an employee bargaining party,—
- (i) at least 1,000 employees within the coverage of the proposed renewal or the proposed replacement support bargaining to renew or replace the fair pay agreement; or
- (ii) 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 5
- (b) for an application from an employer bargaining party, bargaining for the proposed renewal or the proposed replacement is supported by 1 or more employers who, between them, employ— 10
- (i) at least 1,000 employees within the coverage of the proposed renewal or the proposed replacement; or
- (ii) at least 10% of all employees 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— 15
- (a) meets the public interest test specified in **section 29(4)**; or
- (b) would have met the public interest test specified in **section 29(4)** if the fair pay agreement had not previously been in force.
- 191 Chief executive to assess application for approval to renew or replace fair pay agreement** 20
- (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. 25
- (2) For the purpose of **subsection (1), sections 30(2), 31, 32(1), (2), (3), and (4)(b)(i), (ii), and (iii)(B), and 33** apply with all necessary modifications, including that—
- (a) references to the union must be read as references to the applicant; and 30
- (b) the application relates to bargaining for the proposed renewal or the proposed replacement, rather than to bargaining for a proposed FPA.
- (3) The chief executive must decline an application if,—
- (a) after assisting the applicant under **section 32(3)**, the chief executive considers the application does not define the coverage of the proposed renewal or the proposed replacement with sufficient clarity; or 35
- (b) after considering any additional information or evidence provided under **section 32(2)**, the chief executive is not satisfied that the application

meets the requirements set out in **sections 32(4)(b)(i), (ii), and (iii)(B), 189, and 190.**

Notification requirements

- 192 Chief executive must notify bargaining parties of approval to bargain for proposed renewal or proposed replacement** 5
- (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. 10
- (2) A notification under **subsection (1)(a) or (b)** must comply with the requirements of **section 34** with the following modifications:
- (a) the references to a proposed FPA must be read as references to a proposed renewal or a proposed replacement: 15
- (b) **section 34(2)(a)(ii)** does not apply.
- (3) The chief executive must comply with **subsection (1)** within 5 working days of approving the application.
- 193 Notification of bargaining for proposed renewal or proposed replacement**
- (1) If the chief executive approves an application for approval to initiate bargaining for a proposed renewal or a proposed replacement,— 20
- (a) if the applicant is an eligible union or an employee bargaining party, the applicant, any unions notified under **section 36(1)(a) or 37(1)**, and each covered employer must comply with **sections 36 to 41** with all necessary modifications; or 25
- (b) if the applicant is an eligible employer association or employer bargaining party, the applicant, the employee bargaining side, and the employer must comply with **subsections (2) to (8)**.
- (2) Within 15 working days of the applicant receiving notice that the chief executive has approved its application to initiate bargaining, the applicant must— 30
- (a) 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) notify those unions, employer associations, employers, and specified employer bargaining parties that the applicant has received approval to initiate bargaining. 35
- (3) A notification under **subsection (2)** must—

-
- (a) be in writing; and
- (b) state where to find the notice issued by the chief executive under **section 192**; 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 5
- (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 10
- (f) in each case, include a form that has been approved and issued by the chief executive under **section 243** that sets out the following information:
- (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: 15
- (ii) the process by which an employee who does not want their contact details to be provided to the employee bargaining side can elect not to have their contact details provided: 20
- (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: 25
- (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 eligible union or the employee bargaining party. 30
- (4) A statement provided under **subsection (3)(c), (d), or (e)** must—
- (a) be in writing; and 35
- (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: 5
 - (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, a union 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: 10
 - (iv) where to find further information about the proposed renewal or the proposed replacement and the bargaining process: 15
 - (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)**, a covered employer must comply with **section 37** with all necessary modifications.
- (6) An employee bargaining side for a proposed renewal or a proposed replacement must, within 10 working days of forming, provide to the applicant an address to which the employer must provide its employees' contact details. 20
- (7) The applicant must, within 5 working days of receiving the address, provide the address 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. 25
- (8) An employer must, within 10 working days after receiving the address, comply with **section 39** with all necessary modifications.
- (9) An employer that intentionally or recklessly fails to comply with **subsection (5) or (8)** is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**. 30
- 194 Formation of employer bargaining side for proposed renewal or proposed replacement**
- (1) An employer bargaining side for a proposed renewal or a proposed replacement is formed 3 months after the chief executive approves an application for approval to start bargaining for the proposed renewal or the proposed replacement. 35
- (2) For the purposes of forming an employer bargaining side, **sections 42 to 48, 56, and 58 to 61** apply with all necessary modifications, including the following:

- (a) the chief executive's notification of having approved the application is made under **section 192**:
 - (b) references to a proposed FPA must be read as references to a proposed renewal or a proposed replacement.
- 195 Employee bargaining side for proposed renewal or proposed replacement** 5
- (1) An employee bargaining side for a proposed renewal or a proposed replacement is formed 3 months after the chief executive approves an application for approval to initiate bargaining for the proposed renewal or the proposed replacement.
 - (2) For the purposes of forming an employee bargaining side, **sections 49 to 57 and 59 to 61** apply with all necessary modifications, including the following: 10
 - (a) the chief executive's notification of having approved the application is made under **section 192**:
 - (b) references to a proposed FPA must be read as references to a proposed renewal or a proposed replacement. 15

Part 9 Penalties and enforcement

Penalties

- 196 Penalty for non-compliance with obligation when bargaining** 20
- (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. 25
 - (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)**.
- 197 Penalty for non-compliance with obligation when fair pay agreement in force** 30
- (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: 35
 - (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)**.

