Laura Bowman

From: official information
Sent: Thursday, 25 August 2022 8:06 am
To: 7(2)(a) [redacted]
Cc: official information
Subject: Final Response - LGOIMA 269022 - 7(2)(a) [redacted] / The Spinoff - All documentation and correspondence since 2022 in relation to Council membership of BusinessNZ and BusinessNZ's campaign on fair pay agreements
Attachments: LGOIMA 269022 - Combined Correspondence.pdf

Kia Ora,

I refer to your **information request below**, Hamilton City Council is able to provide the following response.

You requested:

Please provide all documentation and correspondence (internal and external), if any, since the start of 2022 that pertain to:

1. Council membership of Business NZ.
2. Business NZ's campaign on fair pay agreements.

Please further provide details of the membership subscription / fees paid to Business NZ or Chamber of Commerce by the council.

Our Response:

Please find attached all correspondence held in relation to your requests above.

With regard to the Waikato Chamber of Commerce, Hamilton City Council currently pays an annual membership fee of $1200.00 + GST.

Hamilton City Council previously paid $25,000.00 + GST annually in membership fees to Business NZ. This was paid for the 2020/21 and 2021/22 years, however this membership was not renewed upon its expiration on 30 June 2022.

Please do not hesitate to contact us if there is some specific detail you are after that we have not provided.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Kind Regards,

Laura | Official Information Coordinator
Governance & Assurance Team | People and Organisational Performance
Email: officialinformation@hcc.govt.nz

Hamilton City Council
Te kaunihera o Kirikiriroa

From: Hamilton City Council <do.not.reply@hcc.govt.nz>
Sent: Wednesday, 15 June 2022 1:44 pm
To: official information <officialinformation@hcc.govt.nz>
Subject: HCC Website - Official Information Request ref: HCC-QF-220615-7ZXK1-LVI

HCC Website - Official Information Request

Reference: HCC-QF-220615-7ZXK1-LVI
Attachment: not attached

Name: 7(2)(a) [redacted]

Email address: 7(2)(a) [redacted]

Phone number: 7(2)(a) [redacted]

Detailed Description of Request
Kia ora
Please provide all documentation and correspondence (internal and external), if any, since the start of 2022 that pertain to either of the below:
- Council membership of BusinessNZ
- BusinessNZ's campaign on fair pay agreements

Please further provide details of the membership subscription / fees paid to BusinessNZ or Chamber of Commerce by the council.

I'm seeking this information for the purposes of public interest reporting.

With thanks, Toby

Organisation: The Spinoff

Laura Bowman

From: Lance Vervoort
Sent: Wednesday, 18 May 2022 10:14 am
To: Louise Lukin
Subject: Re: Question regarding Hamilton CC's ongoing membership of 'BusinessNZ'

Hi Lou,

Can you delve into what is the issue. Cnr Dave wants Paula to consider a letter to Business NZ like Auckland council and we might need to get this on an agenda over the next month.

Also can you get a list together of all the organisations we have an organisational membership with e.g.

Chamber of Commerce;
Business NZ;
Taituara;
Local Govt NZ;
Recreation NZ
etc etc

And what we pay each.

This can be done through EA's/Business Managers

Cheers
Lance

Get Outlook for iOS

From: Louise Lukin <Louise.Lukin@hcc.govt.nz>
Sent: Wednesday, May 18, 2022 10:09:10 AM
To: Lance Vervoort <Lance.Vervoort@hcc.govt.nz>
Cc: Emma Edgecombe <Emma.Edgecombe@hcc.govt.nz>
Subject: FW: Question regarding Hamilton CC's ongoing membership of 'BusinessNZ'

Hi Lance

Unsure on your thoughts around this, but I see 7(2)(a) has also sent something through.

We will receive the next Business NZ invoice next month (for the period 1 July 2022 – 31 June 2023).

The cost is $25,000 per annum to the CE's cost centre, which is a reasonable saving against our budget if you wish to discontinue our membership.

We can arrange to cancel if this is your preference.

Ngaa mihi

Louise Lukin (her/she)
Director Chief Executive's Office | Kaitohutohu o te tari Tumu Whakarae
7(2)(a) | Email: louise.lukin@hcc.govt.nz

From: Dave Macpherson <Dave.Macpherson@council.hcc.govt.nz>
Sent: Tuesday, 17 May 2022 9:08 pm
To: Paula Southgate <paula.southgate@council.hcc.govt.nz>; Lance Vervoort <Lance.Vervoort@hcc.govt.nz>
Cc: Councillors <Councillors@hcc.govt.nz>; Maangai Maaori <MaangaiMaaori@hcc.govt.nz>
Subject: Question regarding Hamilton CC's ongoing membership of 'BusinessNZ'

Kia ora Paula & Lance

Please see below an article below published by the Stuff business section today outlining Business NZ's misuse of a United Nations document to attack the Government's upcoming Fair Pay Agreement legislation.

https://www.stuff.co.nz/business/300590647/auckland-council-wants-a-please-explain-from-businessnz-over-altered-document

While any organisation in New Zealand has the democratic right to disagree with Government policy on any matter, I point out that Hamilton City Council, as a current 'Major Companies Group Member' of Business NZ has not been consulted at all about this Business NZ stance, nor would it agree with it, should we have been given that opportunity, I suggest.

Our membership of this sector group comes up for renewal over the next 2 months, I believe, and I formally notify you that I wish to propose that we withdraw from that organisation, rather than renew our membership.

Among other things, the Fair Pay Agreement legislation is an important tool in the campaign to provide fairer wages for bus drivers, of which this city is extremely short of at the moment, and which our representatives, along with the Regional Council are working on, to ensure we can build our PT services back up to the levels that residents expect.

I have no doubt that other low-paid sectors of our local workforce, such as allied health and education workers, and traditionally underpaid private sector workers, will also materially benefit from the Fair Pay Legislation, when enacted.

I am outraged that this group, which has never consulted our Council, gets many thousands of dollars from us annually in membership fees, and has misused it in this fashion.

I look forward to your response.

Ngaa Mihi
Councillor Dave Macpherson
Hamilton City Council
7(2)(a)
dave.macpherson@hcc.govt.nz

Laura Bowman

From: Louise Lukin
Sent: Monday, 23 May 2022 7:57 pm
To: Lance Vervoort
Subject: Memo to EM's - Fair Pay Amendment Bill
Attachments: DRAFT Memo - Fair Pay Amendment Bill - 20 May 2022.docx; Appendix B - Major Companies Group Members.pdf; DRAFT HCC Organisational Memberships - May 2022.xlsx

Follow Up Flag: Follow up
Flag Status: Completed

Hi Lance

As discussed, I'm keen to get your steer as to whether this is what you're seeking.

I would be helpful to know

- Is there anything else you'd like to see in here?
- Do you want to include a management recommendation (to write a "sternly worded letter") or just submit the memo for discussion and guidance from EMs (noting you will have the final decision)?

Appendix A - James has requested a copy of the letter from Auckland council – but I understand he hasn't received this yet.
Appendix B - BusinessNZ Major Companies Group members (attached)
Appendix C – HCC Organisation Memberships (current list attached – the EAs and Business Managers have been asked to update this by midday tomorrow).

Governance have suggested we may be able to meet to discuss this with EMs on Thursday and use some of the time that had been previously allocated for the AP hearings. Do you need any of the other GMs there?

Ngaa mihi

Louise Lukin (her/she)
Director Chief Executive's Office | Kaitohutohu o te tari Tumu Whakarae
7(2)(a) | Email: louise.lukin@hcc.govt.nz

Hamilton City Council
Te kaunihera o Kirikiriroa

Hamilton City Council | Private Bag 3010 | Hamilton 3240 | www.hamilton.govt.nz

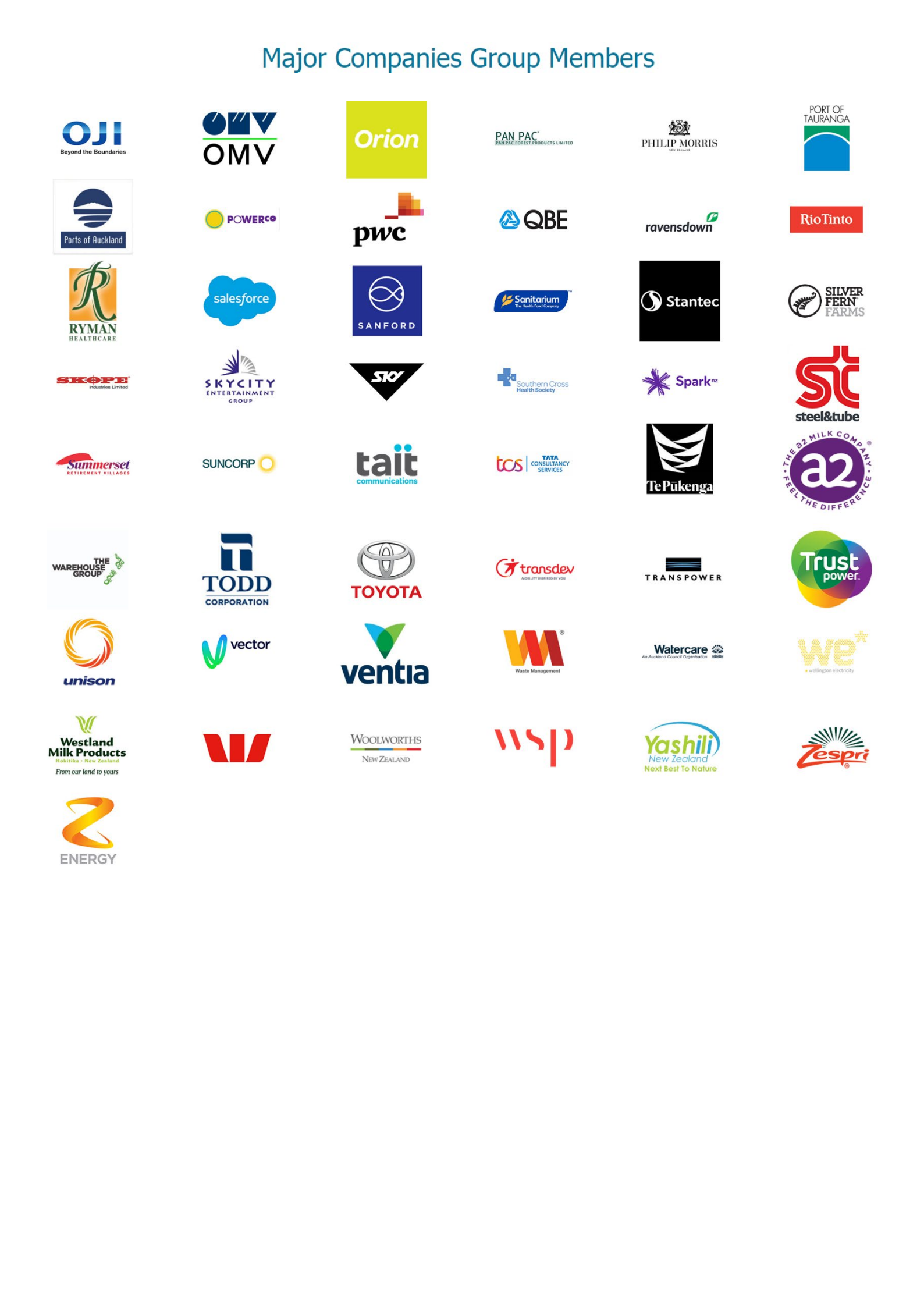
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Major Companies Group Members



Major Companies Group Members



HAMILTON CITY COUNCIL MEMBERSHIPS - AS AT MAY 2022

Organisational Memberships	Per annum	
Property Council NZ	$2,000	Property Council New Zealand is the one organisation that collectively champions property, bringing together members from all corners of the property eco system to advocate for reduced red tape that enables development. Our members shape the cities and spaces where New Zealanders live, work, play and shop.
Waikato Chamber of Commence	$1,200	We Connect, Grow, and Represent our Waikato member businesses. We will represent, empower, and encourage our Waikato business members to connect and
Community Housing Aotearoa	$250	Community Housing Aotearoa (CHA) is a peak body for Aotearoa's community housing sector. Our 100+ members include community housing providers and partner members such as developers, consultants and local councils. Our provider members house approximately 35,000 people nationally across 18,520 homes. Our Vision is to make sure every New Zealander is well-housed in a warm, safe, dry and affordable home.
Master Builders Association	$350	Important that our Building Control unit is a member of Master Builders. Attends all meetings and interacts and liaises with all levels of the building and construction industry.
Heritage NZ	$435	Important that HCC is member to access data bases and information on historic sites. Direct liaison with our District Plan and heritage policies etc Heritage New Zealand Pouhere Taonga is an autonomous Crown Entity under the Crown Entities Act 2004. It is supported by the Government and funded via Vote Arts, Culture and Heritage through the Ministry for Culture and Heritage. Its work, powers and functions are prescribed by the Heritage New Zealand Pouhere Taonga Act 2014. Most protective mechanisms for land-based historic heritage are administered by local authorities through their District Plan policies and heritage listings under the Resource Management Act 1991, although Heritage New Zealand Pouhere Taonga retains regulatory responsibilities regarding archaeological sites.
NZ Archaeological Assn	$600	As for Heritage NZ, important that HCC is a member to access data bases and information on archaeological sites. Direct liaison with our District Plan. The New Zealand Archaeological Association is the national organisation for archaeology with a membership spanning professionals, amateurs, students, organisations, businesses and institutions involved or interested in New Zealand archaeology and heritage. We aim to advance the knowledge and practice of archaeology across New Zealand through encouraging public and professional engagement, undertaking advocacy to Government and providing access to ArchSite, the national archaeological Site Recording Scheme database.
UNISA (Upper North Island Startegic Alliance)	$689	Simply HCC's contribution to meeting costs

HAMILTON CITY COUNCIL MEMBERSHIPS - AS AT MAY 2022

Individual Memberships	Per annum per person	
Institute of Directors	$474	Professional body for senior managers. Networking, career progression and opportunity – particularly in the area of governance.
CAANZ	$700	Chartered Accountants of Australia and NZ. Professional body for all CA's.
Building Officials of NZ (BOINZ)	$456	Industry body for Building Officers. Industry membership provides members with access to networking, training, continuous professional development, career opportunities and commentary on industry legislation. Access to vacancy boards.
NZ Institute of Planners	$370	Industry membership provides members with access to networking, training, continuous professional development, career opportunities. Senior and Principal Planners are required to hold membership. Access to vacancy boards.
Taituara (formerly SOLGM)	$275	Society of Local Government Managers
AAPNZ	$178	Administrative Professional so of NZ. Industry membership provides individuals with access to networking, training and career progression opportunities.
RMLA (Resource Management Law Association)	$178	Membership provides planners with access to networking, training, continuous professional development and training. Along with exposure to up to date information on industry legislation and integration with RM practitioners from other organisations. Access to vacancy boards. A thriving organisation with over 900 members, RMLA brings together lawyers, barristers, judges, planners, environmental managers, environmental engineers, environment commissioners, consultants and civil servants, keeping them abreast of latest developments in environment and resource management-related policy, law and practice, through news, debate, commentary and collaboration. The Association benchmarks itself against high quality environmental outcomes resulting from a robust application of the Resource Management Act.

Memo

CE's Office

To:	Elected Members, Maangai Maaori, Executive Leadership Team		
From:	Lance Vervoort, Chief Executive		
Subject:	BusinessNZ and the Fair Pay Agreements Bill		
Date:	20 July 2022	File:	

1.0 Purpose of this Memo

1.1 To provide background information on BusinessNZ, the Fair Pay Agreements Bill and the alleged actions by BusinessNZ in relation to this.

1.2 To enable discussion and direction on what, if any, course of action Hamilton City Council (HCC) should take with BusinessNZ.

1.3 Provide an overview of other HCC business memberships.

2.0 Background

2.1 On 17 May 2022, an article was published on the Stuff news platform, reporting that "Auckland Council is seeking a 'please explain' from BusinessNZ after its alteration of a United Nations document led to accusations of misinformation."

2.2 BusinessNZ is being accused of misinformation in its handling of an International Labour Organisation (ILO) document that implied New Zealand has been found in breach of international labour laws. ILO is an agency of the United Nations.

2.3 The accusation came after BusinessNZ said the Fair Pay Agreement Bill had landed New Zealand on an international "naughty list" of worst-case breaches of international labour treaties. However, the list, compiled by ILO, was actually a list of alleged breaches which may, or may not, be heard by a committee later this year. The reason New Zealand was on the list was because BusinessNZ had successfully petitioned the ILO to consider whether the proposed Fair Pay Agreement bill was in breach of international law.

2.4 In response, Chris Darby, North Shore Ward Councillor, said he "had received confirmation that Mayor Phil Goff and Chief Executive Jim Stabback were sending a joint letter to Business NZ seeking an explanation."

2.5 The article was initially brought to our attention by Cr Dave Macpherson who expressed concerns that HCC had not been consulted on BusinessNZ's stance and suggested HCC would not have supported their stance, if we had been offered the opportunity to comment.

2.6 Cr Dave Macpherson has formally notified HCC's Chief Executive that he proposes we withdraws our membership, which is due for renewal at the end of June 2022.

