

Short-Form Supplementary Departmental Disclosure Statement

Fair Pay Agreements Bill

A short form supplementary disclosure statement for proposed government amendments to a Bill seeks to bring together in one place some selected information to support and enhance the Parliamentary and public scrutiny of those proposed amendments.

It highlights certain significant powers or features in the proposed amendments that might be of particular Parliamentary or public interest and warrant an explanation.

It provides a limited supplement to the original disclosure statement for the Fair Pay Agreements Bill, dated 24 March 2022, which can be found at this link here: <https://disclosure.legislation.govt.nz/assets/disclosures/bill-government-2022-115.pdf>

This supplementary disclosure statement was prepared by the Ministry of Business, Innovation and Employment.

The Ministry of Business Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

18 October 2022

Significant Legislative Features

Offences, penalties and court jurisdictions

1. Do the proposed amendments create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalties)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
<p>Clause 12, Schedule 3, of the Fair Pay Agreements Bill (the Bill) limits the appeal rights in relation to a determination where the Employment Relations Authority (the Authority) has fixed the terms of a proposed agreement.</p> <p>Where the Authority has fixed the terms of an Fair Pay Agreement (FPA), appeal rights are limited to whether the legal criteria for a determination to fix the terms of an FPA had been met. As such, a party can only challenge whether:</p> <ul style="list-style-type: none">• the grounds required before the Authority can fix terms were met; or• the Authority correctly applied the criteria it may consider when fixing terms. <p>The Select Committee specified that the Authority <i>may</i> (rather than <i>must</i>) consider the criteria listed in clause 220. Therefore, the Supplementary Order Paper (SOP) proposes to also amend clause 12 of Schedule 3 to further limit appeal rights to whether the Authority correctly applied the criteria <i>that it considered</i> when fixing terms. This means that a party can only apply on the basis the Authority did not correctly apply the criteria that they have applied (rather than whether they should have applied the criteria that they have or have not applied). This provides true discretion for the Authority to choose which criteria to apply when fixing terms.</p>	

1.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice was consulted on the policy cabinet paper agreed during select committee stage changing the criteria from 'must consider' to 'may consider' in order to provide the Employment Relations Authority discretion to consider the criteria set out in clause 220 of the Bill. The Ministry of Justice was also notified about the proposed changes to the Bill to be made by SOP.</p>	

Privacy issues

2. Do the proposed amendments create, amend, or remove any provisions relating to the collection storage, access to, correction of, use or disclosure of personal information?	NO
N/A	

Compulsory acquisition of private property

3. Do the proposed amendments contain any provisions that could result in the compulsory acquisition of private property?	NO
N/A	

Charges in the nature of a tax

4. Do the proposed amendments create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
N/A	

Retrospective effect

5. Do the proposed amendments affect rights, freedoms, or impose obligations, retrospectively?	NO
N/A	

Strict liability or reversal of the burden of proof for offences

6. Do the proposed amendments:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for any offence or civil pecuniary penalty proceeding?	NO
N/A	

Civil or criminal immunity

7. Do the proposed amendments create or amend a civil or criminal immunity for any person?	NO
N/A	

Significant decision-making powers

8. Do the proposed amendments create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
N/A	

Powers to make delegated legislation

9. Do the proposed amendments create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
N/A	

10. Do the proposed amendments create or amend any other powers to make delegated legislation?	YES
The SOP also proposes to insert new clause 32B, which includes an additional power to seek information, of a type to be prescribed in regulations, to enable to chief executive to verify information provided with an application to initiate bargaining. This is also replicated in clause 191 for the purposes of a proposed renewal or proposed replacement.	

Any other unusual provisions or features

11. Do the proposed amendments contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
N/A	