198 Jurisdiction concerning penalties

- (1) The Authority has full and exclusive jurisdiction to deal with all actions for the recovery of penalties under this Act— 5
- (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— 10
- (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 11 of Schedule 3** of this Act. 15

Compare: 2000 No 24 s 133

199 Priority when overlapping jurisdiction

- (1) If a person's actions mean that the person has breached this Act and another Act,—
- (a) any proceedings must be brought under the Act specified in this section; and 20
- (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. 25
- (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. 30

200 Matters Authority and court must have regard to in determining amount of penalty 35

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

- (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 5
- (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 10
- (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. 15

Compare: 2000 No 24 s 133A

201 Recovery of penalties

- (1) Any action for the recovery of a penalty may be brought,— 20
 - (a) in the case of a breach of a fair pay agreement, at the suit of any party to the agreement who is affected by the breach; or
 - (b) in the case of any other breach of this Act, at the suit of any person in relation to whom the breach is alleged to have taken place or a Labour Inspector under **section 241(5)**. 25
- (2) A claim for 2 or more penalties against the same person may be joined in the same action.
- (3) In any claim for a penalty, the Authority or the court—
 - (a) may give judgment for the total amount claimed, or any amount, not exceeding the maximum specified in **section 196 or 197** (as applicable); or 30
 - (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: 35
 - (a) the date on which the cause of action first became known to the person bringing the action:

- (b) the date on which the case of action should reasonably have become known to the person bringing the action.

Compare: 2000 No 24 s 135

202 Chief executive or Labour Inspector may enforce payment of penalty

The chief executive or a Labour Inspector may recover in the District Court as a debt due to the Crown any penalty ordered by the Authority or the court under **section 201** to be paid to the Crown. 5

Compare: 2000 No 24 s 135A

203 Application of penalties recovered

- (1) Subject to any order made under **subsection (2)**, every penalty recovered in any penalty action, whether before the Authority or the court, must be paid into the Authority or the court, as the case requires, and not to the plaintiff, and must then be paid by the Authority or the court into a Crown Bank Account. 10
- (2) The Authority or the court may order that the whole or any part of any penalty recovered must be paid to any person. 15

Compare: 2000 No 24 s 136

Part 10 Institutions

Subpart 1—Mediation services

204 Mediation services 20

- (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 FPA, a proposed variation, a proposed renewal, a proposed replacement, or a fair pay agreement,— 25
- (a) the relationships listed in **section 17(2)**; and
- (b) the relationships between the following parties:
- (i) the employer bargaining parties on an employer bargaining side and the covered employees:
- (ii) an employee bargaining party and the covered employees: 30
- (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 the covered employers: 35

- (vi) the employee bargaining parties on an employee bargaining side and the covered employers.
- (3) Mediation services may include services that—
- (a) provide general information about rights and obligations in relation to fair pay agreements: 5
 - (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: 10
 - (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 207** of this Act. 15
- Compare: 2000 No 24 s 144
- 205 Application of provisions in Employment Relations Act 2000** 20
- 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: 25
 - (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 FPA, a proposed variation, a proposed renewal, or a proposed replacement: 30
 - (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: 35

- (f) the reference in section 150A(3)(a) of the Employment Relations Act 2000 to an employment relationship problem must be read as a reference to a problem relating to a fair pay relationship listed in **section 204(2)**:
- (g) section 153 of the Employment Relations Act 2000 also applies to a person employed or engaged to provide mediation services under this Act. 5

206 Other mediation services

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

Compare: 2000 No 24 s 154

10

Subpart 2—Bargaining support services

207 Bargaining support services

- (1) The chief executive must employ or engage persons to provide bargaining support services to support all fair pay relationships listed in **section 204(2)** when bargaining for a proposed FPA, a proposed variation, a proposed renewal, or a proposed replacement. 15
- (2) Bargaining support services may include services that—
- (a) help bargaining sides to understand the process for bargaining:
- (b) support bargaining sides throughout the process of bargaining:
- (c) support bargaining sides to ensure that bargaining is constructive and efficient: 20
- (d) assist bargaining sides to understand the content requirements for a proposed FPA, a proposed variation, a proposed renewal, or a proposed replacement:
- (e) assist in resolving any conflict within or between bargaining sides that are bargaining. 25
- (3) A person employed or engaged to provide bargaining support services under this section may also be employed or engaged to provide mediation services under **section 204** of this Act or under section 144 of the Employment Relations Act 2000. 30

208 Access to bargaining support services

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

Compare: 2000 No 24 s 146

209 Provision of bargaining support services

35

- (1) The chief executive may, by general instructions under **subsections (5) and (6)**,—

- (a) decide how to provide the bargaining support services required under **section 207**; and
- (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,— 5
- (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— 10
- (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 15
- (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. 20
- (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. 25
- (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)
- 210 Other bargaining support services** 30
- Nothing in this Part prevents any person from seeking and using bargaining support services other than those provided by the chief executive under **section 207**.
- Compare: 2000 No 24 s 154
- Subpart 3—Employment Relations Authority** 35
- 211 Role of Authority**
- (1) Under this Act, the Authority’s role includes the following:

- (a) making determinations, making recommendations, and resolving disputes relating to proposed FPAs, proposed variations, proposed renewals, proposed replacements, and fair pay agreements by establishing the facts and making a decision according to the substantial merits of the case, without regard to technicalities: 5
- (b) if there is coverage overlap, determining whether the proposed FPA, the proposed renewal, the proposed replacement, or the fair pay agreement provides the better terms overall for employees within the coverage of both agreements (*see section 105*):
- (c) assessing a proposed FPA, a proposed variation, a proposed renewal, or a proposed replacement to determine whether it complies with the requirements of this Act and other legislation (*see section 133*). 10
- (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 15
- (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 20
- (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. 25
- Compare: 2000 No 24 s 157 25

Determinations and recommendations

212 Parties may apply to Authority for determination

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

- (a) an employee, an employer, or a bargaining party may apply for a determination in relation to whether an employee or employer is within coverage of a proposed FPA, a proposed variation, a proposed renewal, or a proposed replacement: 30
- (b) a party to a fair pay relationship described in **section 204(2)**, in relation to a dispute about a duty, obligation, or requirement provided under this Act: 35
- (c) a bargaining side for a proposed FPA, a proposed renewal, or a proposed replacement, in relation to whether to include a term that addresses a

topic listed in **section 115(1)** in the proposed FPA, the proposed renewal, or the proposed replacement:

- (d) a bargaining side for a proposed FPA, a proposed renewal, or a proposed replacement, in relation to asking the Authority to fix the terms of the proposed FPA, the proposed renewal, or the proposed replacement: 5
- (e) a covered employee or a covered employer, in relation to the interpretation, the application, or the operation of the fair pay agreement by which they are covered:
- (f) a Labour Inspector in relation to whether an employee, or a group of employees, is within the coverage of a fair pay agreement. 10

213 Jurisdiction of Authority

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

- (a) any matter arising during the initiation of, bargaining for, or ratification of a proposed FPA, a proposed variation, a proposed renewal, or a proposed replacement, including matters relating to— 15
 - (i) forming bargaining sides:
 - (ii) notifying covered employees of process requirements for bargaining:
 - (iii) whether an employee is a covered employee: 20
 - (iv) whether an employer is a covered employer; and
- (b) determining whether a party has complied with the good faith obligations imposed by this Act, including—
 - (i) the terms of an inter-party side agreement:
 - (ii) the terms of the bargaining process agreement: 25
 - (iii) the appointment of a bargaining side lead advocate:
 - (iv) whom the bargaining sides to a proposed FPA should appoint as an independent reviewer for the purposes of **section 92(3)**; and
- (c) determining whether a bargaining party or bargaining side has complied with its bargaining obligations imposed by this Act, including the following: 30
 - (i) ensuring a sufficient level of representation and input from employees or employers:
 - (ii) ensuring a sufficient level of Māori representation and input; and
- (d) resolving a dispute about whether an employee is within the coverage of a fair pay agreement; and 35
- (e) resolving a dispute about the interpretation or application of, or compliance with, a fair pay agreement; and

- (f) determining whether a topic listed in **section 115(1)** must be included in a proposed FPA, a proposed renewal, or a proposed replacement under **section 214**; and
- (g) recommending the terms of a proposed FPA, a proposed renewal, or a proposed replacement under **section 215**, or the terms of a proposed variation under **section 180**; and 5
- (h) fixing the terms of a proposed FPA, a proposed renewal, or a proposed replacement under **section 218**; and
- (i) determining any other matter arising under this Act.
- 214 Determination relating to topic that bargaining sides must consider for inclusion** 10
- (1) If the bargaining sides for a proposed FPA, a proposed renewal, or a proposed replacement are unable to agree whether to include a term that addresses a topic listed in **section 115(1)**,—
- (a) a bargaining side (or a bargaining party acting on behalf of the bargaining side) may apply to the Authority for a determination as to whether the proposed FPA, the proposed renewal, or the proposed replacement must include such a term; and 15
- (b) the Authority must determine whether the proposed FPA, the proposed renewal, or the proposed replacement must include such a term. 20
- (2) The Authority must determine that a proposed FPA, a proposed renewal, or a proposed replacement must include a term to address a topic listed in **section 115(1)** unless the Authority considers there is good reason not to include such a term.
- (3) If the Authority determines that a proposed FPA, a proposed renewal, or a proposed replacement must include a term to address a topic listed in **section 115(1)**, the bargaining sides must bargain to decide the content of the term. 25
- 215 Recommendations on terms of proposed FPA, proposed renewal, or proposed replacement**
- (1) If the bargaining sides for a proposed FPA, a proposed renewal, or a proposed replacement are unable to agree the content of a term of the proposed FPA, the proposed renewal, or the proposed replacement, a bargaining side (or a bargaining party acting on behalf of the bargaining side)— 30
- (a) may apply to the Authority asking it to recommend the content of the term; but 35
- (b) is not permitted to apply for a recommendation under section 173A of the Employment Relations Act 2000.
- (2) The Authority must consider the factors listed in **section 220** before making a recommendation under **subsection (1)**.

- (3) A recommendation made by the Authority is not binding on the parties to the proposed FPA, the proposed renewal, or the proposed replacement.

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

- (1) Except as provided in **section 217**, if a party seeks a determination or recommendation from the Authority, the Authority must— 5
- (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. 10
- (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— 15
- (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. 20
- (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). 25

217 Limitations on issues relating to coverage

- (1) A party listed in **subsection (2)** is not required to use mediation services, (whether provided under this Act, the Employment Relations Act 2000, or otherwise) before applying to the Authority for a determination as to whether, in relation to a proposed FPA, a proposed variation, a proposed renewal, a proposed replacement, or a fair pay agreement,— 30
- (a) an employee is a covered employee:
 - (b) an employer is a covered employer. 35
- (2) For the purposes of **subsection (1)**, the parties are,—
- (a) during bargaining for a proposed FPA, a proposed variation, a proposed renewal, or a proposed replacement, employees, employers, and bargaining parties; or

- (b) when a fair pay agreement is in force, an employee or 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 5
 - (b) must give priority to investigating and determining the matter in accordance with **clause 2(2) of Schedule 3**.
- (4) An application for a determination described in **subsection (1)** cannot be made to the Employment Court.

Fixing terms of fair pay agreements

10

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

- (1) If the bargaining sides for a proposed FPA, a proposed renewal, or a proposed replacement are unable to agree 1 or more terms of the proposed FPA, a bargaining side (or a bargaining party acting on behalf of the bargaining side) may apply to the Authority for a determination to fix the terms of the proposed FPA, the proposed renewal, or the proposed replacement. 15
- (2) However, before making an application,—
 - (a) the bargaining sides must have exhausted all other reasonable alternatives for reaching agreement; or 20
 - (b) the bargaining sides must have, for a reasonable period, used their best endeavours to identify and use reasonable alternatives to agree the terms of the proposed FPA, the proposed renewal, or the proposed replacement; or
 - (c) the proposed FPA, the proposed renewal, or the proposed replacement must have been the subject of 2 ratification processes, without having been ratified. 25

219 Terms that Authority may fix

- If the Authority decides to fix the terms of a proposed FPA, a proposed renewal, or a proposed replacement, it may do so by— 30
- (a) fixing terms that, under **section 114**, must be included in a fair pay agreement:
 - (b) fixing terms on topics that, under **section 115**, the bargaining sides must discuss for inclusion in a fair pay agreement and that one bargaining side has requested to be included: 35
 - (c) fixing terms that are not described in **paragraph (a) or (b)** but that both bargaining sides have agreed to include.