2.7 Subsequently, the Mayor and several elected members have also expressed concern with BusinessNZ's approach.

2.8 A copy of the letter from Auckland Council to BusinessNZ is attached as Appendix X.

3.0 BusinessNZ and the Major Companies Group (MCG)

3.1 BusinessNZ has a number of divisions (see fig. 1) including the Major Companies Group (MCG). This is a collective network of large companies that ensures New Zealand businesses *"have a strong voice in policy, business and economic debate."*



Fig 1: Business NZ Division Brands

3.2 They aim to provide a vehicle to *"voice and positively influence the challenges and opportunities facing NZ businesses, by engaging with government officials, community groups, MPs and Ministers."*

3.3 The work of the MCG is carried out with the overarching governance of the BusinessNZ Council. The Chair is 7(2)(a) [redacted]

3.4 The four regional shareholders are: EMA Northern; Business Central; Canterbury Chamber of Commerce; and Otago Southland Employers Association.

3.5 [redacted] is the Chief Executive; however our primary contacts have been 7(2)(a) [redacted], and 7(2)(a) [redacted].

3.6 More than 100 of New Zealand's largest companies (representing 67% of NZ's GDP) are active members, including HCC. We have been a member of BusinessNZ since 2020 and our current annual membership is due for renewal on 30 June 2022. A list of members is attached as Appendix X.

3.7 Whilst membership includes invites to forums, seminars, meetings and conferences our previous Chief Executive primarily attended the quarterly MCG CE Forums. The Chair for these is 7(2)(a) [redacted]

4.0 The Fair Pay Amendment Bill (#115-1)

4.1 The Fair Pay Amendment (FPA) Bill can be accessed on the Parliamentary website here. It states this bill would *"provide the framework for collective bargaining for fair pay agreements across entire industries or occupations, rather than just between unions and particular employers."*

4.2 Parliament's website also states that "*The Fair Pay Agreements Bill seeks to establish a framework for the bargaining of fair pay agreements. The overarching policy objective is to enable employers and employees to collectively bargain industry-wide or occupation-wide minimum employment terms. At present, New Zealand's employment relations and employment standards regulatory system only allows for collective bargaining at an enterprise level (i.e. between individual employers and unions). There is no mechanism for parties to co-ordinate collective bargaining across entire occupations or industries. The Bill aims to address this gap."*

4.3 Additional information, including discussion papers and the working group's report, can be accessed on the MBIE website here.

4.4 **The FPA Bill was introduced to Parliament on 29 March 2022**, with the first reading on 5 April 2022. Submissions closed on 19 May, ahead of the Select Committee Hearing.

4.5 Following the introduction to Parliament, BusinessNZ confirmed it will not accept payments included in the FPA Bill. Under the terms of the Bill, BusinessNZ would be offered $250,000 per year for supporting compulsory bargaining in major sectors of the economy.

4.6 CEO, Kirk Hope said: *"The scheme would make it compulsory for businesses to take part in collective bargaining and compulsory for them to accept union demands or imposed arbitration…. (and) the FPA scheme would be deleterious to the economy, to people's prosperity and to the human rights of those involved… I can confirm that BusinessNZ will definitely not be taking taxpayer money to support compulsory national pay schemes."*

4.7 Hamilton City Council did not make a submission to the Bill. Taituara (formerly SOLGM) did not make a submission to the Bill either.

4.8 Related information and links:

4.8.1 Parliament's **Education and Workforce Committee Report** on the Fair Pay Agreements Bill is due on 5 October 2022.

4.8.2 The **Fair Pay Agreements Bill 2022: Bills Digest 2674** (which provides useful background information) can be accessed here.

4.8.3 The **Transcript for the First Reading of the Bill** (which also provides useful background information) can be accessed here.

5.0 HCC Business Memberships

5.1 In addition to our BusinessNZ membership, Council has a number of other organisational memberships. These are listed in Appendix X.

5.2 Many of these are reviewed and renewed on an annual basis.

6.0 Appendices

A. Copy of letter from Auckland Council to Business NZ *(copy has been requested)*
B. BusinessNZ Memberships
C. HCC Memberships *(being compiled - info requested by Tuesday)*

Laura Bowman

From: Amy Viggers
Sent: Tuesday, 24 May 2022 2:44 pm
To: Councillors; Executive Leadership Team; Maangai Maaori
Cc: Governance Team; ELTEA'S
Subject: Annual Plan Hearing Updates & Mayor/Elected Member/Maangai Maaori
Attachments: Make It 16 Open letter from Local Government Elected Members and Candidates

Kia ora all,

Since the circulation of the agenda for tomorrow Annual Plan Council meeting staff have also been working on an updated engagement and insights report that would include all of the submissions received during consultation on the Draft 2022-23 Annual Plan. A new version of the report has been added to diligent as Attachment 2 of the Hearing report. Please sync your agendas to see this update.

Also on Diligent at the end of the Council Agenda is a draft submission list. At this time there is approximately 30 members of the public that would like the opportunity to speak to their submissions which can be completed in one day. This means the second Annual Plan Hearings day on 26 May is not required. Shortly we will be cancelling the appointment.

Since the second day for Annual Plan Submissions frees up some additional time you calendars, the Mayor/Elected Member/Maangai Maaori Weekly Discussion that is currently on Monday 30th will be move to be on Thursday 26 May from 9.30am to 11.00am where more time is available. Currently on the agenda for this discussion is the following:

Item	Lead
1. **Hamilton City Crest Petition** (Available on Diligent)	Jahvaya Wheki
2. **Council ongoing membership of 'BusinessNZ'**	Lance Vervoort
3. **Make It 16 Open letter from Local Government Elected Members and Candidates** (see attached email)	James Clarke

Ngaa mihi,
Amy Viggers (she/her)
Governance Lead
Mana Whakahaere|Governance
7(2)(a) |Email: Amy.Viggers@hcc.govt.nz

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Laura Bowman

From: Louise Lukin
Sent: Tuesday, 24 May 2022 4:24 pm
To: Lance Vervoort
Cc: Emma Edgecombe; Louise Lukin
Subject: BusinessNZ and the Major Companies Group (MCG) - Additional Info
Attachments: Memo - BusinessNZ and the Fair Pay Amendment Bill - 24 May 2022.pdf; File Note - Business NZ - 24 May 2022.pdf; BusinessNZ - Advocacy Letter - 24 June 2020.pdf; BusinessNZ MCG - Growing NZs Value.pdf; BusinessNZ - Planning Forecast March quarter 2022.pdf; Business NZ & Southern Cross Health Insurance Workplace Wellness Report 2021.pdf

Hi Lance, as promised, here's some info I've been pulling together today to better explain our relationship with BusinessNZ and the benefits of membership.

File Note and Info on BusinessNZ

Attached is (what I hope is) a fairly comprehensive file note on BusinessNZ, including membership details, contacts, benefits and events. You will see links included which will take you to the relevant pages on the website for further info (if interested).

Also attached are a couple of documents which have been referenced in my memo.

- Business Advocacy Letter from 7(2)(a) (June 2020)
- MCG – Growing New Zealand (benefits, forums, events etc)
- BusinessNZ Planning Forecast (March 2022)
- Latest Southern Cross Health Insurance / BusinessNZ Workplace Wellness Survey Report (2021)

I looked back through our email history to refresh my memory on our relationship with BusinessNZ as they seem to have gone a bit quiet lately. They used to be quite active with Richard, so if you choose to renew the membership in June there is probably an opportunity to foster the relationship with 7(2)(a). We can also arrange to get you on the distribution list for their regular newsletters, if that's something you see benefit in.

Memo and Info for Elected Members

Update – Auckland Council are reluctant to release the actual letter (both James and I tried). They said the crux of the letter was that it was a 'please explain', outlining some of the concerns raised in the media last week about the heading assigned to the report. They are still awaiting a reply from BusinessNZ. So we can send the memo to Elected Members without the letter.

Attached is the final version of the memo (withdrew reference to the letter being attached and discussed) including

- Appendix A – BusinessNZ members
- Appendix B – the updated list of HCC memberships. I have only included corporate memberships at this stage. but let me know if you need the individual memberships as we do have this available

If you want any of the additional information from this file note added to the memo for EMs please let me know.

Once I have your approval we can send this to EMs ahead of Thursday's meeting.

Anyway, let me know if you have any questions.

Ngaa mihi

Louise Lukin (her/she)
Director Chief Executive's Office | Kaitohutohu o te tari Tumu Whakarae
7(2)(a) | Email: louise.lukin@hcc.govt.nz

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Southern Cross Health Insurance

BusinessNZ
GROWING PROSPERITY AND POTENTIAL

Workplace Wellness Report 2021









About the authors

Southern Cross Health Insurance

Southern Cross Health Insurance (SCHI) opened for business in 1961 as New Zealand's first health insurer. Today, the not-for-profit Friendly Society is New Zealand's largest health insurer with 887,000 members.

In the year ended 30 June 2021, for every $1 received in premium, SCHI paid out 87c in claims. This compares to an industry average of 62 in the dollar.

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155 Fanshawe Street
Auckland 1010 New Zealand

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E: comms@southerncross.co.nz

www.southerncross.co.nz

BusinessNZ

BusinessNZ is New Zealand's largest business representation group, providing a wide range of services for member businesses.

BusinessNZ undertakes analysis and advocacy on behalf of the wider business, manufacturing, importing and exporting sectors, making representation to Government, local government and other decision makers on issues important to business.

BusinessNZ Network organisations EMA, BusinessCentral, Canterbury Employers' Chamber of Commerce and Otago Southland Employers' Association provide services and advocacy on behalf of thousands of businesses in all parts of New Zealand.

Level 6, JacksonStone House
3-11 Hunter Street
Wellington 6011 New Zealand

P: 04 496 6555
E: admin@businessnz.org.nz

www.businessnz.org.nz

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Southern Cross Health Insurance

BusinessNZ

Foreword



Nick Astwick

CEO , Southern Cross Health Insurance

Southern Cross Health Insurance is pleased to again partner with BusinessNZ to deliver New Zealand's most comprehensive study into workplace wellbeing, at a time when employee wellness has never been more important for New Zealand businesses.

The pandemic has had a significant impact on the way many New Zealand businesses now operate, and that is reflected in the shift in challenges facing enterprises since the last survey two years ago. This report reveals that in the wake of COVID-19, the traditional single place of work no longer exists for many people, and businesses need to be aware of the impact this can have on employee health and wellbeing. Employers' health and wellbeing policies need to be up-to-date and fit-for-purpose to support a healthy new wave of hybrid workers.

Pleasingly, half of organisations surveyed believe their role in employee health and wellbeing increased in 2020, and we've seen a positive shift in the number of businesses noting a correlation between employee wellness and the productivity of their organisation.

Southern Cross is proud this year to celebrate 60 years. We're champions for the health and wellbeing of more than 887,000 New Zealanders, and we support almost 4,000 businesses in protecting and maintaining the health of their employees.

This report will enable businesses to better understand workforces across physical, mental and social health and wellbeing. It also shows the evolution that New Zealand's workplace wellness has undergone since this survey began in 2013, and the ways that Kiwi organisations have adapted to support their employees through the pandemic and beyond.



Kirk Hope

CEO, BusinessNZ

The Workplace Wellness Survey plays an important part in prompting ongoing improvement in New Zealand's health and safety landscape. The survey's findings over five editions have helped inform and motivate organisations towards better wellness outcomes.

This is clearly seen in this year's survey which reveals the huge changes brought by COVID-19. Working from home is a massive change for many organisations and employees. The survey's finding - that working from home is largely viewed as completely positive - is encouraging.

Another finding, that some employees feel isolated when working from home, provides valuable information on how organisations may better manage remote working in future.

This year's survey reveals a big increase in organisations with a culture of encouraging unwell employees to stay home. For employees already working from home, it is evident that many organisations are sending appropriate signals to employees about taking legitimate absences and breaks and taking time to recuperate if unwell.

This survey was completed just prior to legislative change to increase sick leave entitlements from five to 10 days per year, driven by concerns that Covid requirements could mean employees not having enough sick leave to cope with illness or isolation requirements. Data gathered this year, regarding the types of illness or issues causing sick leave to be taken, will form a useful base for comparison with data gathered in the next survey.

BusinessNZ appreciates the cooperation of member businesses and Southern Cross Health Insurance in providing this timely data towards the goal of healthy workplaces.

Cut to the chase
A picture of health in the workplace

The Southern Cross Health Insurance – BusinessNZ Workplace Wellness Survey is designed to provide a picture of where New Zealanders stand in terms of health and wellbeing in the workplace. The research can help employers in a number of ways, including benchmarking for workplace wellness, how businesses can provide better support and lift productivity for their employees, as well as improve the health and wellbeing of their people.

The Workplace Wellness Survey, now in its fifth edition, takes place on a biennial basis and provides a valuable time series for tracking New Zealand's progress towards an effective workplace health and safety system. It is also able to show how broad policy changes and one-off events can move the needle around workplace wellbeing.

The survey has previously shown how legislative changes, such as the 2015 Health and Safety at Work Act, have shown a gradual positive move by employers towards recognising the importance of addressing broader issues of health for their employees. Further, the sudden emergence of COVID-19 in 2020 culminated in a swift step change to the daily working life of many New Zealanders. It also resulted in businesses having to consider vastly different aspects of employee wellbeing and provide additional support.

As noted in previous years, the Workplace Wellness Survey is able to capture and track the journey that workplace wellness is taking in New Zealand, but also gives an opportunity to take an increasingly broader scope for how it can be measured. The 2020 survey retained a number of questions from previous iterations, because it is important to continue to identify the current situation for absence rates, costs and drivers of absence in order to further build upon its time series.

However, COVID-19 has led to a number of new avenues for research in recognition of New Zealand's rapidly changing work environment. For instance, there is an entire chapter in this report dedicated to working from home, a theme that would have been unlikely before COVID-19 expedited this way of working globally.

These findings show that the impacts of working from home on enterprises have been two-fold. While some employees feel isolated, it has also largely been viewed as a positive move. Therefore, further steps towards making working from home more mainstream point towards a future that will need to be carefully managed by employers to ensure it remains a positive change on the whole.

In previous years there has been some degree of disconnect between saying one thing yet showing another, such as employers being clear around staying at home if unwell but employees still coming into work. However, the 2020 results indicate a significant improvement of results with employers recognising the importance of sending the right signal to employees about taking legitimate absences and breaks and taking time to recuperate at home if unwell.

Lastly, while differences between small and large businesses will continue due to different levels of capability and resources, it is pleasing to see the latest results showing the broad business community generally moving in the same direction around improving employee wellbeing.



Southern Cross Health Insurance – BusinessNZ
Key findings from the Workplace Wellness Report 2021

35%

of businesses have changed their views on working from home and now offer it to employees since **COVID-19** began

Most common way for organisations to identify employee mental wellbeing

Larger businesses (>50)
Employee surveys

Smaller businesses (<50)
Training for managers



76%

of businesses are very clear on having a 'if you're sick, stay home' policy **– up from 50% in 2016**



of businesses reported an increase in stress levels, with **91%** citing **COVID-19** as the partial reason why

The main impact on enterprises that previously never used to offer working from home

73%

Report some employees feel isolated

58%

Report that working from home has been positive and employees like the flexibility

Employees taking annual leave in 2020 compared to previous years:



Workload remains the biggest cause of work-related stress / anxiety for businesses

51%

Half of organisations believe their role in the health and wellbeing of employees increased in 2020

Research for the Southern Cross Health Insurance – BusinessNZ Workplace Wellness Report 2021 was carried out between March and June 2021. Respondents were asked to report on data for the period 1 January to 31 December 2020. In total, 116 enterprises responded, representing 95,488 employees (4.76 per cent of all NZ employees).

Southern Cross Health Insurance

BusinessNZ
GROWING PROSPERITY AND POTENTIAL

1. Background to the survey

Purpose and overview

This is the fifth time the biennial Southern Cross Health Insurance – BusinessNZ Workplace Wellness Survey has been carried out in New Zealand.

This report outlines the main results of the 2021 Southern Cross Health Insurance – BusinessNZ Workplace Wellness Survey.

The research is designed to help employers benchmark employee absence levels in their organisations and identify ways to increase attendance and improve the health and wellbeing of their people. It also provides policy makers with data on occupational health practice and absence in the workplace.

The survey provides the business community with information on the overall health of New Zealand's workforce. This now has greater importance given recent changes in health and safety legislation (e.g. the increase of sick leave from five days per year to 10 days that came into effect on 24 July 2021).

The research for this report was conducted between March and June 2021. Fifteen business associations took part and also sent it to their membership, including BusinessNZ Network organisations, Business Central, Canterbury Employers' Chamber of Commerce and Otago Southland Employers' Association. BusinessNZ also sent the questionnaire to Major Company and Gold Group members, as well as a number of Government departments. Respondents were asked to report their absence data for the 12-month period 1 January to 31 December 2020, and to provide details of their policies and practices for managing employee attendance.