220 Considerations when Authority recommends or fixes terms

When recommending terms of a proposed FPA, a proposed variation, a proposed renewal, or a proposed replacement under **section 180 or 215**, or fixing the terms of a proposed FPA, a proposed renewal, or a proposed replacement under **section 218**, the Authority—

- (a) must consider—
 - (i) any terms of the proposed FPA, the proposed variation, the proposed renewal, or the proposed replacement (as applicable) that the bargaining sides have already agreed; and
 - (ii) industrial (in relation to an industry-based agreement) or occupational (in relation to an occupation-based agreement) practices and norms, including their evolution and development; and
 - (iii) the likely impact and potential benefits of the terms on covered employees and, in particular, on covered employees who are low-paid and vulnerable employees; and
 - (iv) the likely impact of the terms on covered employers; and
 - (v) relativities within the proposed FPA, the proposed variation, the proposed renewal, or the proposed replacement (as applicable) and with other relevant employment standards (for example, any relevant collective agreements under the Employment Relations Act 2000 or applicable minimum employment standards); and
 - (vi) the need to ensure that the proposed FPA, the proposed variation, the proposed renewal, or the proposed replacement is easily understood by covered employees and covered employers (for example, by being expressed in plain language); and
 - (vii) any other relevant considerations; and
- (b) may consider any likely impacts on New Zealand's economy or society.

221 Limits on Authority fixing terms

- (1) When the Authority fixes the terms of a proposed FPA, the terms must comply with the limitations and requirements specified in **Part 6** (content and form of fair pay agreements).
- (2) However, the Authority—
 - (a) may fix a term that provides for a union member payment (as defined in **section 13(4)**) only if both bargaining sides agree to include such a term in the proposed FPA; and
 - (b) must not fix a term that provides for the proposed FPA to have a delayed commencement date for a specified employer (*see sections 127 to 129*).

222 Effect of Authority fixing terms

Terms that are fixed by the Authority under **section 218** are binding and enforceable and—

- (a) are not required to be—
 - (i) assessed under **subpart 1 of Part 7**; or 5
 - (ii) ratified under **subpart 2 of Part 7**; or
 - (iii) verified under **subpart 3 of Part 7**; but
- (b) must be—
 - (i) assessed for overlapping coverage under **subpart 4 of Part 7**; and 10
 - (ii) validated under **subpart 5 of Part 7**.

223 Membership of Authority when fixing terms of fair pay agreement

- (1) When fixing the terms of a proposed FPA, the Authority must consist of a panel of 3 members.
- (2) The Chief of the Authority must appoint 1 of the 3 members to be the chair-person of the panel. 15
- (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 20

224 Powers of Authority under this Act

- (1) Despite **Schedule 3**, the Authority has only the powers set out in **subsection (2)** when it is—
 - (a) assessing a proposed FPA for compliance in accordance with **section 133**; or 25
 - (b) determining whether a proposed FPA or a fair pay agreement provides better terms in accordance with **section 105**.
- (2) The Authority has the power—
 - (a) to call for evidence and information from any person:
 - (b) to interview any person: 30
 - (c) to follow whatever procedure the Authority considers appropriate.

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

An Authority member who is a member of a panel that has fixed the terms of a fair pay agreement must not hear any disputes relating to the interpretation or application of the fair pay agreement. 35

226 Decision of Authority

- (1) The decision of a majority of the Authority members on a panel appointed in accordance with **section 223** is the decision of the panel.
- (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.

5

Compare: 2000 No 24 s 210

10

227 Obligation not to obstruct or delay Authority

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

15

20

Compare: 2000 No 24 s 134A

*Provisions that apply when application made to Authority***228 Application of Employment Relations Act 2000**

The provisions of the Employment Relations Act 2000 listed in **Part 1 of Schedule 3**, and the provisions set out in **Part 2 of Schedule 3**, apply if a person applies, in accordance with this Part, for the Authority or the court to,—

25

- (a) issue a determination or recommendation;
- (b) resolve a dispute;
- (c) fix the terms of a fair pay agreement.

Part 11

30

Miscellaneous provisions**229 Meaning of document**

In this Part, **document** includes information that is stored electronically.

Representation

230 Representation of individuals

- (1) **Subsection (2)** applies only if this Act confers on an employee the right to do anything or take any action—
- (a) in respect of an employer; or 5
 - (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)**. 10
- (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 15
 - (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 20 that person's authority for that representation.

Compare: 2000 No 24 s 236

231 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— 25
- (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. 30
- (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— 35
- (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
- (5) Any person purporting to represent any employee bargaining party or employer bargaining party must establish that person's authority for that representation. 10
- Compare: 2000 No 24 s 236 10

Record-keeping requirements

232 Record when minimum entitlement provision has district variation

- (1) An employer that has at least 1 employee within the coverage of a fair pay agreement that includes a minimum entitlement provision that applies to a specific district (*see* **section 123**) must keep records showing, for each of the employer's employees who are within the coverage of the fair pay agreement (regardless of where the employee works)— 15
- (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. 20
- (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— 25
- (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. 30
- (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. 35

233 Record when agreement includes penalty rate or overtime rate

- (1) An employer that has at least 1 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 employees who are within the coverage of the fair pay agreement— 5
- (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. 10
- (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— 15
- (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. 20
- (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. 25

Compare: 2000 No 24 s 130

234 How records must be kept

- (1) A record kept under **section 232 or 233**— 30
- (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. 35
- (3) An employer that fails to comply with **section 232, 233**, or this section is liable to a penalty as if the employer had failed to comply with section 130 of the Employment Relations Act 2000.

*Labour Inspector may make determination of coverage by fair pay agreement***235 Employee or employer may apply for coverage determination**

- (1) An employee or an employer (or a representative of the employee or the employer under **section 230**) may apply to a Labour Inspector for a determination as to whether an employee, or a group of employees, is covered by a fair pay agreement. 5
- (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— 10
- (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.

236 Labour Inspector may determine coverage under fair pay agreement 15

- (1) A Labour Inspector may determine whether an employee is covered by a fair pay agreement if the Labour Inspector— 20
- (a) receives an application for a determination under **section 235**; or
 - (b) considers, without receiving an application, that it is necessary to do so for the purposes of performing a function under section 223A of the Employment Relations Act 2000.
- (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— 25
- (a) decide whether to investigate whether the employee is covered by 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 30
 - (d) within a reasonable period after receiving the application, notify the applicant of its decisions under **paragraphs (a) to (c)**.
- (4) When the Labour Inspector notifies the applicant under **subsection (3)(d)**, the Labour Inspector must also,— 35
- (a) if the Labour Inspector decides to make a determination, include a copy of the determination; and
 - (b) 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.
- 237 Actions by Labour Inspector** 5
- A Labour Inspector may commence an action in the Authority to seek a determination as to whether an employee is covered by a fair pay agreement—
- (a) on behalf of an applicant under **section 235**; 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 10
- (ii) the Labour Inspector is unable to make a determination.
- 238 Effect of coverage determination**
- (1) A determination made under **section 236** is prima facie evidence of the matter determined. 15
- (2) However, **subsection (1)** does not apply if—
- (a) a Labour Inspector makes a subsequent determination in relation to the same employee and the same fair pay agreement; or
- (b) the determination is appealed against in accordance with **section 239**. 20
- (3) A determination as to whether an employee is covered by a fair pay agreement overrides any earlier determination in relation to the same employee and the same fair pay agreement.
- 239 Appeal against coverage determination**
- (1) A person described in **section 235(1)** may appeal to the Authority against a determination made under **section 236** if the person is dissatisfied with the determination. 25
- (2) Any appeal must be made no later than 28 days after the date on which the Labour Inspector notifies the applicant of the determination under **section 236(3)(d)**. 30
- 240 Extended powers of Labour Inspectors**
- (1) For the purpose of determining whether an employee is covered by a fair pay agreement under **section 236**, a Labour Inspector has the following powers:
- (a) the power to enter, at any reasonable hour, any premises where any person is employed or where the Labour Inspector has reasonable cause to believe that any person is employed (including the premises of a controlling third party), accompanied, if the Labour Inspector thinks fit, by any other employee of the department qualified to assist or by a constable: 35

-
- (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): 5
 - (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: 10
 - (ii) any records that an employer is required to keep under **sections 232 and 233**:
 - (iii) any other document held that records the remuneration of any employees (including an employee of a controlling third party, or that is under the direction and control of a controlling third party): 15
 - (iv) any other document that the Labour Inspector reasonably believes may assist in determining whether an employee is covered by a fair pay agreement under **section 236**: 20
- (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: 25
 - (ii) any records that an employer is required to keep under **sections 232 and 233**:
- (e) the power to question any employer or controlling third party.
- (2) An employer or a controlling third party that is required, under **subsection (1)(c) or (d)**, to provide any information to a Labour Inspector must comply with the requirement immediately. 30
- (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 197**. 35

- (4) A Labour Inspector must not use any evidence or information obtained under **section 240** for any purpose other than to determine whether an employee is covered by a fair pay agreement.
- (5) For the purpose of this section and **section 241, controlling third party** has the same meaning as in section 5 of the Employment Relations Act 2000. 5
- 241 Extent of Labour Inspectors' powers**
- (1) A Labour Inspector's powers under **section 240**—
- (a) apply only for the purpose of the Labour Inspector determining whether an employee is covered by a fair pay agreement under **section 236**; and
- (b) permit a Labour Inspector to require a controlling third party to provide information only if the Labour Inspector reasonably believes that the controlling third party holds information that may assist the Labour Inspector to determine whether an employee is covered by a fair pay agreement; and 10
- (c) are subject to sections 230 to 233 of the Employment Relations Act 2000; and 15
- (d) are in addition to the Labour Inspector's powers under section 229 of that Act.
- (2) A Labour Inspector may only interview an employee under **section 240(1)(b)(iv) or (v)** if— 20
- (a) the employee consents to being interviewed; and
- (b) the interview takes place at a reasonable time of the day.
- (3) A Labour Inspector may only interview an employee under **section 240(1)(b)(v)** if the Labour Inspector reasonably believes that—
- (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 25
- (b) the employee holds information that would contribute meaningfully to the Labour Inspector's determination.
- (4) A Labour Inspector may interview— 30
- (a) a person described in **section 240(1)(b)(i), (ii), or (iii)** in person; or
- (b) a person described in **section 240(1)(b)(iv) or (v)** in person or by way of telephone conference or video link.
- (5) A Labour Inspector may recover a penalty under this Act in the Authority for a breach of any provision that provides for the imposition of a penalty. 35

*Regulations***242 Power to make regulations**

- (1) The Governor-General may, by Order in Council and on the advice 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 5
 - (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). 10

*Forms***243 Chief executive may approve forms**

- (1) The chief executive may approve and issue any forms that the chief executive considers necessary for the purposes of this Act and that are not forms prescribed by regulations made under this Act. 15
- (2) Every document purporting to be in a form approved and issued by the chief executive under and for the purposes of this Act is deemed to have been so approved and issued unless the chief executive certifies otherwise.

Compare: 2000 No 24 s 237AA

244 Consequential amendments 20

Amend the Acts specified in **Schedule 4** as set out in that schedule.