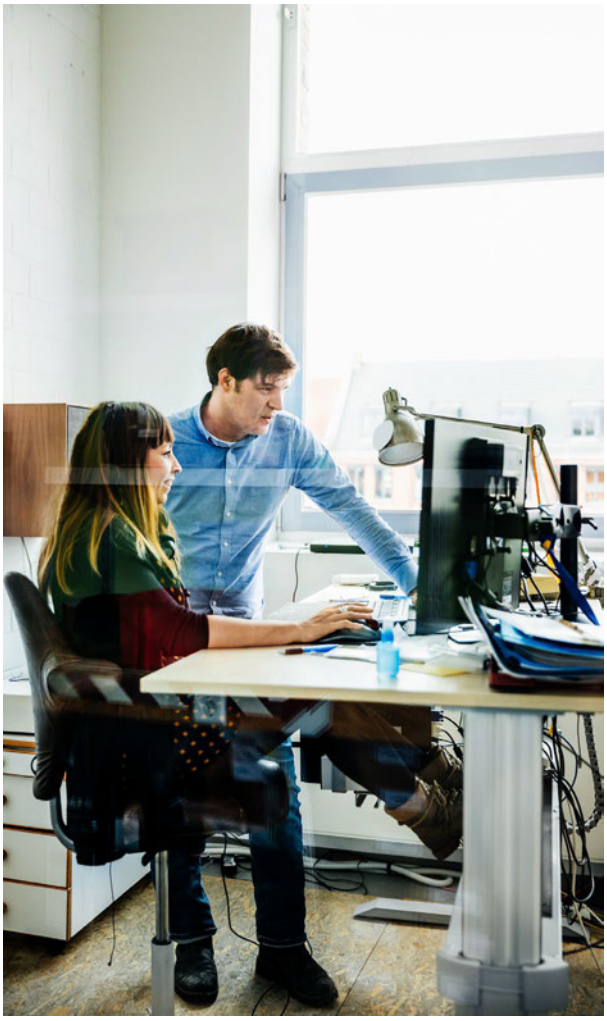
In total, 116 responses were received from entities across the private and public sectors - up from 99 responses in 2019. The respondent entities for 2021 employed a total of 95,488 people, including 77,238 permanent staff. This was down from 121,252 and 106,234 employees respectively in 2019. Over the history of the survey, the number of total employees represented has ranged from 93,000 to 121,252.

The 2021 sample represented 4.76 percent of all employees in New Zealand, down from 6.21 percent in 2019.[1]

Despite the dip in employee numbers from 2019, the 2021 survey still provides a sizeable number of employees, both from a number and percentage perspective. Overall, it still represents the largest number of employees for any such survey in New Zealand.

Notes on survey comparisons

Previous iterations of the Workplace Wellness Report have been published in 2013, 2015, 2017, 2019 and now 2021. However, for each corresponding survey, respondents were asked about their absence data for the years 2012, 2014, 2016, 2018 and 2020. This means that for the purposes of this report, comparisons between the five surveys to date reference the year the data represents.



1. Based on 1,709,000, 1,781,300, 1,874,800, 1,953,100 and 2,005,100 filled jobs during the June 2012, 2014, 2016, 2018 and 2020 quarters respectively (QuarterlyEmployment Survey, StatisticsNZ).

2. Respondent demographics

Respondents by workforce size

While New Zealand has a large proportion of micro-small-sized enterprises, official data from StatisticsNZ show that employees are typically employed by relatively large-sized businesses (figure 1).

Therefore, given the make-up of New Zealand's enterprises by size and the types of questions asked, there was a stronger targeting of medium to large enterprises in order to cover a higher proportion of employees.

Figure 2 shows that the 2020 survey sample had a very similar breakdown of employees to the New Zealand workforce in relation to organisation size. The proportion of very large enterprises represented in the Workplace Wellness Survey was at its highest in 2020 (45 percent), compared with 44, 43, 33 and 41 percent in 2018, 2016, 2014 and 2012 respectively. It is important to note that any overarching hourly or monetary value changes between the various time periods should be treated with caution.

Table 1 shows the average and median number of workers by size of business that responded to the 2020 survey. While the average and median results for businesses with fewer than 50 staff were broadly similar to 2018, 2016 and 2014, there was not the same number of exceptionally large employers who responded to the 2020 survey. This means the average for those with greater than 50 staff was brought back to 2016 levels. The overall median number of 59 was up from 2018, but almost identical to 2016.



Figure 1: New Zealand workforce: Proportion ofemployees by organisation size (Feb 2020)

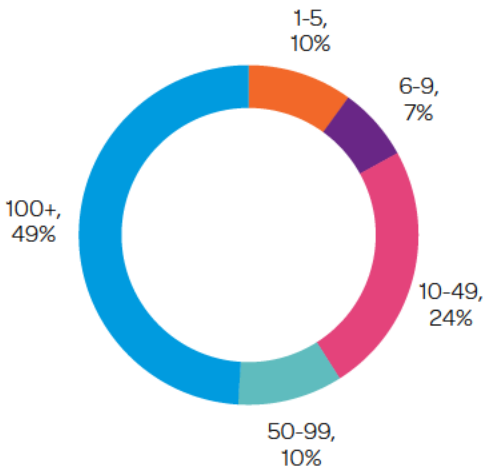


Figure 2: Workplace Wellness Survey: Proportion of employees by organisation size (2020)

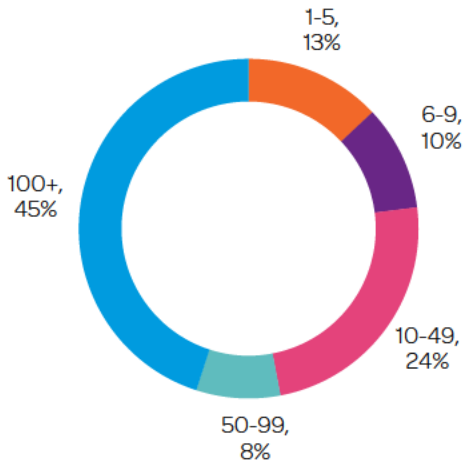


Table 1: Average and median count of employees by business size (2020)

Employee Count	Number	Average	Median
1-5	15	3.4	4.0
6-9	12	7.3	7.0
10-49	28	25.6	26.0
50-99	9	70.2	65.0
100+	52	1807.7	812.5
Fewer than 50	50	15.5	10.0
Great than 50	61	1551.4	700.0
All	**116**	**823.7**	**59.0**

Respondents by industry

Figure 3 shows that those responding to the survey continue to represent a broad range of sectors. The largest proportion are from the business, finance and property sectors, followed by the manufacturing industry sector.

In addition to the 110 private sector enterprises represented, six large public sector departments also completed the survey (down from 12 in 2018) employing a total of 26,247 people, down slightly from 26,880 in 2018.

Respondents by region

As the questionnaire was distributed by a number of nationwide and regional industry associations, responses represent all parts of the country (figure 4).

The greatest number of responses came from Auckland and Wellington, although there was still good representation from the South Island and from smaller regions.

Figure 3: Proportion of respondents by industry (2020)

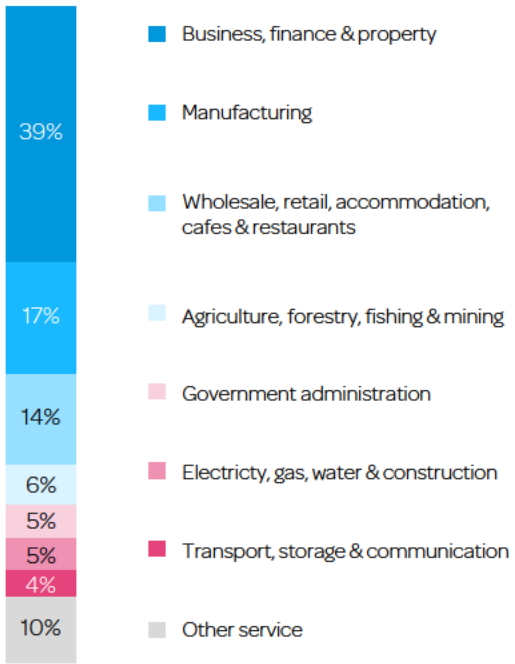
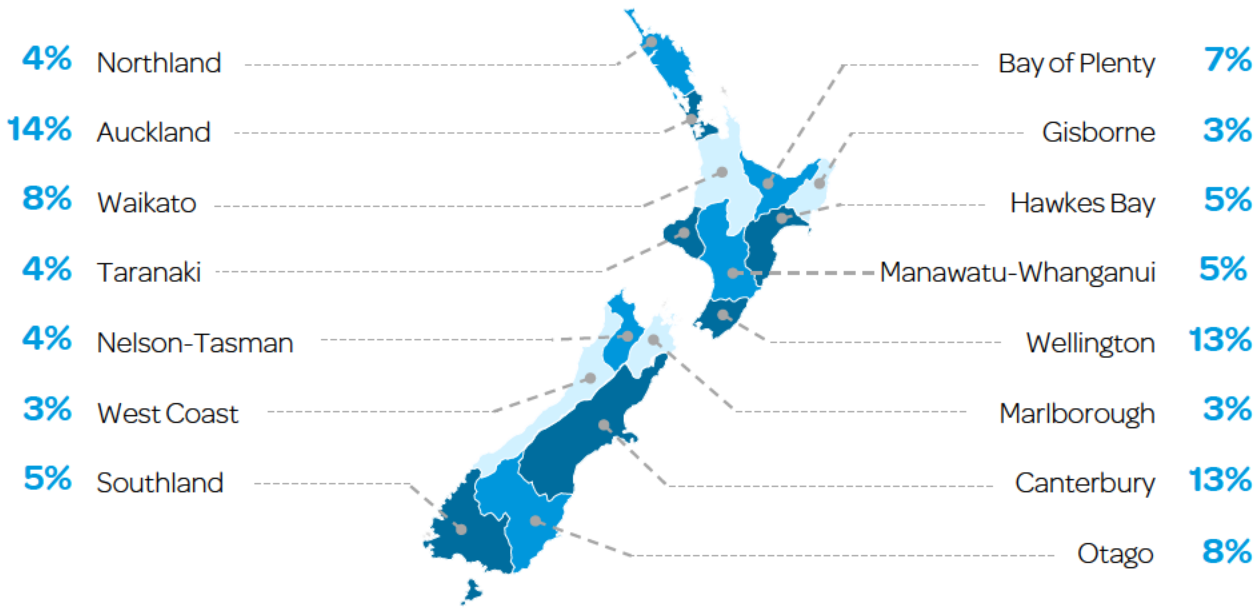


Figure 4: Proportion of respondents by region (2020)



3. Absence rates in 2020

COVID-19 was the most likely key factor influencing the 2020 results. Some of the absence results continue to show similar patterns to previous years. However, lockdowns, increased sickness-prevention measures and clarity around dealing with illness in the workplace have led to a sizeable shift in other values in comparison to previous results.

The average rate of absence in 2020 was the lowest ever at 4.2 days per employee. This compares with 4.7 days in 2018, 4.4 days in 2016, 4.7 days in 2014 and 4.5 days in 2012.

The difference in the average number of days off between manual workers (5.3 days) and non- manual workers (3.4 days) was 1.9 days, which was the highest difference for the survey to date.

When projected across the entire New Zealand workforce, the total number of days lost due to absence in 2020 was 7.3 million. This was down from 7.4 million working days in 2018.

Time lost to absence averaged 4.2 days per employee in 2020

Employers were asked about the average number of days of absence per employee. Survey results in table 2 show that overall absence was 4.2 days on average per employee in 2020. This was lower than all the previous years, including 2018 (4.7), 2016 (4.4), 2014 (4.7) and 2012 (4.5).

COVID-19 had a significant impact on these results in 2020. From March to May, the nation spent approximately seven weeks in lockdown at alert levels 4 and 3, forcing New Zealanders to stay home. Auckland went into an additional alert level 3 lockdown for two weeks in August.

Furthermore, increased measures to prevent the spread of COVID-19 such as social distancing and staying home when unwell helped to reduce overall employee absence levels, as did increased numbers of employees working from home.

Similarly to previous years, if we were to project the number of days lost on average across the New Zealand workforce as a whole, it means around 7.3 million days in total were lost to absence in 2020. This was slightly lower than the 7.4 million days recorded in 2018. While the total number of employees increased between those two time periods, the average days lost per employee more than compensated for this, leading to a lower overall value.

Table 2: Absence levels: average days lost per employee (2020)

	Total	Private sector	Public sector
Manual	5.3	5.2	6.9
Non-manual	3.4	3.2	7.8
All	**4.2**	**4.1**	**7.9**

New Zealand lost around **7.3 million** working days to absence in 2020

The manual / non-manual gap

The 2020 results continue the trend seen in previous years where higher average levels of absence have been recorded for manual employees compared to non-manual employees. Given the often highly physical nature of manual work, especially in jobs involving lifting, injury can be more prevalent, offering an explanation for the higher rate of absence.

The results for 2020 (table 2) show that for manual employees, the average number of days lost per employee was 5.3, compared with 3.4 days for non-manual employees.

This is the highest average number of days of absence recorded for manual workers. In contrast, non-manual workers displayed the lowest overall average, dropping below four days for the third time. These two average scores represent the largest discrepancy between manual and non-manual employees. In 2020 it stood at 1.9 days compared to 0.8 (2018), 0.6 (2016), 1.2 (2014) and 1.5 days (2012).

While the 2020 results continue to highlight the disparity between manual and non-manual workers, COVID-19 could have played a part in inflating the difference. It may be the case that since non-manual workers could work from home, a higher proportion of them continued to work while unwell. In contrast, manual workers could simply not go into their place of work due to increased communications / policies among employers telling employees to stay home if unwell.

Size of enterprise differentials

Table 3 shows average days of absence for manual / non-manual workers across those businesses with fewer or greater than 50 employees. Despite the presence of COVID-19, the 2020 findings continue two consistent trends that have been evident throughout the survey's history. First, manual workers working in large enterprises have the highest average amount of absence per year.

Second, non-manual workers in enterprises with fewer than 50 employees have the lowest average level of absence.

In terms of the individual results, the average days of absence for those with fewer than 50 staff (3.9) sat squarely in the middle of previous years' figures. However, the 2020 result for those greater than 50 (4.6) recorded the lowest average of days for the history of the survey.

While at face value this is encouraging to see, further results outlined in this report may help clarify why this was the case.

It should also be noted that the total average in table 3 does not include contract workers, though they are included in the breakdown of manual / non-manual workers. This means that the total average can end up slightly beyond the range of the manual / non-manual absence rate.

Table 3: Absence by size of business (2020)

	AVERAGE DAYS OF ABSENCE		
Employee Count	Total	Manual	Non-Manual
Fewer than 50	3.9	5.2	3.1
Greater than 50	4.6	5.4	3.6

Ongoing private / public sector gap

The difference between private and public sector absence levels in table 2 shows that the public sector (both central and local) has more absences than the private sector for manual, non-manual and permanent staff. This is consistent with previous years' findings.

However, the average days of absence for the public sector was the highest at 7.9 days, following values ranging between 6.1 - 6.7 days for the previous years. In turn, this meant the overall difference between the two sectors was the largest at 3.8 days.



4. Costs, drivers and factors around absence

Key findings

A typical employee's absence continues to cost their employer between $600 to $1,000 per year.

The direct costs of absence amounted to $1.85 billion across the economy in 2020, up from $1.79 billion in 2018. However, this represented a smaller increase compared with 2016 to 2018.

Non-work-related illness (which now includes COVID-19) is the most common cause of absence, followed by caring for an unwell family member or dependent.

There is now increased incidence of employees staying at home when sick. This corresponds with the fact that most businesses now encourage their people to stay home when they are ill.

Unwell employees were more likely to continue working at home rather than take a sick day, although this was more prevalent in larger businesses.

Costs of absence

Since the Workplace Wellness Survey began, an absent employee has typically cost their employer $600-$1,000 per year.

The Workplace Wellness Survey has consistently asked respondents to quantify the total cost each absent employee represents to their business, including the salary cost of absent individuals and replacement costs (e.g. through temporary staff or overtime worked by other employees).

Results in table 4 show each absent employee costs a median total of $722, a figure indicative of the cost savings to be achieved if employers can reduce the extent and duration of employee absences.

The 2020 result is lower than the 2018 value of $1,007, but not the lowest result recorded ($616 in 2014). The overall median result over the history of the survey has been $837. As has been pointed out in previous reports, it is important to take into account two factors when examining these figures.

First, the results are indicative, rather than substantive. This means changes to the make-up of respondents (particularly by size) will cause the figures to shift.

Second, the length of time the survey has now been running furnishes certain conclusions that can be drawn about typical costs of absence. Overall, these remain in the vicinity of $600 to $1,000 per absent employee.

Table 4: Absence costs by workforce size ($) (2020)

Employee Count	Median cost per absent employee ($)	Total median cost by size of business ($)
1-5	481	1,500
6-9	1,607	9,000
10-49	722	14,600
50-99	567	33,954
100+	1,087	555,489
Fewer than 50	700	7,000
Greater than 50	895	367,753
All	**722**	**21,590**

Absence costs rise above 50 staff

A consistent finding in all Workplace Wellness surveys since 2012 has been higher absence costs in larger organisations. Enterprises with more than 50 employees consistently bear higher costs per absent worker than smaller enterprises. Table 4 shows 2020 was no different. It found the average cost per absent employee is around 1.3 times greater in larger enterprises (it was 1.7 times greater in 2018).

Higher wages and higher absence levels are key factors in the greater cost of absences in larger enterprises.

Costs across the economy

As in previous years, extrapolating the direct costs of absence over the entire economy provides a macroeconomic picture of the level of direct costs New Zealand faces due to absence.

For 2020, the average absence level per employee of 4.2 days amounts to a cost of around $1.85 billion for the total economy[2]. This compares with $1.79 billion in 2018, $1.51 billion in 2016, $1.45 billion in 2014 and $1.26 billion in 2012. In part, New Zealand's increasing national cost is affected by an ever-increasing workforce and a natural rise in income. For example, New Zealand's workforce has increased by 30 percent since 2012, while income has increased by 21.4 percent over the same period. Therefore, any reduction or levelling out of that national cost would most likely come from a sustained decrease in average absence time lost.

Main causes of absence

Respondents were asked to list the three main causes of absence during 2020 for manual and non-manual employees. Because of COVID-19, additional options were available, or were changed slightly to take into account related effects of COVID-19.

Figure 5 shows that once again, non-work-related illness (which now includes COVID-19) is the most common cause of absence. Caring for an unwell family member or dependent is the second most common cause of absence followed by injury (non-work-related).

Of the remaining drivers of absence, mental wellbeing / stress moved up one spot to fourth overall. This was followed by two COVID-19 related causes, namely caring for a family member or other dependent due to COVID-19 and isolating while waiting for COVID-19 test results.

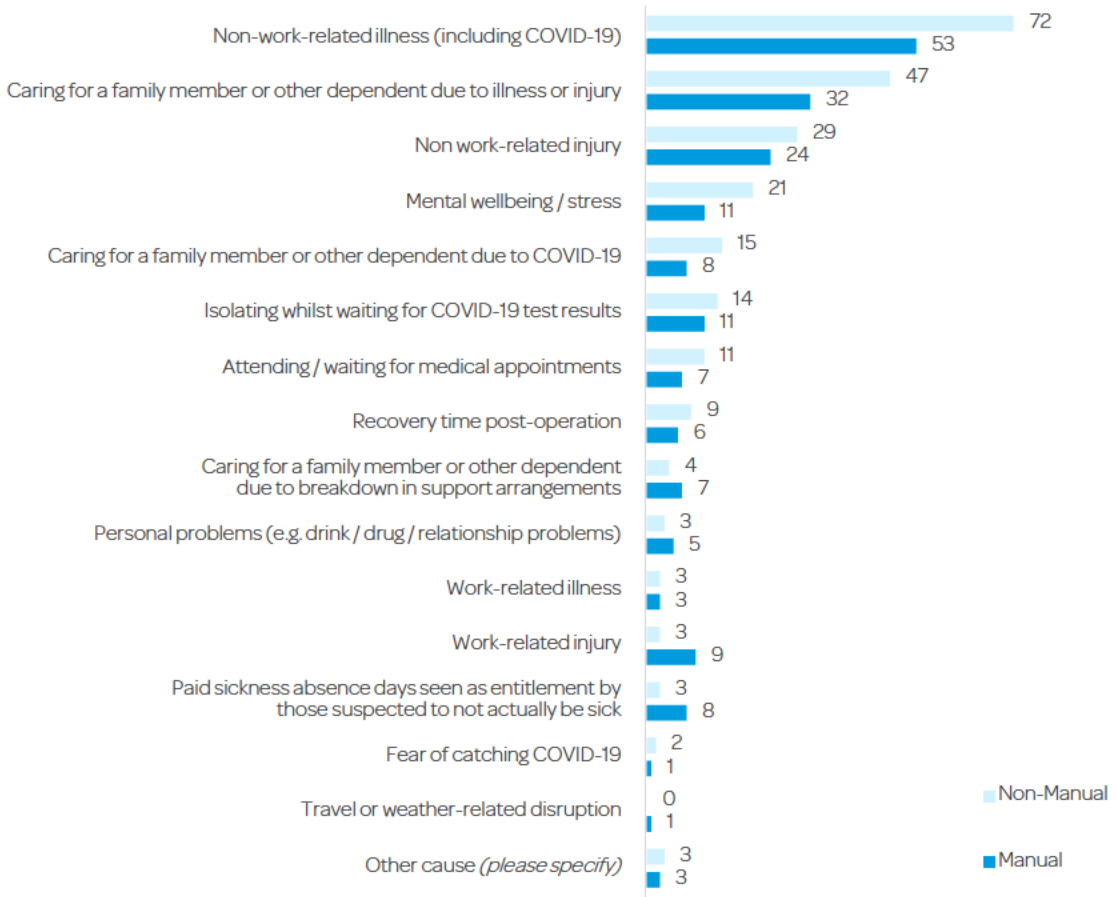
Differences between manual and non-manual occupations continue, with non-manual occupations showing higher absences for illness and caring for others. In contrast, manual workers are more likely to experience work-related injuries.

While COVID-19 has had some effect on the 2020 causes of absence, it is important to remember that the key reasons for absence remain firmly in place, especially given non-work-related illness was already the main culprit for absence.



2. Based on Quarterly Employment Survey (SNZ) average weekly earnings for FTEs at $1,259.71 and total employed of FTEs of 1,748,100. All figures were taken from the June quarter 2020 results.

Figure 5: Main drivers of absence (2020) – %



Rolling sick days

For the second time, 2020 respondents were asked what their most common approach was to sick days.

Table 5 shows that of the options available to select, the most common approach remained five days per year (rolled over if unused) at 44.8 percent, which was a similar result in 2018 (47.5 percent). This was followed by over a quarter selecting more than five days per year (25.9 percent).

Of those that put 'Other' (13.8 percent), half of them indicated 10 days as the most common approach. Those that selected 'unlimited leave' rose from 4 percent in 2018 to 9.5 percent in 2020.

From 24 July, New Zealand's minimum employee sick leave entitlement increased from five days to 10 days per year.

Given we do not know how many of those who selected 'more than five days per year' in the Workplace Wellness Survey provided 10 or more days, we cannot ascertain an approximate percentage of those organisations affected by the entitlement change. However, the results do indicate that over 60 percent of employers will need to cater for increased sick leave as a result of the legislative changes.

Table 5: Common approach to sick days (2020)

Approach	%
Five days per year (rolled over if unused)	44.8
More than five days per year	25.9
Other	13.8
Unlimited leave	9.5
Five days per year (not rolled over if unused)	6.0

Decline in annual leave taken

Respondents were also asked what impact COVID-19 had on annual leave taken by employees during 2020. Fifty six percent said that their employees had taken less annual leave, while only 12.9 percent had taken more. Just under 30 percent did not see any noticeable change. The high proportion of employees who had not taken annual leave may have been due to myriad COVID-19 related reasons, including a lack of travel options, uncertainty about job security, fear of getting COVID-19, and not wanting to use up leave staying home.

Attitude shift

Enterprises were again asked on a scale of 1 (almost never) to 5 (almost always), to what degree their staff typically turned up for work with some form of illness, when they should have stayed at home.

The 2020 results indicate a much clearer message from enterprises to their people. The mean value for 2020 was 2.68, compared with 3.11, 3.36, 3.09 and 3.32 for 2018, 2016, 2014 and 2012 respectively. The median value remained at 3.

Figure 6 provides a number of insights into the change in behaviour. Firstly, the combined proportion of employees who typically stay at home stands at 46 percent. The next closest result was 28 percent in 2014. Secondly, those who responded with a value of '4' decreased dramatically, standing at 14 percent in 2020 (this was as high as 44 percent in 2012). Third, for the first time there was a decrease in the proportion of those who waver between turning up or not, reducing to 32 percent in 2020.

Although there remains a proportion of employees who almost always turn up to work despite being sick, the overall proportion of those people is now at its lowest point at 22 percent (compared to a high of 49 percent in 2012).

By size of enterprise, table 6 shows that smaller-sized businesses continue to see more employees coming to work who should be at home. However, there has been an overall improvement in the results for 2020, with the overall mean value now at 2.85 - the first time below 3.0. Larger sized firms also recorded their lowest mean value at 2.5.

Figure 6: Degree to which staff typically turn up for work, even though they should stay home due to illness – % (2012, 2014, 2016, 2018 & 2020)

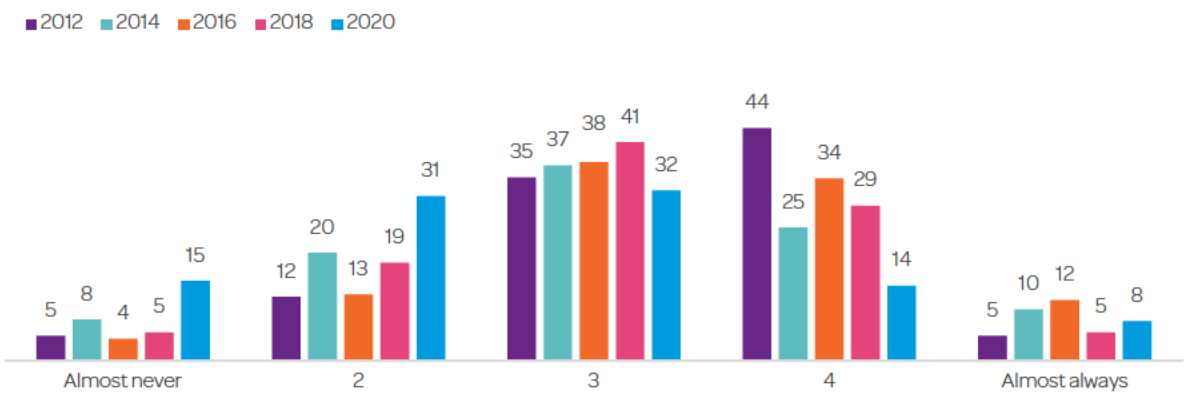




Table 6: Degree to which staff typically turn up to work even though they should stay home with some form of illness (2020)

Size of enterprise	Mean	Median
1-5	3.60	4
6-9	3.09	3
10-49	2.36	2
50-99	3.11	3
100+	2.37	2
<50 staff	2.85	3
>50 staff	2.50	3
All	**2.68**	**3**

COVID-19's influence

Enterprises were asked how much COVID-19 influenced their response around the degree to which their staff typically turned up for work, even though they should most likely stay at home.

Table 7 shows that on a scale of 1 (not at all) to 5 (significantly), there is a clear difference by size of business. The larger the business, the more COVID-19 had an impact on their response.

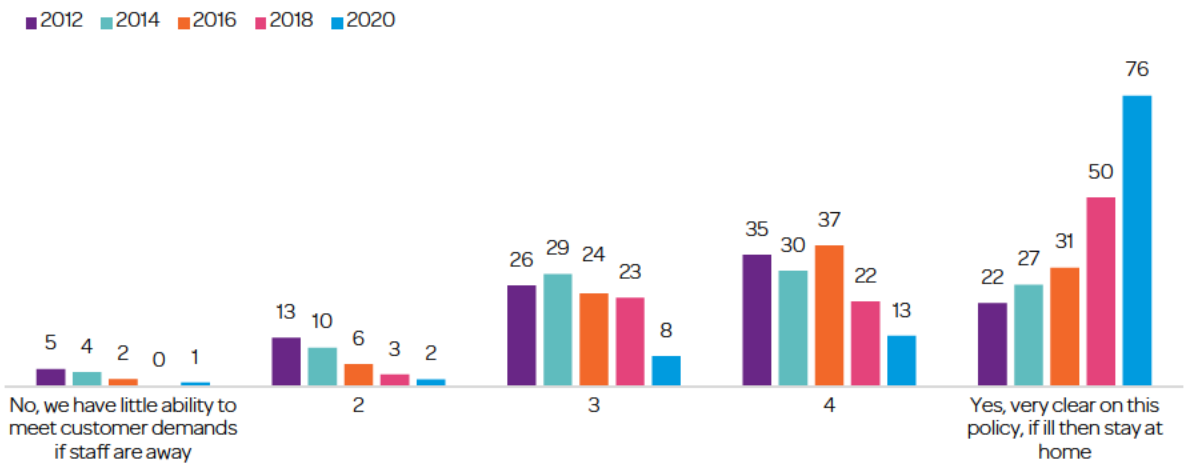
Table 7: COVID-19's influence on staff who typically turn up to work even though they should stay home with some form of illness (2020)

Size of enterprise	Mean	Median
1-5	2.15	1
6-9	2.64	2
10-49	2.79	2.5
50-99	3.67	4
100+	3.89	4
<50 staff	2.60	2
>50 staff	3.86	4
All	**3.25**	**4**

Clear encouragement to stay home

Enterprises were again asked whether they thought the culture of their business encouraged employees to stay home when they were ill. Figure 7 shows the overall result for the five years observed, with a significant shift in culture. The average result increased to 4.62, compared with 4.21, 3.89, 3.66 and 3.32 for 2018, 2016, 2014 and 2012 respectively. The increase in the average score from 2018 to 2020 was the largest recorded, assisted by a sizeable increase in those being very transparent on this policy.

Figure 7: Culture of respondent business encouraging employees to remain away from work if they are ill – % (2012, 2014, 2016, 2018 & 2020)



It is now the case that over three quarters of organisations are very clear that employees should stay home when unwell, while almost 90 percent ensure at least some proactive steps are taken towards a clear culture to stay home.

Given the dramatic decline in the overall proportion of people who turned up to work when sick, the 2020 results show a very clear and positive link between expectation and reality around employees heeding the message from employers about staying home if unwell.

Table 8: Culture of respondent businesses encouraging employees to stay at home if they are unwell (2020)

Size of enterprise	Mean	Median
1-5	4.43	5.00
6-9	3.67	4.00
10-49	4.74	5.00
50-99	4.78	5.00
100+	4.81	5.00
<50 staff	4.42	5.00
>50 staff	4.80	5.00
Private sector	4.64	5.00
Public sector	4.33	5.00
All	**4.62**	**5.00**

Table 8 shows that the culture of businesses encouraging employees to stay at home when unwell is evident throughout all sizes of business, albeit stronger for larger enterprises.

Types of illness / injury when coming to work

The 2020 survey asked what forms of illness / injury employees typically had when turning up to work. Table 9 shows mainly minor illnesses as the key type of illness, followed by physical pain. Work and non- work related anxiety / stress / depression round out the top four spots. It is very uncommon for employees to turn up to work with major illness or injury.

Home, sick and working

Enterprises were asked if unwell employees were more likely to continue working at home rather than take a sick day.

Figure 8 shows that this tends to be the case for around 60% of employees across all enterprises, although it is more prevalent in larger businesses.

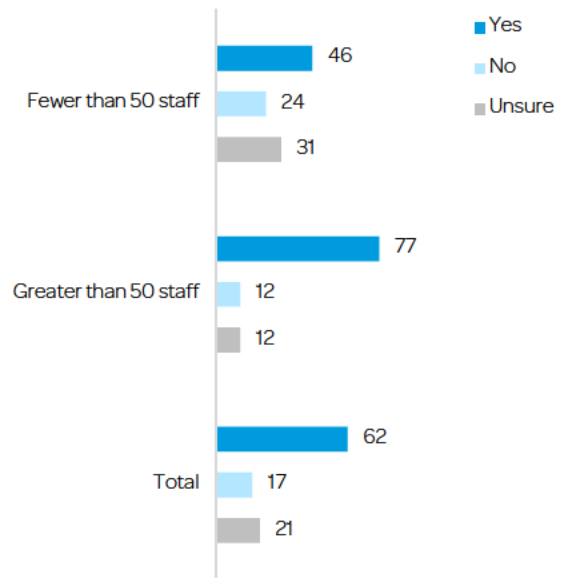
It should be pointed out that not all illness prevents someone from working (i.e. a minor cold). Therefore, a message from employers to stay home if unwell can mean someone can continue to work, however doing so from home ensures the illness does not spread to other employees.

For many, the key point is knowing when to draw the line between working from home if slightly unwell to ensuring a proper sick day is taken to fully rest and recover.

Table 9: Types of illness / injury that staff typically have when they are turning up to work (2020)

Type	2020 (%)
Mainly minor illness (e.g. cold, flu, tummy bug, headache)	85.3
Physical pain (e.g. sore back, neck, knee, arthritis, musculoskeletal disorders)	47.4
Non work-related anxiety / stress / depression	23.3
Work-related anxiety / stress / depression	23.3
More major illness (e.g. heart, blood pressure, respiratory, cancer, bowel problems)	1.7
Injury	0.9
Other	0.9

Figure 8: Are employees now more likely to continue working rather than take a sick day when unwell and working from home? – % (2020)



Productivity matters

On a scale of 1-5 where 1 = almost no effect and 5 = significant impact, table 10 shows that businesses of all sizes say wellness impacts the productivity of their employees.

The wellness of staff continues to play a sizeable role in the productivity of enterprises. The overall score of 3.91 for 2020 was noticeably up on 3.80 for 2018 and 3.82 for 2016. Interestingly, there was a higher productivity impact on larger enterprises (greater than 50 staff) than those with fewer than 50 staff for 2020. This was even more evident when just examining those with 100+ staff.

Table 10: Wellness of staff impacting the productivity of organisations (2020)

Size of enterprise	Mean	Median
1-5	3.87	4.00
6-9	3.42	4.00
10-49	3.93	4.00
50-99	3.78	4.00
100+	4.06	4.00
<50 staff	3.80	4.00
>50 staff	4.02	4.00
All	**3.91**	**4.00**

Looking ahead

Analysing five separate years' worth of data shows a significant shift in key employee absence metrics relating to costs, drivers and factors. In previous years there has been some degree of disconnect between employers saying one thing while doing another. However, the 2020 results indicate a significant alignment of results with employers recognising the importance of sending the right signal to employees about taking legitimate absences and breaks and taking time to recuperate at home if unwell.