Schedule 1
Transitional, savings, and related provisions

s 6

Part 1
Provisions relating to this Act as enacted

5

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

Schedule 2
Ratification process: number of votes for covered employers

Number of covered employees	s 144(3) 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 relating
to Employment Relations Authority**

s 228

Part 1

5

Provisions of Employment Relations Act 2000**1 Provisions that apply when application made under Part 10**

The following provisions of the Employment Relations Act 2000 apply, with all necessary modifications, when an application is made to the Authority or the court under this Act:

10

- (a) section 156:
- (b) section 158:
- (c) section 160(1), (2), (2A), and (4):
- (d) section 162:
- (e) section 164: 15
- (f) section 165:
- (g) section 166 (subject to **section 223** of this Act):
- (h) sections 166A to 173:
- (i) section 173A (except in relation to the Authority fixing the terms of a proposed FPA, a proposed renewal, or a proposed replacement under **section 218** of this Act): 20
- (j) sections 175 to 178A:
- (k) section 179B:
- (l) section 185:
- (m) section 186: 25
- (n) section 188:
- (o) section 188A:
- (p) section 189:
- (q) section 190:
- (r) section 191: 30
- (s) section 193:
- (t) 194A:
- (u) sections 195 to 213:
- (v) section 217:

- (w) sections 219 to 222:
- (x) Schedule 2:
- (y) Schedule 3.

Part 2

Provisions that apply in relation to Employment Relations Authority and Employment Court 5

Employment Relations Authority

2 Authority to prioritise previously mediated matters

- (1) This clause applies if a matter comes before the Authority for investigation and recommendation, determination, or resolution, and the parties have attempted to resolve the matter by mediation. 10
- (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. 15
- (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: 20
 - (b) an employer is a covered employer.

Compare: 2000 No 24 s 159A

3 Authority to concentrate on resolving matters

The Authority is not bound to treat a matter as being a matter of the type described by the parties, and may, in investigating the matter, concentrate on resolving the matter, however described. 25

Compare: 2000 No 24 s 160(3)

4 Authority to give oral determination or oral indication in certain circumstances

- (1) At the conclusion of an investigation meeting, the Authority must, wherever practicable and subject to **subclause (2)**,—
 - (a) give its determination on the matter orally; or
 - (b) give an oral indication of its preliminary findings on the matter.30
- (2) This clause is subject to **clause 7**.

Compare: 2000 No 24 s 174

35

5 Oral determinations

- (1) If the Authority gives an oral determination under **clause 4(1)(a)**, it must—
- (a) express its conclusions on the matters or issues it considers require determination in order to dispose of the matter; and
 - (b) state any relevant findings of fact or law to the extent that it considers it necessary to do so in order to explain its conclusions; and 5
 - (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. 10
- (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. 15

Compare: 2000 No 24 s 174A

6 Oral indication of preliminary findings

- (1) If the Authority gives an oral indication of its preliminary findings under **clause 4(1)(b)**, it— 20
- (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 25
 - (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. 30
- (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 35
 - (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 5
- 7 Authority may reserve determination**
- (1) Despite **clause 4** and subject to **clause 8**, the Authority may reserve its determination of a matter if it is satisfied that there are good reasons as to why it is not practicable for it to provide an oral determination or an oral indication of its preliminary findings at the conclusion of the investigation meeting. 10
- (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: 15
- (a) the day that is 3 months after the date on which the investigation meeting concluded; and
- (b) the day that is 3 months after the date on which the Authority received the last evidence or information from the parties or any other person. 20
- (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 25
- 8 Authority must reserve determination when fixing terms**
- (1) When the Authority is fixing the terms of a fair pay agreement, it must reserve its determination of the matter.
- (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. 30
- (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: 35
- (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.

9 Authority may determine matter without holding investigation meeting

- (1) Subject to **subclause (2)**, and despite **clauses 4, 7, and 8**, the Authority may determine a matter without holding an investigation meeting. 5
- (2) The Authority must hold an investigation meeting when fixing the terms of a fair pay agreement.
- (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. 10
- (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. 15

Compare: 2000 No 24 s 174D

10 Content of written determinations

- (1) A written determination provided by the Authority in accordance with **clause 5(2), 6(2), 7(3), 8(3), or 9(3)**—
- (a) must— 20
- (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 25
- (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 30
 - (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. 35

Compare: 2000 No 24 s 174E

11 Challenges to determinations of Authority

- (1) A party to a matter before the Authority that is dissatisfied with a written determination of the Authority under **clause 5(2), 6(2), 7(3), 8(3), or 9(3)** (or any part of that determination) may elect to have the matter heard by the court.
- (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. 5
- (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). 10
- (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 15
 - (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. 20
- (5) **Subclause (1)** does not apply—
- (a) to an oral determination or an oral indication of preliminary findings given by the Authority under **clause 6(1)(a) or (b)**; and
 - (b) to a determination, or part of a determination, about the procedure that the Authority has followed, is following, or is intending to follow; and 25
 - (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

12 Limitation on challenges to certain determinations of Authority 30

- (1) This clause applies to a determination of the Authority that fixes the terms of a fair pay agreement.
- (2) A party may not elect, under **clause 11(1)** to have the matter heard by the court unless it is an appeal on a question of law.
- (3) For the purpose of **subclause (2)**, a **question of law** is limited to whether the Authority, in fixing the terms of the fair pay agreement,— 35
- (a) met the threshold for fixing the terms of a fair pay agreement (*see section 218*); or

- (b) correctly applied the criteria that, when fixing the terms of a fair pay agreement (*see* **section 220**), it must consider under **section 220(a)** or may consider under **section 220(b)**.

Compare: 2000 No 24 s 179A

13 Election not to operate as stay 5

Making an election under **clause 11** does not operate as a stay of proceedings on the determination of the Authority unless the court, or the Authority, so orders.

Compare: 2000 No 24 s 180

14 Report in relation to good faith 10

- (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 15
 (b) acted in good faith towards each other during the investigation.

- (2) The court may request a report under **subclause (1)** only where the court considers, on the basis of the determination made by the Authority under **clause 5(2), 6(2), 7(3), 8(3), or 9(3)**, that any party may not have participated in the Authority's investigation of the matter in a manner that was designed to resolve the issues involved. 20

- (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. 25

- (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

30

15 Hearings

- (1) If the election states that the person making the election is seeking a hearing *de novo*, the hearing held in accordance with that election is to be a hearing *de novo* unless the parties agree otherwise or the court otherwise directs.

- (2) The court may give a direction under **subclause (1)** only if— 35

- (a) it has requested a report under **clause 14(1)**; and
 (b) on the basis of that report and after having had regard to any comments submitted under **clause 14(5)**, it is satisfied that the person making the

election did not participate in the Authority's investigation of the matter in a manner that was designed to resolve the issues involved.

- (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*. 5
- (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

16 Decision 10

- (1) If a party to a matter has elected under **clause 11** to have that matter heard by the court, the court must make its own decision on that matter and any relevant issues.
- (2) Once the court has made a decision, the determination of the Authority on the matter is set aside and the decision of the court on the matter stands in its place. 15
- (3) Despite **subclause (2)**, a person may apply for review of the determination of the Authority under **clause 19**.
- Compare: 2000 No 24 s 183

17 Restriction on review

- (1) Except on the ground of lack of jurisdiction or as provided in **clause 11**, no determination, order, or proceedings of the Authority are removable to any court by way of certiorari or otherwise, or are liable to be challenged, appealed against, reviewed, quashed, or called in question in any court. 20
- (2) No review proceedings under **clause 19** may be initiated in relation to any matter before the Authority unless— 25
- (a) the Authority has issued a determination under **clause 5(2), 6(2), 7(3), 8(3), or 9(3)** (as applicable) on all matters relating to the subject of the review application between the parties to the matter; and
 - (b) (if applicable) the party initiating the review proceedings has challenged the determination under **clause 11**; and 30
 - (c) the court has made a decision on the challenge under **clause 16**.
- (3) For the purposes of **subclause (1)**, the Authority suffers from lack of jurisdiction only where,—
- (a) in the narrow and original sense of the term jurisdiction, it has no entitlement to enter upon the inquiry in question; or 35
 - (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.

Compare: 2000 No 24 s 184

Employment Court

18 Jurisdiction of court

- (1) The court has exclusive jurisdiction— 5
- (a) to hear and determine elections under **clause 11** 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): 10
 - (c) to hear and determine any application for review of the type referred to in **clause 19**.
- (2) The court does not have jurisdiction to entertain an application for summary judgment.
- (3) Except as provided in this Act, no other court has jurisdiction in relation to any matter that, under **subclause (1)**, is within the exclusive jurisdiction of the court. 15

Compare: 2000 No 24 s 187

19 Application for review

- (1) **Subclauses (3) to (5)** apply if a person wishes, in relation to the exercise, refusal to exercise, or proposed or purported exercise by a person listed in **subclause (2)** of a statutory power or statutory power of decision (as defined by section 4 of the Judicial Review Procedure Act 2016) conferred by or under this Act,— 20
- (a) to apply for review under the Judicial Review Procedure Act 2016; or 25
 - (b) to bring proceedings seeking a writ or order of, or in the nature of, mandamus, prohibition, or certiorari, or a declaration or injunction.
- (2) For the purposes of **subclause (1)**, the persons are—
- (a) the Authority; or
 - (b) an officer of the Authority or the court; or 30
 - (c) an employer, or that employer’s representative; or
 - (d) a union, or that union’s representative; or
 - (e) an employer association; or
 - (f) an employee bargaining side; or
 - (g) an employer bargaining side; or 35
 - (h) the chief executive; or
 - (i) any other person.

- (3) Despite any other Act or rule of law, but subject to **clause 17(2)**, the court has full and exclusive jurisdiction to hear and determine any application or proceedings of the type referred to in **subclause (1)** and all such applications or proceedings must be made to or brought in the court.
- (4) Where a right of appeal (which includes, for the purposes of this subclause, the right to make an election under **clause 11**) is conferred on any person under this Act in respect of any matter, that person may not make an application under **subclause (1)** in respect of that matter unless any appeal brought by that person in the exercise of that right of appeal has first been determined. 5
- (5) A Judge may at any time and after hearing such persons, if any, as the Judge thinks fit, give such directions prescribing the procedure to be followed in any particular case under this clause as the Judge deems expedient having regard to the exigencies of the case and the interests of justice. 10
- Compare: 2000 No 24 s 194

Appeals 15

20 Appeals on question of law

- (1) A party to a proceeding under this Act that is dissatisfied with a decision of the court (other than a decision on the terms of a fair pay agreement) as being wrong in law may, with the leave of the Court of Appeal, appeal to the Court of Appeal against the decision. 20
- (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. 25
- (4) The Court of Appeal may grant leave accordingly if, in the opinion of that court, the question of law involved in that appeal is one that, by reason of its general or public importance or for any other reason, ought to be submitted to the Court of Appeal for decision. 30
- (5) The Court of Appeal, in granting leave under this clause, may, in its discretion, impose such conditions as 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. 35
- (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

- 21 Appeals to Supreme Court on question of law in exceptional circumstances**
- (1) A party to a proceeding under this Act that is dissatisfied with a decision of the court (other than a decision on the terms of a fair pay agreement) as being wrong in law may, with the leave of the Supreme Court, appeal to the Supreme Court against the decision. 5
- (2) In its determination of the appeal, the Supreme Court may confirm, modify, or reverse the decision appealed against or any part of that decision.
- (3) Neither an application for leave to appeal nor an appeal operates as a stay of proceedings on the decision to which the application or the appeal relates unless the court or the Supreme Court so orders. 10
- (4) This clause is subject to section 75 of the Senior Courts Act 2016 (which provides that the Supreme Court must not give leave to appeal directly to it against a decision made in a court other than the Court of Appeal unless it is satisfied that there are exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court). 15
- Compare: 2000 No 24 s 214A
- 22 Court of Appeal may refer appeals back for reconsideration**
- (1) Despite anything in **clause 20**, the Court of Appeal may in any case, instead of determining an appeal under that clause, direct the court to reconsider, either generally or in respect of any specified matters, the whole or any specified part of the matter to which the appeal relates. 20
- (2) In giving a direction under this section, the Court of Appeal must—
- (a) advise the court of its reasons for so doing; and
- (b) give the court such directions as it thinks just as to the rehearing or reconsideration or otherwise of the whole or any part of the matter that is referred back for reconsideration. 25
- (3) In reconsidering the matter, the court must have regard to—
- (a) the Court of Appeal’s reasons for giving a direction under **subclause (1)**; and
- (b) the Court of Appeal’s directions under **subclause (2)(b)**. 30
- Compare: 2000 No 24 s 215
- 23 Obligation to have regard to special jurisdiction of court**
- In determining an appeal under **clause 20 or 24**, the Court of Appeal must have regard to—
- (a) the special jurisdiction and powers of the court; and 35
- (b) the purpose of this Act; and