While the next chapter provides greater details around challenges relating to working from home, employers will need to be mindful of ensuring clear policies around not coming to work if unwell are equally observed when unwell and working from home.



5. Working from home

Key findings

- Over half of enterprises have introduced more formal policies to support working from home since the outbreak of COVID-19.
- While one to two days per week is the most common option for working from home across all enterprises, there are key differences when looking at the size of business.
- Many small enterprises are simply unable to offer working from home.
- The impacts of working from home on enterprises have been twofold. While some employees feel isolated, it has also largely been viewed as a positive move.
- Around 40 percent of larger enterprises anticipate more of their people working from home over the next year.
- Enterprises of all sizes invested in standard electronic equipment to support employees working from home, including laptops, monitors and keyboards.

Formalising working from home

Working from home has been increasingly offered to employees across various enterprises in recent years, but the COVID-19 enforced lockdowns meant a large proportion of organisations were forced to enable their people to work from home if they wanted to continue operations. Many employers now see working from home as a fundamental part of their organisation's operations, and many employees have come to expect it. However, this new way of working poses unique challenges around employee management and team morale.

Enterprises were asked whether COVID-19 has been the driver for introducing more formal policies around employees working from home. Table 11 shows that this was the case for over half of respondents with formal policies more evident in larger enterprises.

The reason for 'size of business' differences can be seen in figure 9, which looks at the degree to which enterprises have changed their views on employees working from home. Larger enterprises have a much stronger capacity to provide this option, while a significant proportion of smaller enterprises are simply unable to offer working from home. Subsequently, for many small enterprises it is simply not worth having a formal policy in place if the option is not available to begin with.

Of those who had previously not offered some capacity for working at home but now do so, respondents were asked how this had impacted their operations. Figure 10 shows that employees feeling isolated is a key concern for all sizes of enterprise. However, this is balanced by over 50 percent of enterprises finding it to be a positive move.

Table 11: Introduced more formal policies towards staff working from home because of COVID-19

Employee Count	Yes (%)	No (%)	Don't Know (%)
1-5	6.7	93.3	0.0
6-9	8.3	83.3	8.3
10-49	53.6	46.4	0.0
50-99	66.7	33.3	0.0
100+	82.7	17.3	0.0
<50	30.9	67.3	1.8
>50	80.3	19.7	0.0
All	**56.9**	**42.2**	**0.9**

Figure 9: Degree to which enterprises have changed their view on employees working from home as a result of COVID-19 – %

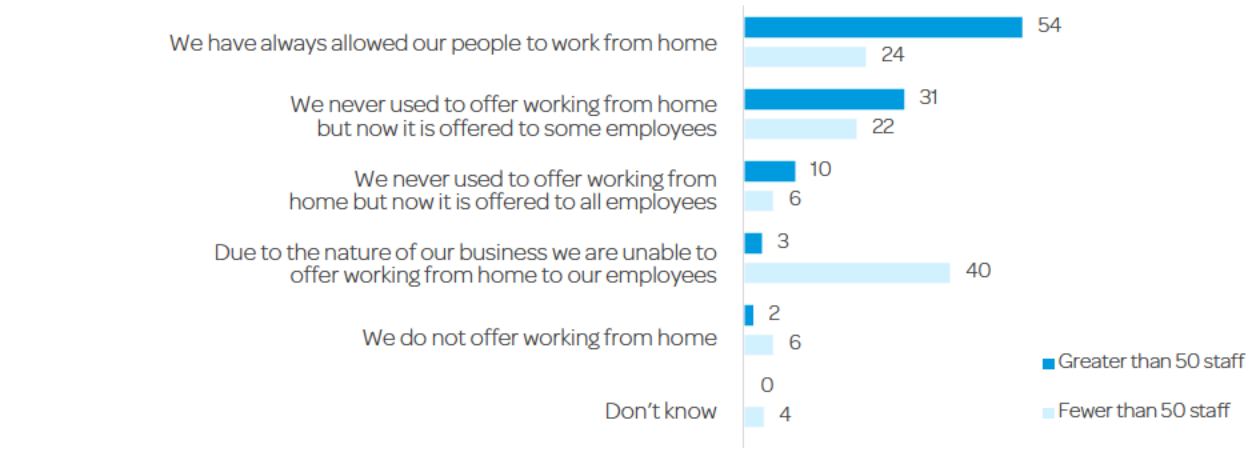
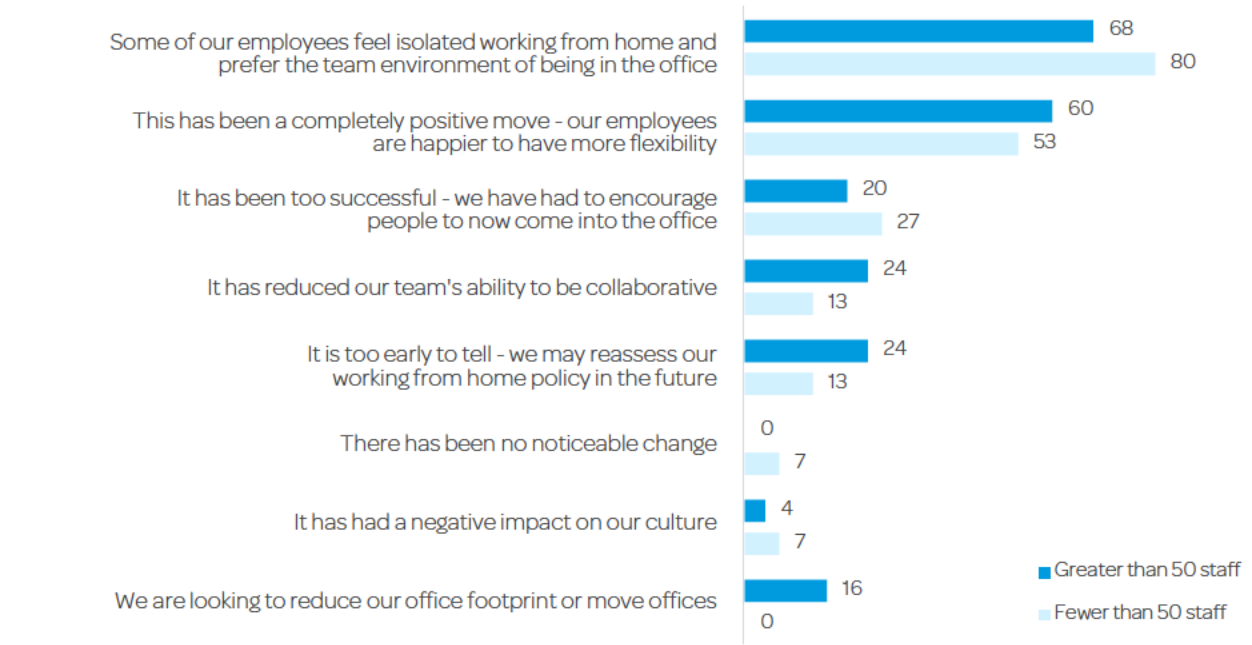


Figure 10: The main impact on enterprises that previously never used to offer working from home – %





Days working from home

Table 12 shows that one to two days a week is the most common frequency for working at home since the nationwide lockdown in 2020. However, around half of smaller enterprises do not provide any days working from home, compared with only 8.3 percent of larger enterprises that do not provide for working from home.

Table 12: Approximate number of days per week that employees now work from home since the 2020 nationwide COVID-19 lockdown

Number	All (%)	Fewer than 50 staff (%)	50+ staff (%)
1-2 days a week	59.3	37.7	78.3
3-4 days a week	7.1	5.7	8.3
Full-time	1.8	3.8	0
Never	27.4	49.1	8.3
Don't know	4.4	3.8	5

For those enterprises that provided an approximate number of days per week that employees now work from home, an overwhelming number of them (88.3 percent) saw an increase. Only 11.7 percent said it was roughly the same, and no enterprises said there was a decrease. Of the businesses experiencing an increase, it was more prevalent amongst those with greater than 50 staff (94.2 percent) than for those with fewer than 50 staff (76.0 percent).

Changing home work

Table 13 shows that the majority of enterprises do not expect a higher proportion of staff working from home over the next year. However, there are clear differences between sizes of business. While 69.1 percent of smaller enterprises do not anticipate an increased proportion of staff working from home, only 36.1 percent of larger enterprises thought similarly. Around four out of every 10 larger enterprises anticipate more staff working from home over the next year.

Table 13: Anticipate a higher proportion of staff working from home over the next year

Response	All (%)	Fewer than 50 staff (%)	50+ staff (%)
Yes	30.2	18.2	41.0
No	51.7	69.1	36.1
Unsure	14.7	10.9	18.0
Don't know	3.4	1.8	4.9

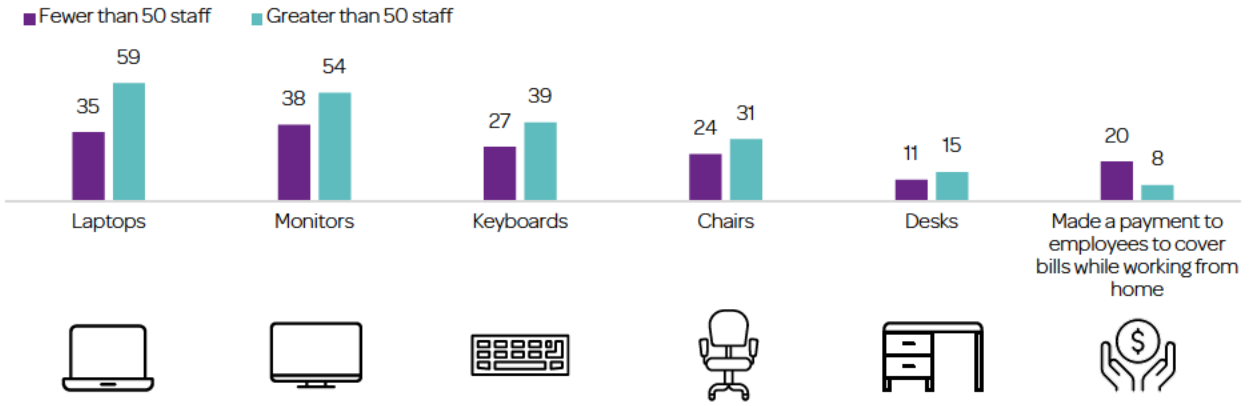
Office equipment

Employers were asked whether they had invested in office equipment or provided other support to enable their employees to work from home.

Survey results in figure 11 show that electronic equipment including laptops, monitors and keyboards were key investments for all sizes of enterprise. However, the comfort of staff was also important, with chairs also provided by 27.6 percent of all enterprises.

While making a payment to employees to cover bills while working from home was uncommon for larger enterprises, it was more than twice as likely for small enterprises. Given, on balance, smaller enterprises have a greater ability to know their staff on an individual basis, such payments may be an easier discussion between the two parties.

Figure 11: Office equipment or support provided to enable employees to work from home – %



Looking ahead

The outbreak of COVID-19 rapidly changed the way many New Zealanders were able to work. Offering working from home became a requirement for enterprises to remain operational during the lockdowns, but this new way of working has since become well ingrained and many employees continue to, and expect to continue to, work from home.

It is pleasing to see many businesses embracing working from home as an option through more formalised mechanisms. However, it is important to point out that not all enterprises can provide this option due to the nature of their business. This is especially true when the size of the enterprise is taken into account.

The main impacts of working from home point towards a future that will need to be carefully managed by employers. Overall, it has been viewed as a positive step as it has provided flexibility for many. However, some staff feel isolated and miss the team environment.



6. Stress, fatigue and mental health in the workplace

Key findings

Overall stress and anxiety levels for all enterprises remain more on the moderate than the high side, with 2020 levels similar to 2018. However, the 2020 result shows the largest proportion of enterprises reporting greater general stress / anxiety levels among their staff.

When asked about the change in direction of general stress levels, a net 64.7 percent of firms observed an increase. This was significantly up on previous years, with 91 percent of enterprises surveyed reporting that COVID-19 was the partial reason for this increase.

General workload remained the biggest work- related issue reported by businesses of all sizes, while relationships outside work were reported to be the key feature of non-work-related stress. A noticeable increase regarding financial concerns was also reported.

Smaller businesses are now much more likely to have formal practices in place to identify stress among staff.

Stress and fatigue in the workplace

While implementing workplace health and safety practices to prevent injuries is commonplace, safeguarding the overall wellbeing of employees has traditionally been of lesser concern. While there has been an increase in recent years among enterprises offering health and wellbeing programmes to reduce stress and fatigue in the workplace, businesses surveyed reported that the outbreak of COVID-19 has increased stress levels for many employees in both their personal and professional lives.

Table 14 shows on a scale of 1 (almost never stressful for most staff) to 5 (highly stressful for most staff) the current stress / anxiety levels among employees. Overall, the 2020 figure of 3.09 was all but identical to 2018 (3.08). Similarly to previous years, the larger the business, the greater the stress levels reported.

In recent years, the overall mean score for stress / anxiety has stayed relatively the same with the 2016 figure standing at 3.02. But over the history of the survey it has crept up – in 2014 the figure was lower at 2.69.

However, when it comes to the 2020 views around stress, fatigue and anxiety, COVID-19 certainly played a part. Figure 12 shows that a key shift in the 2020 results has been a lower proportion of respondents sitting on the fence around rating the general stress / anxiety levels of staff. In turn, this saw ratings of '2' and '4' increase.

Therefore, despite an almost matching overall score to 2018, the 2020 result shows the largest proportion of enterprises reporting greater general stress / anxiety levels among their staff.

Table 14: Rating general stress / anxiety levels amongst staff (2020)

Employee Count	Stress / anxiety levels amongst staff (mean)
1-5	2.80
6-9	2.83
10-49	3.00
50-99	3.22
100+	3.27
<50	2.91
>50	3.26
All	**3.09**

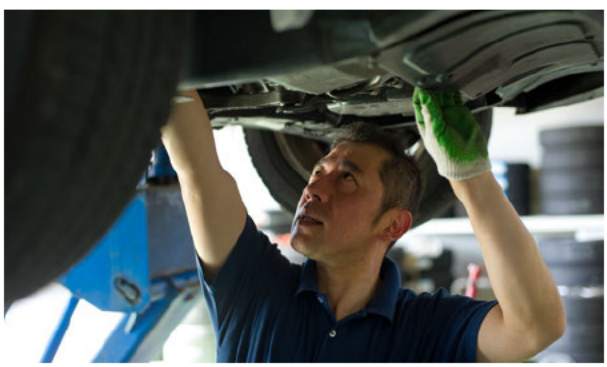
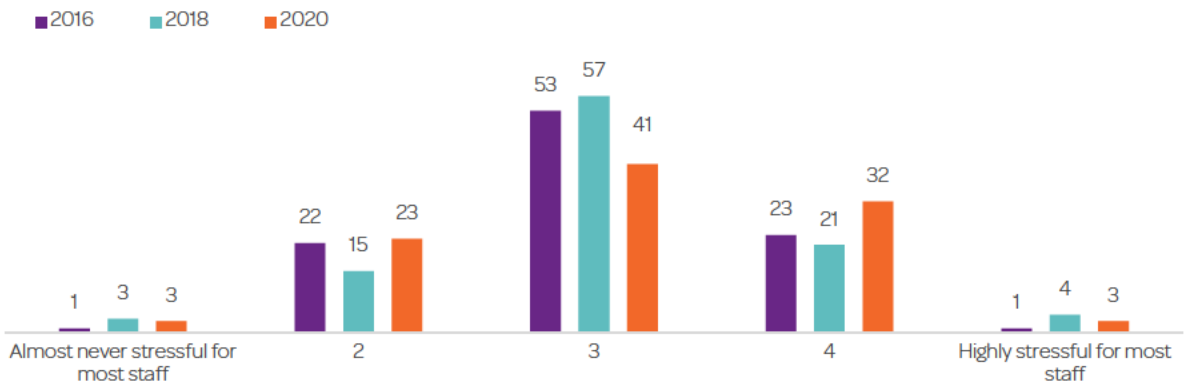


Figure 12: Rating the general stress / anxiety levels amongst staff (2016, 2018 & 2020) – %



When asked about the change in direction of general stress levels, results in table 15 are broken down by determining a positive or negative direction, with a net +64.7 percent of firms noting an increase. This was significantly up from +23.5 percent in 2018, +22.9 percent in 2016 and +14.3 percent in 2014. The table also shows that for those with 50+ staff, the net result was +77.1 percent, compared with +31.3 percent in 2018 and +30.5 percent in 2016. For those with fewer than 50 staff, it stood at +50.9 percent in 2020, compared with +16.0 in 2018 and +14.0 percent in 2016.

Unsurprisingly, table 16 shows that COVID-19 was perceived to have been at least partially responsible for those who noted an increase in general stress levels during 2020, no matter what size of enterprise.

Table 15: Change in direction of general stress levels staff experienced (2020)

Option	All (%)	Fewer than 50 staff (%)	50+staff (%)
Increased	66.4	52.7	78.7
Stayed roughly the same	28.4	43.6	14.8
Decreased	1.7	1.8	1.6
Net result	**+64.7**	**+50.9**	**+77.1**

Table 16: COVID-19 as a partial reason for an increase in general stress levels (2020)

Option	All (%)	Fewer than 50 staff (%)	50+ staff (%)
Yes	90.9	86.2	93.8
No	1.3	3.4	0
Unsure	7.8	10.3	6.3



WHAT IS MENTAL WELLBEING?

Mental wellbeing is a state of wellbeing in which the individual realises his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to his or her community.

Figure 13 outlines the main causes of stress in the workplace for those businesses surveyed. 'General workload' remains the leading cause of stress / anxiety reported by all businesses. However, while 'change at work' was the second most common reported cause of stress for businesses with 50+ employees, for those with fewer than 50 staff 'long hours' and 'job uncertainties / redundancies' were at similar levels. It was also interesting to note that 'fear of getting sick / catching COVID-19' was reported as being a main cause of work stress for over 20 percent of enterprises, and on par with 'relationships at work'.

Figure 14 shows that for the main causes of non-work related stress, 'relationships outside work' remains the key contributor of stress, with 57.8 percent selecting this option when surveyed. However, 'financial concerns' increased from 41.4 percent in 2018 to 54.3 percent in 2020, and this climbed to 60.0 percent for those with fewer than 50 staff. COVID-19 was reported as a main cause for 38.8 percent of all enterprises, although higher for those with more than 50 employees.

Figure 15 outlines the main practices businesses have in place to identify mental wellbeing / stress. For those with greater than 50 employees, the top two spots were again 'staff surveys' and 'training for managers', with the former increasing from 63.3 percent in 2018 to 82 percent in 2020.

Businesses with fewer than 50 staff showed another large and encouraging shift. In previous years, the proportion of enterprises that did not have any practices in place to identify stress ranged anywhere between 36.0 to 53.2 percent. In 2020 this stood at 27 percent. Also, 'training for managers' increased at 40.0 percent- the highest proportion since the survey began.

It is still evident that larger businesses are more likely to have processes in place to identify stress and fatigue, given their ability to implement such processes. However, the 2020 results show the gap between smaller and larger business has shrunk. Bigger organisations are typically less able to have a close relationship with their larger number of workers, which means more formal processes are required. Therefore, it would not be realistic to expect matching outcomes. However, an increased effort by smaller enterprises to provide more formal practices, combined with informal discussions, helps overall identification of stress and fatigue.

Regarding approaches to support mental wellbeing of employees in figure 16, 'employee assistance programmes' and 'flexible working' were tied for the most common approach across all enterprises at 65.5 percent. Also, 'mental wellbeing seminars' have overtaken 'diversity and inclusion policies and practices' to slip into third spot.

The addition of 'support for parents juggling working from home and caring for children (during the lockdowns)' saw the same number select that as 'diversity and inclusion policies' (both at 38.8 percent). It was also encouraging to note that the proportion of smaller enterprises that had no wellbeing approaches in place decreased to 15 percent in 2020, compared with 24.0 percent in 2018.

Table 17: Rating organisation role in the health and wellbeing of staff (2020)

Employee Count	Role in health / wellbeing of staff (mean)
<50	3.73
>50	3.75
All	3.74

Table 17 shows on a scale of 1 (not at all) to 5 (significantly) the rating organisations give to their role in the health and wellbeing of their people. There appears to be no difference between small and large enterprises, with all taking an active role.

Enterprises were further asked how this had changed in the past year. Overall, 50.9 percent mentioned an increase, while 48.3 percent indicated it had stayed roughly the same.



Figure 13: Main causes of work-related stress (2020)

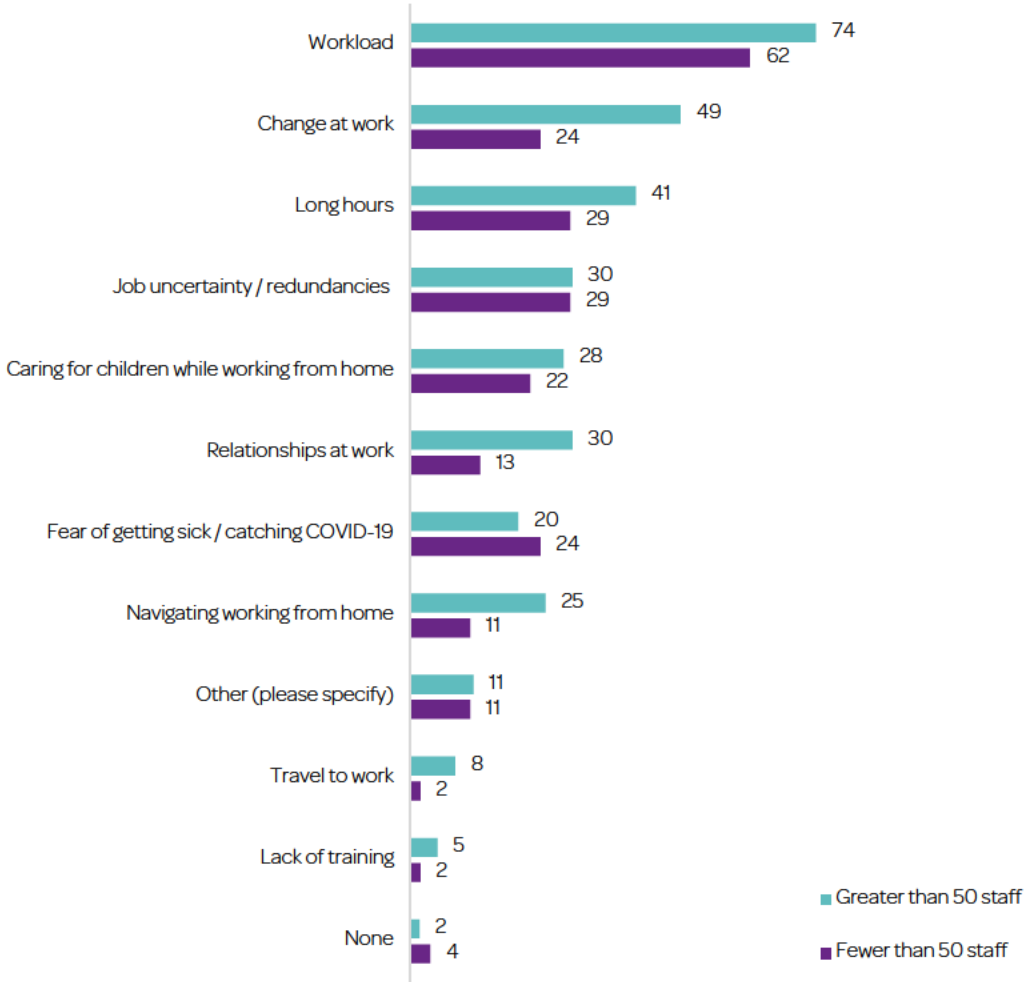


Figure 14: Main causes of non-work-related stress (2020)

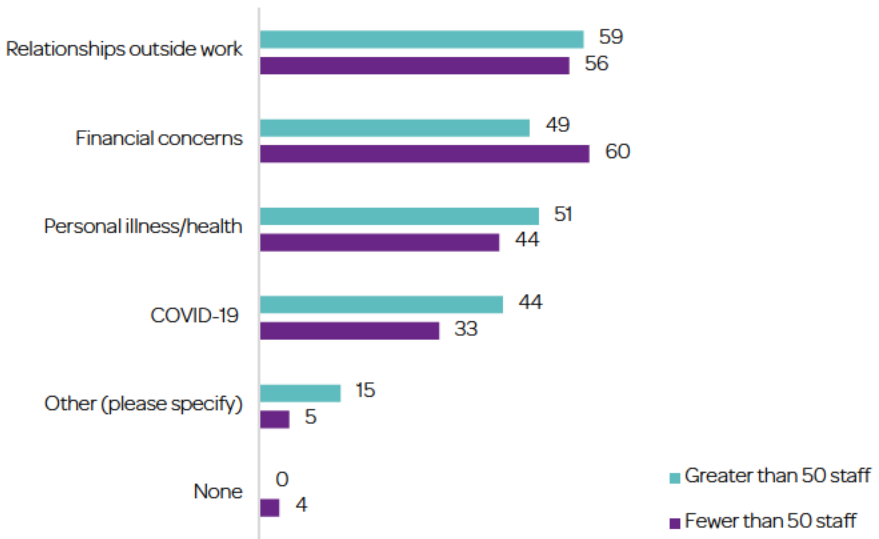


Figure 15: Practices in place to identify mental wellbeing / stress (2020)

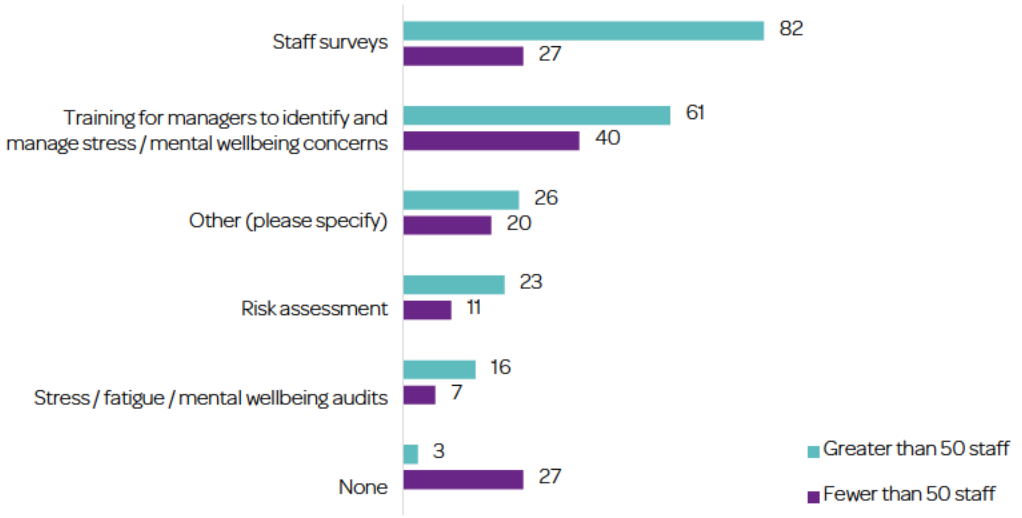
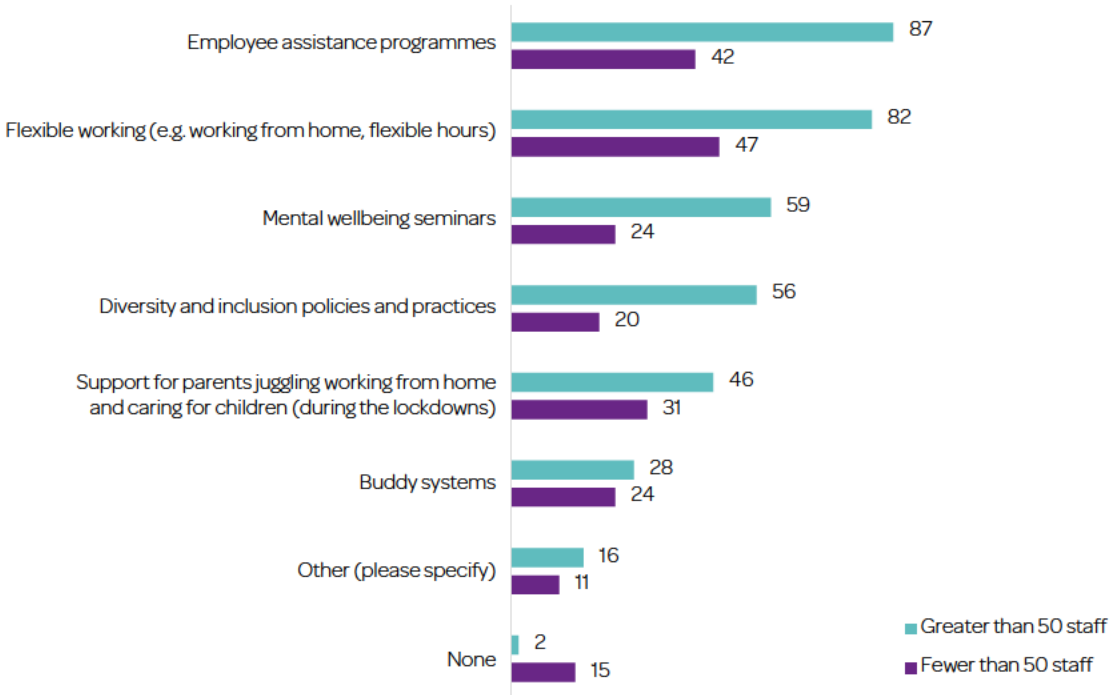


Figure 16: Approaches to support mental wellbeing of staff (2020)





7. Relationships and communication with staff

Key findings

The 2020 results saw the largest proportion of enterprises taking a formal approach to gathering non-work-related data. Meanwhile, the number of organisations that did not take a formal approach to gathering non-work-related data was still not the lowest over the history of the survey.

The proportion of larger businesses which did take a formal approach more than doubled from 18.4 percent in 2018 to 39.3 percent in 2020.

Unsurprisingly, 'COVID-19 governance' was the most popular benefit to improve wellbeing of staff across all sizes of business. However, for larger businesses an 'employee assistance programme' was on par with 'COVID-19 governance' (both at 93.4 percent).

A higher proportion of smaller businesses now provide some form of benefit to improve the wellbeing of their employees with 'flexible hours / working from home' showing a sizeable lift.

Data to improve wellbeing

Enterprises typically collect a variety of work-related data on their employees, including bank account details, home address and emergency contact numbers. However, operating in a COVID-19 affected world, combined with ongoing changes to ways of working, means a clearly defined and coordinated approach to collecting non-work wellbeing-related information may be increasingly important.

Table 18 shows that in 2020, 27.6 percent of enterprises took a formal approach to gathering non-work data. This was up from 17.2 percent in 2018, 22.9 percent in 2016 and 19.5 percent in 2014. In contrast, the proportion of organisations that said they did not take a formal approach to gathering non-work-related data decreased a further 7.3 percentage points, on top of the 1.6 percentage point decrease for 2016 (although still not as low as the 23.9 percent recorded in 2014).

When broken down by size of enterprise, the results showed differing movements in comparison with 2018. The proportion of larger businesses who did take a formal approach more than doubled from 18.4 percent in 2018 to 39.3 percent in 2020. Correspondingly, those who do not take a formal approach fell from 36.7 percent to 23.0 percent. For smaller businesses, those that had a formal approach fell slightly from 16.0 percent to 14.5 percent, although there was still a slight drop for those that did not (from 28.0 percent to 27.3 percent).

For those with some form of clearly defined and coordinated approach, on balance, results were positive for 2020. Table 19 shows that on a scale of 1-5 where 5 is 'very proactive' and 1 is 'hardly ever used', the mean value in 2020 was 3.11. This was the highest value since 2016, and well above the 2.79 score in 2018. It was also the first result where both small and large enterprises had a mean score above 3.0 at the same time.

Table 18: Enterprises having a clearly defined and coordinated approach to collecting non-work-related information of staff (2020)

Type	Yes (%)	Sometimes (%)	No (%)	Don't know (%)
<50 staff	14.5	54.5	27.3	3.6
>50 staff	39.3	34.4	23	3.3
All	**27.6**	**44**	**25**	**3.4**

Table 19: How proactive are those that collect non-work-related data in improving the wellbeing of their staff (2020)

Type	Mean	Median
<50 staff	3.16	3.0
>50 staff	3.07	3.0
All	**3.11**	**3.0**

Benefits to improve wellbeing

Larger organisations are more likely than smaller ones to use other options alongside 'flexible hours' as part of their family friendly policies.

In terms of general benefits enterprises provide to improve the wellbeing of their staff, figure 17 shows broadly similar patterns to previous years. However, COVID-19 has seen some shifts and some strengthening around priorities for 2020.

Unsurprisingly, 'COVID-19 governance' was the most popular option across all sizes of business, although for larger businesses an 'employee assistance programme' was on par with 'COVID-19 governance' (both at 93 percent). This was followed by 'vaccinations' (92 percent) and 'flexible hours / working from home' (85 percent).

For those with fewer than 50 staff, the priority of options was again different for 2020. This is not unexpected given that the larger the business, the more resources it can direct to various initiatives. However, what was different to previous results was that there were a higher proportion of smaller businesses providing benefits.

To illustrate this, of the top five listed benefits in 2018, only one was listed by more than half (education / training at 64.0 percent). In contrast, the top six options for 2020 were all undertaken by more than half of smaller businesses.

Looking at the results of smaller businesses more specifically, there was a big shift in 'flexible hours / working at home', which rose from 38.0 percent in 2018 to 58 percent in 2020.