- (c) in particular, the provisions of sections 189, 190, 193, 219, and 221 of the Employment Relations Act 2000.

Compare: 2000 No 24 s 216

24 Appeal to Court of Appeal in respect of order on application for review

- (1) Any party to an application for review or other proceeding under **clause 19** 5
that is dissatisfied with any final or interlocutory order in respect of the appli-
cation may appeal to the Court of Appeal.
- (2) Section 56 of the Senior Courts Act 2016 applies to an appeal under **sub-**
clause (1).

Compare: 2000 No 24 s 218

10

Schedule 4

Consequential amendments

s 244

Employment Relations Act 2000 (2000 No 24)

In section 5, definition of **employment standards**, after paragraph (b), insert: 5

- (ba) the minimum entitlement provisions under **section 117** of the Fair Pay Agreements Act **2022**:

In section 5, definition of **minimum entitlement provisions**, before paragraph (a), insert:

- (aa) the minimum entitlement provisions under **section 117** of the Fair Pay Agreements Act **2022**; and 10

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 FPA, a proposed variation, a proposed renewal, or a proposed replacement: 15
 - (ii) the existence of bargaining for a proposed FPA, a proposed variation, a proposed renewal, or a proposed replacement:
 - (iii) the existence of a fair pay agreement.

After section 86(1)(e), insert:

- (ea) relates to a proposed FPA, a proposed variation, a proposed renewal, a proposed replacement, or a fair pay agreement under the Fair Pay Agreements Act **2022**; or 20

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— 25
- (a) the wages actually paid to the employee, including overtime rate payments, and penalty rate payments:
 - (b) the hours, days, and time worked by the employee:
 - (c) the district in which the employee worked for each hour and day (*see* **section 123** of the Fair Pay Agreements Act **2022**). 30

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**”. 35

After section 161(1)(m)(v), insert:

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

- (vi) under **section 196 or 197** of the Fair Pay Agreements Act **2022**:

After section 161(1)(qd), insert:

- (qe) all matters arising under the Fair Pay Agreements Act **2022** and, in particular, those listed in **section 213** of that Act.

5

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—

10

- (i) the Fair Pay Agreements Act **2022**; or
 (ii) the Holidays Act 2003; or
 (iii) the Minimum Wage Act 1983; and

15

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.

20

Replace section 235A(a) with:

- (a) a failure by an employer to comply with the requirements of—
- (i) section 64(1) or (2) or 130(1) of this Act; or
- (ii) **section 232(1) or 233(1)** of the Fair Pay Agreements Act **2022**; or
- (iii) section 81(2) of the Holidays Act 2003:

25

Equal Pay Act 1972 (1972 No 118)

After section 13ZN, insert:

30

13ZNA Relationship between pay equity claims and fair pay agreements

- (1) Bargaining for a proposed FPA, a proposed variation, a proposed renewal, or a proposed replacement, or the validation of a fair pay agreement under the Fair Pay Agreements Act **2022** that covers 1 or more employers and 1 or more employees does not settle or extinguish an unsettled pay equity claim to which 1 of those employers is a party.

35

Equal Pay Act 1972 (1972 No 118)—continued

- (2) In **subsection (1), proposed FPA, proposed variation, proposed renewal, and proposed replacement** 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:

5

6A Relationship between Act and fair pay agreements

- (1) If an employee is within the coverage of a fair pay agreement under the Fair Pay Agreements Act **2022**, the employee is entitled to receive no less than the greater of—
- (a) each entitlement under this Act; and
 - (b) the corresponding entitlement under the fair pay agreement.
- (2) In **subsection (1), coverage** has the same meaning as in **section 5(2)** of the Fair Pay Agreements Act **2022**.

10

Judicial Review Procedure Act 2016 (2016 No 50)

Replace section 7 with:

15

7 This Act subject to certain provisions of Employment Relations Act 2000 and Fair Pay Agreements 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
 - (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):

20

25

30

Judicial Review Procedure Act 2016 (2016 No 50)—*continued*

- (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 5
- (b) the following provisions of the Fair Pay Agreements Act **2022**:
 - (i) **clause 17 of Schedule 3** (which restricts review proceedings being brought in respect of any matter before the Employment Relations Authority): 10
 - (ii) **clause 18(1)(c) of Schedule 3** (which confers on the Employment Court exclusive jurisdiction to hear and determine certain proceedings and applications).

Minimum Wage Act 1983 (1983 No 115)

After section 6, insert as subsections (2) and (3): 15

- (2) However, if a worker is within the coverage of a fair pay agreement under the Fair Pay Agreements Act **2022**, the worker is entitled to receive no less than the greater of—
 - (a) the minimum rate to which the worker is entitled under this Act; and
 - (b) the minimum rate to which the worker is entitled under the fair pay agreement. 20
- (3) In **subsection (2)**, **coverage** has the same meaning as in **section 5(2)** 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,— 25
 - (a) if the worker is within the scope of a fair pay agreement under the Fair Pay Agreements Act **2022**, the minimum rate of wages set out in the fair pay agreement for the worker; or
 - (b) in all other cases, the minimum rate of wages prescribed under this Act 30
for the worker.