Clear break

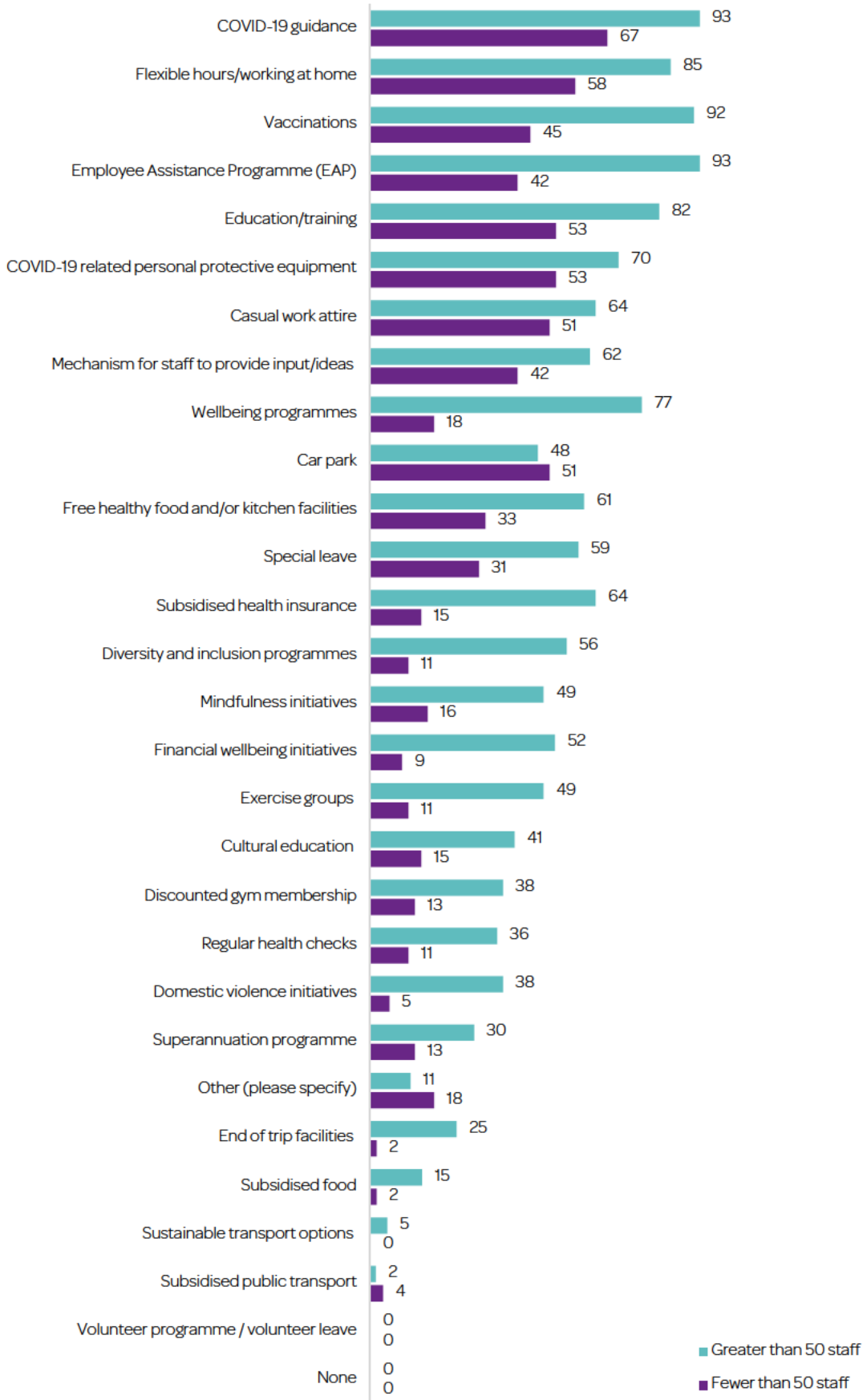
Respondents were again asked whether they actively encourage staff to take breaks. The 2020 results in table 20 show a slight drop in encouragement from 2018, although the combined options of 'every day' and 'most days' was almost identical between the two years. Also, other factors such as working from home and flexible hours may have had an influence on the extent to which businesses specifically mention this to staff.

Table 20: Extent to which business actively encourages staff to take breaks (2020)

Option	All (%)	Fewer than 50 staff (%)	50+ Staff (%)
Every day	63.8	58.2	68.9
Most days	20.7	27.3	14.8
Some days	9.5	7.3	11.5
Never	4.3	5.5	3.3
Don't know	1.7	1.8	1.6



Figure 17: Benefits provided to improve the wellbeing of staff (2020)





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BusinessNZ
GROWING PROSPERITY AND POTENTIAL

24 June 2020

Mr Richard Briggs
Chief Executive
Hamilton City Council
Private Bag 3010
Hamilton 3240

Dear Richard

Thank you for being part of the Major Companies Group - your Membership is highly valued and appreciated by all involved.

MCG, the alliance of major companies within BusinessNZ, enables leading corporates to influence advocacy towards a better business environment in New Zealand.

Through MCG, Members can undertake engagement with key decision-makers at many levels, as your Membership fee covers services not only of the MCG but also of your regional business association EMA, Business Central, Canterbury Employers' Chamber of Commerce and Otago Southland Employers Association.

Our advocacy is informed by briefings, forums, strategy sessions, dialogue with political and industry leaders, networking, and insights gained at the highest corporate level.

MCG has had impressive wins during 2019-20, helping to achieve:

- A new focus on infrastructure investment
- Restraint on legislation that would have required entire industries to be covered by multi-employer collective agreements, risking industrial harmony
- Compulsory literacy and numeracy in NCEA
- Large increases in funding for trades and apprenticeships
- Respect for industry's needs in ongoing environmental regulation
- Better government decisions around Covid support and stimulus (a summary of recent MCG/BusinessNZ Covid advocacy successes is attached)

During 2019-20 MCG Members have also taken part in events with the Prime Minister, Party Leaders, Cabinet Ministers and MPs including the *Back to Business* cocktail event, the Prime Minister's Pre-Budget summit, the annual CEO dinner and other events.

MCG Members have received specialist advice and contributed to BusinessNZ submissions and select committee representations on major current business issues.

These and other opportunities are part of the value delivered by the Major Companies Group.

MCG's work is supported by an annual fee - which also covers the membership and services of your regional business organisation and I enclose for payment an invoice for 2020-21, with thanks for your valued participation.

With kind regards

7(2)(a)

What the Major Companies Group & BusinessNZ advocated for and achieved

results of Covid advocacy by MCG and BusinessNZ

Business involvement	Business involvement in decision-making: BusinessNZ reps embedded in Covid Operational Command Centre & MBIE
Wage subsidy	Wage subsidy improvements: $150k cap removed, scheme extended to 5 months
Interest-free loans	Interest-free loans for business: Small Business Cashflow Scheme loans of $10k and payments of $1.8k per full time employee, interest-free for 1 year
Bank credit	Delay new capital requirements on banks to allow them to make more credit available for business: Increased capital requirements deferred till 1 July 2021
Tax reductions	Reduce taxes until recovery is underway: Provisional tax threshold increased from $2.5k to $5k; Use of money interest payments for tax debts removed for 2 years
Tax deductions	Allow tax deductions to reduce burden on firms affected by Covid outbreak: Govt mandated deductions for low-value assets up to $5k for 1 year
Rent	Establish a rent relief scheme agreed to by tenants and landlords: Rent arbitration scheme introduced
Paying bills - govt	Ask govt departments to pay NZ suppliers more promptly: State Services Commission now requires govt depts to pay NZ suppliers within 10 days
Paying bills - firms	Ask large businesses to pay invoices to small businesses promptly: BusinessNZ & Govt have promoted strongly
Small business support	Targeted support for SMEs: Budget 2020 provided $240m for NZTE support, tax deductions for unsuccessful or abandoned assets, advisory services, R&D loans for SMEs
Insolvency	Changes to rules re trading while insolvent to avert emergency-induced insolvencies: Companies Act amended to let businesses place existing debts into hibernation for 6 months if agreed by 50% of creditors
Work visas	Extensions to work visas for overseas workers in NZ: Work visas automatically extended to 25 September
Immigration	More ability for essential workers & families to enter NZ: Exceptions to border closure introduced for 'other essential workers'
Technology assistance	Technology credits – to enable small businesses to buy digital business tools and get into e-commerce: Budget 2020 provided $10m to encourage e-commerce, train digital advisers
Infrastructure investment	More funding for infrastructure development: Budget 2020 provided $3b for infrastructure projects
Infrastructure options	The best projects for infrastructure development: MCG/BusinessNZ identified list of key infrastructure opportunities
Skills & training	Active labour market policies and funding for skills & training: Budget 2020 provided $1.6 billion for apprenticeship, trades training & careers advice
Job brokering	Active brokering between industries with layoffs and those with job vacancies: Brokering undertaken in forestry & horticulture businesses
Manufacturing - involvement	NZ manufacturers to contribute to production of PPE: BusinessNZ identified & promoted list of NZ manufacturers able to manufacture PPE at scale
Buying local	More customer support for Kiwi businesses: BusinessNZ/Buy NZ Made established ShopKiwi online mall, now hosting 2,200 local retailers
Ongoing support	'Waves of stimulus' approach, with Govt responding to emerging business issues as Covid crisis unfolded: Achieved, ongoing
Engagement	Ongoing engagement with Ministers & officials on key issues for business: MCG/BusinessNZ Members continue to engage via webinars & other means, with Ministers and officials

BUSINESS NZ

PLANNING FORECAST

MARCH 2022

BusinessNZ

NZ Economy: Cross-currents of risk

Executive Summary

NZ faces risks internationally and domestically, with geopolitical risks as the Russian invasion of Ukraine continues apace, while on the domestic front Omicron and widespread inflationary pressures remain front of mind.

Some sectors (tourism and hospitality) have been battered as a result of ongoing Covid restrictions, while other sectors (agriculture and construction) are showing relatively strong growth. However, almost all sectors of the economy are facing supply constraints as a result of domestic regulatory measures, including largely closed borders. This is putting upward pressure on prices, and the ongoing spread of Omicron is seriously impacting on the ability of many businesses to function efficiently, as people self-isolate.

Internationally, rising commodity prices are a two-edged sword. Rising demand for agricultural commodities, along with reduced supply as a result of weather conditions, have brought higher returns for NZ agricultural producers, as evidenced by Global Dairy Trade and Fonterra ratcheting up the expected payout to dairy farmers.

Meanwhile, increased commodity prices are pushing up input prices, particularly following the invasion of the Ukraine by Russian forces, which is affecting the price of international oil. This is flowing through into transport and fuel costs facing many NZ businesses, adding fuel to the inflationary fire which was already well alight, with increasing international demand for oil and other commodities well before the invasion took place.

The impact of hostilities the war and resulting significant overt sanctions on Russia by many Western countries have the potential to disrupt financial and commodity markets, quite apart from the risk of escalation of the war.

While the war is having significant humanitarian impacts on immediately affected parties in Ukraine and to some extent on Russian forces, NZ's distance from the conflict combined with fairly limited bilateral trading relationships with Russa and Ukraine means the direct economic impact on NZ is likely to be very limited. However, the impact of higher fuel prices will add significantly more pressure to NZ's domestic inflation.

The NZ Government has taken tentative steps towards partially dismantling border controls; however, it is not axiomatic that when the NZ Government does eventually open the border to allcomers that there will be a rush to come here, or that citizens currently living in NZ will want to stay here. There are two reasons for this. First, given NZ's conservative approach to opening the borders, many countries have stolen a march on NZ; people will go to countries more open to international capital and labour. Second, given the pent-up demand by Kiwis to see the world, and costs associated with living in NZ, housing in particular, many young skilled NZers may feel the time is ripe to leave.

Although some consider NZ weathered the storm of Covid-19 pretty well by international standards, particularly from a short-term health perspective, the economic costs have been huge, with around $60 billion spent on the Covid-19 response, while easy money from the Reserve Bank has added to the housing frenzy. Government and household debt have risen substantially, and with interest rates rising, increased debt servicing costs are set to bite.

HIGHLIGHTS

The BusinessNZ Economic Conditions Index, a compilation of NZ's major economic indicators, sits at 3 for the March 2022 quarter, up 2 on the previous quarter and down 2 on a year ago. The index overall shows little change for the March 2022 quarter, however this masks large changes in the sub-indices, including improvements in economic growth largely offset by deteriorating monetary policy conditions (higher interest rates and inflationary pressures) and a large dip in business and consumer confidence.

Notwithstanding recent efforts to reduce some border restrictions for NZ citizens, it will be some time before the border is fully open for business. Current restrictions will continue to constrain growth, particularly in sourcing labour, while the ongoing saga of supply chain problems has been well publicised.

The BNZ-BusinessNZ Performance of Manufacturing Index (PMI) continues to show expansion in the manufacturing sector, however the Performance of Services Index (PSI) continues to show contraction in the services sector.

The construction sector is in expansion mode, however the inability to source key inputs - labour and materials - is constraining output.

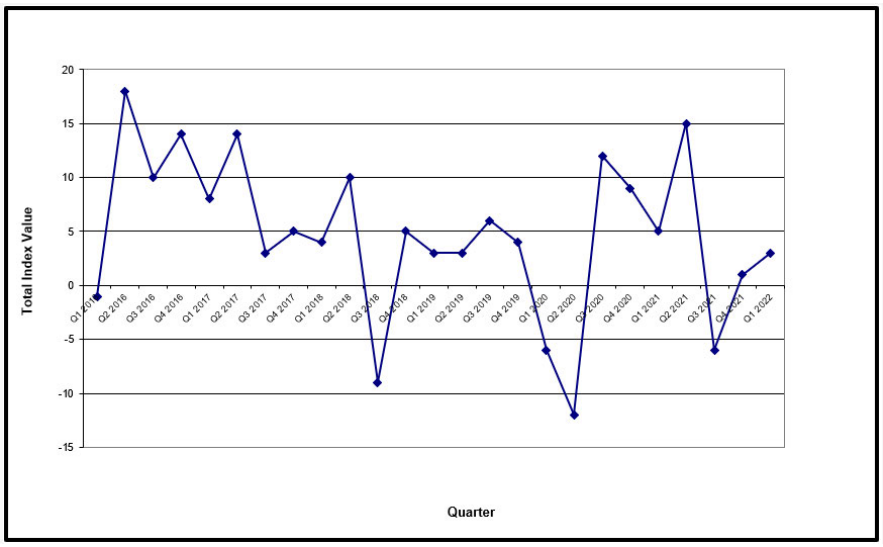
The agricultural sector continues to go from strength-to-strength on the back of continued strong commodity prices, including dairy and sheep meat. Notwithstanding, agriculture like many other sectors will feel the impact of increased input costs, in particular fuel and transport, along with rising debt servicing costs, which will take the edge off improved profit margins. This is reflected in declines in recent confidence surveys for the sector.

PART 1: THE NZ ECONOMY – WHERE ARE WE NOW?

BusinessNZ Economic Conditions Index (ECI)

The overall BusinessNZ Economic Conditions Index (a measure of NZ's major economic indicators) sits at 3 for the March 2022 quarter, up 2 on the previous quarter and down 2 on a year ago. The index overall shows little change for the March 2022 quarter, however this masks large changes in the sub-indices, including improvements in economic growth largely offset by deteriorating monetary policy conditions (higher interest rates and inflationary pressures) and a large dip in business and consumer confidence.[1]

Overall Economic Conditions Index (ECI)



Data in the ECI is broken up into four key sub-groups:

- Economic growth/performance indicators
- Monetary policy/pricing indicators
- Business/consumer confidence indicators
- Labour market indicators

Economic growth/performance indicators sit at 5 for the March 2022 quarter, up 2 on the previous quarter and down 2 on a year ago. NZ's terms of trade remain strong on the back of continuing international support for our key agricultural commodities. Notwithstanding, shipping capacity is still stretched, leading to delays and significant transport cost increases for some sectors while supply of key inputs (goods and services including labour) to construction and other sectors will continue to constrain growth over the short to medium term.

Monetary policy/pricing indicators sit at -4 for the March 2022 quarter, down 4 on the previous quarter and down 3 on a year ago. Current inflation (both tradeables and non-tradeables) remain at evaluated levels which is now started to be reflected in continued rises in interest rates as the Reserve Bank starts on its track of getting inflation under control. Unfortunately, given that inflationary pressures are largely a result of supply-side constraints (both domestically and internationally) there is little that the Reserve Bank can do through interest rate mechanisms to free up supply chains or increase labour supply.

Business/consumer confidence indicators sit at -2 for the March 2022 quarter, up 1 on the previous quarter and down 3 on a year ago. Both business and consumer confidence indicators have taken a significant dive over recent weeks on the back for significant Omicron in the community, rising geopolitical tensions internationally, and in respect to consumers, higher debt levels and rising interest rates - with more to come. Indications of housing price rises slowing (if not falling) has also weighed on consumer confidence given the tendency for consumers historically to feel more confident when house prices are rising.

Labour market indicators sit at 4 for the March 2022 quarter, up 3 on the previous quarter and the same as a year ago. The economy is now beyond what the Reserve Bank would term sustainable full employment and many businesses are doing their best to retain staff wherever possible. However, on the negative side, a tight labour market is resulting in significant constraints on the ability to grow the economy while record low official unemployment is not being reflected in reduced numbers of those on the Job Seek benefits – quite the opposite. There have been significant rises in Job Seeker numbers since late 2019 despite record low unemployment which is concerning given the risks and costs associated with long-term state dependency.

[1] The ECI tracks over 30 indicators on a quarterly basis. The overall index value for any one quarter represents the net balance of the indicators (generally the number increasing minus the number decreasing) thus providing an overall measure of performance. Note: The results for the March quarter 2022 are estimates based on available information to date.

<u>Note</u>: Given a very fluid international and domestic situation at present, the forecasts below, including with respect to economic growth, interest rates, exchange rates, inflation, and unemployment, should be seen for what they are: the best available information to date. Some banks are currently updating their forecasts while other forecasts will likely be subject to significant change as the global and domestic scene continues to evolve over coming months.

<u>PART 2: THE NZ ECONOMY – WHERE ARE WE HEADING?</u>

1.1 Economic growth (GDP) – subdued

NZ faces a number of risks both internationally and domestically, with geopolitical risks as the Russian invasion of Ukraine continues apace, while on the domestic front Omicron and widespread inflationary pressures remain front of mind. Meanwhile, the global shipping industry continues to face challenges, with delays at ports keeping shipping costs elevated.

While some sectors are suffering under Covid restrictions, e.g., tourism and hospitality, other sectors are showing relatively strong growth, e.g., construction and agriculture. However, almost all sectors of the economy are facing supply-side constraints as a result of Covid restrictions (especially largely closed borders), putting upward pressure on prices, and the ongoing impact of Omicron, yet to reach its peak, is seriously affecting the ability of many businesses to function efficiently, as people self-isolate.

Internationally rising commodity prices are a two-edged sword. Rising demand for agricultural commodities, along with reduced supply as a result of weather conditions, have brought higher returns for our agricultural producers, evidenced by Global Dairy Trade and Fonterra ratcheting up the expected payout to dairy farmers.

However, increased commodity prices are being felt in input prices, particularly following the invasion of Ukraine, which is affecting international oil prices as Europe and the US have banned oil imports from Russia, and the EU is proposing significantly reducing the purchase of Russian natural gas. This is flowing through into transport and fuel costs facing many NZ businesses and adding fuel to the inflationary fire already alight, with international demand for oil and other commodities increasing well before the invasion took place.

The impact of the invasion of Ukraine and resulting significant overt sanctions on Russia by many Western countries is likely to bring disruption to financial and commodity markets, quite apart from the risk of escalation of the war, following some of the statements coming from President Putin.

Global sharemarkets have taken a beating over recent weeks during the Russian invasion and there are fears that supply chains will be further disrupted, given already stretched networks because of Covid.

While it hasn't been mentioned for a very long time, the risk of stagflation - very low economic growth with high unemployment - cannot be ruled out, at least at an international level.

Over the last six months there has been reasonably strong economic recovery for a large part of the developed world, as economies opened up in the realisation that Covid was something that had to be lived with rather than persisting with the elimination strategy that some countries including NZ have tried. However, recent geopolitical events have raised fears that this international recovery might be derailed.

Historically, recessions have been signaled through a range of factors, but one important one which has generally been accurate is the yield curve (comparing the yield of short-term vs long-term interest rates).

Generally speaking, people and companies will only invest for a longer term if the returns are higher than short-term rates, reflecting the risks associated with investing over the longer term, i.e the yield curve is generally upward-sloping. Recently, at the international level there have been moves to increase short-term rates at a much higher rate than long-term rates, suggesting that investors are more nervous about investing short-term given the international risks at present. While internationally yield curves are still upward sloping, they have levelled off somewhat, which is concerning.

While the concept of stagflation has not been talked about publicly for decades and the world is a much more open place than when stagflation last hit NZ in the 1970s and '80s, the ongoing risks and uncertainty associated with Covid, and risks of potential escalation of war beyond the Russian invasion of Ukraine, provide a perfect storm for prices to increase rapidly while businesses pull back on investment for fear of uncertain returns.

While this might seem almost laughable to some given that NZ is currently experiencing modest growth and historically low unemployment, much of NZ's growth over the last couple of years has been propped up by $60 billion worth of government spending, along with the commodity boom which has particularly assisted the agricultural sector. This won't continue forever.

While some consider that NZ weathered the storm of Covid-19 pretty well by international standards (particularly if one looks at the results purely from a short-term health perspective), the economic costs have been huge, with around $60 billion spent on the Covid response, while easy money from the Reserve Bank helped fuel the housing frenzy. Government and household debt have risen substantially, and with interest rates rising, increased debt servicing costs are set to bite.

Higher levels of household and government debt do impose ongoing risk as interest rates rise, while higher levels of debt also constrain the choices that Governments and households can make in the future due to tighter budgets. Given that around 90 percent of household debt is tied up in various forms of housing, this creates significant risks should interest rates rise markedly as they are likely to do, while the current slowing in house prices will be making some homeowners nervous, particularly if NZ does not continue growing and the labour market shows signs of weakness.

Nevertheless, despite the concerns over the economic outlook expressed above, there are several factors that should provide NZ with some comfort.

First, it appears that Omicron infections are in full swing in NZ, with some commentators suggesting that it may have already peaked, especially in Auckland (although data is a bit ropey in some cases, given hospitalisations may be more useful than case numbers as a proxy for the severity of the pandemic). Hopefully, this signals that the widely desired removal of restrictions on people going about their daily lives will be announced soon, and that the border re-opening will also be announced sooner rather than later so NZ businesses and people can reconnect with the world.

Second, despite some significant build-up of debt, with Government expenditure on Covid-related activities of around $60 million over the past two years, NZ's net debt is currently around 35 percent of GDP, up from around 19 percent at the start of 2020, but pretty good compared to many countries we traditionally compare ourselves to.

Third, despite widespread pessimism evidenced in business and consumer confidence surveys, the February corporate earnings season was one of the strongest in the past couple of years with most NZX-listed companies beating analyst forecasts. Of the 31 companies that had full or half-year results, 21 reported higher earnings per share than forecast. Four were as expected and six missed the mark.

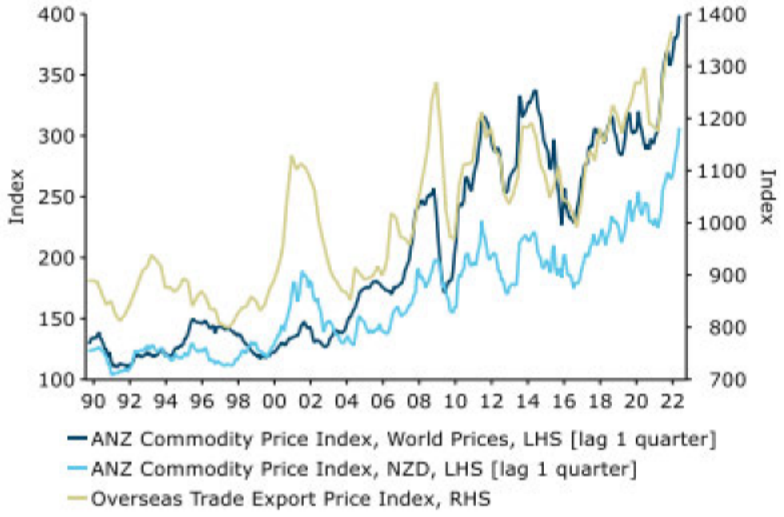
However, it is a less than attractive picture when looking forward, with most companies experiencing significant cost increases, most frequently for labour and freight, with most companies suggesting inflationary pressures would continue unabated in 2022.

Fourth, NZ's Terms of Trade (a measure of the value of exports required for a given number of imports) remain at elevated levels, driven principally by strong prices for traditional agricultural commodities e.g., dairy, beef and lamb.

The latest ANZ Commodity Price Index (see below) shows a lift of 3.9 percent in February 2022 compared to a month earlier, to hit another record high.

Prices lifted across most commodity groups with dairy and aluminum leading the way. In NZ dollar terms, the index increased 4.9 percent, as local returns were assisted somewhat by a 1.2 percent reduction in the Trade Weighted Index.

ANZ Commodity Price Index



Source: Stats NZ, Macrobond, ANZ Research

Fifth, the construction sector continues to go from strength to, with record numbers of dwelling consents and a strong pipeline of further work which will keep the sector busy for a number of years to come. However, short-term, there are major supply-side issues; many key building materials are in short supply, delaying work and driving up prices across the board.

Finally, NZ has secured what appears to be a satisfactory free trade deal with the UK. The UK-NZ FTA was signed on the 1st of March and will now go through parliamentary process to ratify the agreement.

The agreement immediately will remove 99.5 per cent of trade tariffs and customs duties once in force, and save New Zealand exporters $37 million per year. There are significant removals of quotas for access for beef, sheep meat, butter and cheese after 5-15 years.

The trade deal is forecast to boost New Zealand GDP by between $700 million and $1 billion and will help grow New Zealand exports to the UK by 40 per cent.

Notwithstanding this trade deal and others being negotiated, there are risks that the current geopolitical situation and world-wide pandemic will cause countries to become much more insular and concerned about sourcing materials internally. This is likely to add further to costs of production and inhibit innovation, with the costs ultimately passed on to consumers. While management of risk is an issue, particularly for those countries exposed principally to a single market, this has to be weighed up against the downsides of restricting free trade in goods and services.

Forecasts: Real GDP percent Growth

	Years Ending		
	Mar 22	Mar 23	Mar 24
Highest	5.8	4.6	4.1
Average	5.2	3.5	2.7
Lowest	4.1	2.8	1.6

Source: ASB, BNZ, Kiwibank and Westpac

1.2 Monetary Policy – multiple objectives make the Reserve Bank's job difficult

Significant changes have been made to how the Reserve Bank operates now its mandate has been radically expanded beyond that of simply targeting inflation.

Many including BusinessNZ opposed the Government's decision some years back to give the Reserve Bank two differing key priorities – price stability and maximum sustainable employment – and now question how these can be juggled or traded-off if NZ enters a period of stagflation down the track.

Furthermore, over the past few years, the Reserve Bank has gone from very much a bit player in the climate change area, to making significant submissions in respect to climate change issues. It is difficult to see how the Reserve Bank might be able to act on this issue, given it has little control over climate change.

Additional new tools such as loan-to-value and debt-to-income ratios will make transparency in decision-making even harder. Arguably these mechanisms can perhaps be justified because New Zealand households have significant debt tied up in housing (currently around 90 percent of household debt), potentially affecting the soundness of the financial system.

However, overall, the Reserve Bank's mandate seems to be expanding rapidly into issues which will have little medium-term impact on the financial system.

The danger from the Reserve Bank having so many balls in the air is that it will no longer concentrate on the prime purpose of monetary policy which is to ensure a relatively stable price level over time. This would be unfortunate and could reduce New Zealanders' confidence in the independence and predictability of the Bank's monetary policy settings.

The next few months may tell us whether the decision to extend the Reserve Bank's mandate, by legislation and also voluntary measures, was wise.

Inflation – widespread

Current inflation (both tradeables and non-tradeables) remains at elevated levels and is now reflected in continued rises in interest rates as the Reserve Bank starts on its track of getting inflation under control. Unfortunately, given that inflationary pressures are largely a result of supply-side constraints (both domestically and internationally) there is little that the Reserve Bank can do through interest rate mechanisms to free up supply chains or increase labour supply.

Business opinion surveys now consistently show stronger inflationary expectations with most respondents reporting an intention to raise prices over the next year. At the same time even more respondents are expecting that input costs will also rise.

As stated earlier, there is also the real problem for the Reserve Bank in how far and how fast it raises interest rates in response to elevated inflationary pressures, given how this may impact on its other objective of employment.

Inflationary pressures are now widespread, with shipping capacity constraints, material supplies and labour shortages increasing costs and restricting overall growth in the NZ economy. Inflationary pressure is not only a NZ phenomenon but is being felt more and more around the world as expansionary monetary and fiscal policies bring growing demand for goods and services, fuelled by historically low interest rates. The boost to oil prices in light of restrictions on supplies coming out of Russia adds to the inflationary mix.

The Reserve Bank's very loose 'no-regrets' monetary policy stance over the last two years is significantly impacting on asset prices, particularly housing, which has encouraged the further buildup of household debt. NZ household debt is not at an historic high, much of it tied into the housing market, and while debt servicing costs are at their lowest level for well over two decades, the tide is clearly turning.

Perhaps the only bright spot on the inflationary front is that it appears that secondhand house price rises have ground to a halt after rising the best part of 30 percent over the past year alone. The problem is that with building materials in short supply, the ability to build new houses is constrained and also much more costly. Recently there was talk about gib board being sold on Trade Me for around 4 times the normal market price.

Despite some moderation in house prices of late, housing affordability remains a massive issue in NZ. The recently released Demographia Housing Affordability survey makes for sober reading. While there has been a world-wide deterioration in housing affordability during the pandemic, NZ remains one of the most unaffordable countries of all.

Median house prices in NZ were 11.2 percent of gross median household income pre-tax, compared to 8 percent for Australia, 6 percent for Canada, 5.1 percent for the United Kingdom, and 5 percent for the United States.

Given higher levels of inflation are eroding real incomes of the labour force, we also face the risk of a wage-price spiral, unheard of since the 1970s and '80s. This underlines the need to get inflation under control soon as possible.

Policies are needed that free up resources, free up movement of people across the border, provide for easier development of land and business activity, and reduce unnecessary regulation and levies on businesses and households.

While some regulatory costs on businesses over the past several years may have been justified, there are a lot of costs which are unjustified and counterproductive in terms of improving New Zealanders' prosperity and potential.

The changes to the Credit Contracts and Consumer Finance Act have tended to be counterproductive. 'Responsible lending' requirements were designed to protect vulnerable borrowers from loan sharks, but have seriously affected other borrowers, including small businesses who often use their home as security - yet another case of well-intended legislation bringing unintended consequences. It is noted that the Government is currently reviewing some of the regulations on bank lending requirements which may lessen some of the more draconian requirements currently in place.

Forecasts: Percent Change in Inflation (CPI)

	Years Ending		
	Mar 22	Mar 23	Mar 24
Highest	7.2	4.4	2.9
Average	6.7	3.5	2.4
Lowest	6.3	2.7	1.7

Source: ASB, BNZ, Kiwibank and Westpac

Interest Rates – higher, faster

The Reserve Bank has started on a path of increasing the OCR with a number of further rises in the pipeline.

The importance of the Reserve Bank getting on top of inflation should not be underestimated given that rather than a transitory issue, inflation is here to stay for some time. Importantly, it is a world-wide phenomenon, not just confined to only a few economies.

Given NZ's so-called 'fortress' approach to its borders, constraints on the provision of goods and services will continue, as traditional sources of labour from overseas are closed off and many businesses are unable to operate to capacity, with constrained supply of basic materials in particular making building even more difficult and costly than previously.

Given recent events internationally, with oil and other commodity prices increasing, and domestically, with tight labour markets placing strain on supply chains, it is important that the Reserve Bank acts decisively on Official Cash Rate increases to prevent inflation from getting out of control. A number of commentators, including some banks, have ramped up their views on how far and fast the Reserve Bank should move to increase the OCR.

On the other hand, given that increases in interest rates take around a year to really bite (particularly since many households have short-term mortgages at low interest rates which will only be re-priced near the end of this year), this could mean interest rates might not need to rise as fast as some predict.

There is some support for this view, given house prices are already falling and some surveys suggest consumers are prepared to cut their spending over the next year. Further, given the high level of household debt with around

90 percent tied directly to housing, any increase in interest rates will hit some highly leveraged households hard. Also, the recent steep rises in fuel costs will act as a tax on businesses and households, further constraining activity. Finally, business and consumer confidence survey results have fallen off a cliff which is another reason that the economy may cool without the need for significant interest rate hikes. This is not an easy time for the Governor of the Reserve Bank in determining the optimal path forward in respect to interest rates.

The Reserve Bank, in its February monetary policy review, clearly signaled its intention to return monetary policy to a more neutral state. That review is now likely to be out of date with greater inflationary pressures, geopolitical and domestic, evident over recent weeks. Interest rates will continue to rise, as can be seen from the forecasts below, and with historically high levels of household debt, those rises might not need to be significant before starting to impact on households' disposable incomes.

Nevertheless, some households will be sheltered from interest rate rises until late this year as around 60 percent of mortgages are not due for re-pricing for another six months at least. Many households will regret not locking in 4 percent rates for three or even five years before the latest hikes took effect. Short-term rates of say one year are not always best given they leave households exposed to significant increases when they come to re-price their mortgage.

Forecasts: Interest Rates (90-day bills)

	Years ending		
	Mar 22	Mar 23	Mar 24
Highest	1.4	2.9	3.3
Average	1.3	2.8	3.0
Lowest	1.2	2.7	2.7

Source: ASB, BNZ, Kiwibank and Westpac

The NZ dollar – a dollar each way

The NZ dollar is likely to be supported over coming months due to a range of factors, including continuing improvements in commodity prices.

Perhaps more importantly, NZ has been one of the first countries to start increasing interest rates which will likely tempt investors seeking higher returns in NZ.

Also, there is the potential for Kiwis to return from overseas and for an increased number of immigrants potentially later this year, which would put upward pressure on the NZ dollar as foreign funds are converted to NZ dollars.

However, current geopolitical risks mean there is likely to be a move towards safe haven currencies such as the US dollar and Japanese yen. This makes forecasting exchange rates even more difficult than usual and is reflected in the relatively wide range of forecasts, particularly for the short-term (see below).

The speed at which world-wide interest rates rise will also have an impact on future currency movements. Central banks are at present reviewing their monetary policy settings, and it is likely that in a range of countries, interest rate rises will occur sooner than originally intended, as inflationary pressures increase.

Probably the only certainty at present is that many short- to medium-term forecast of exchange rates are likely to be wrong. Things are simply too volatile to make rational decisions in this space.

Forecasts: Exchange Rates

AUD (cents)			
	Mar 22	Mar 23	Mar 24
Highest	0.96	0.94	0.94
Average	0.94	0.93	0.93
Lowest	0.93	0.92	0.91

USD (cents)			
	Mar 22	Mar 23	Mar 24
Highest	0.71	0.73	0.73
Average	0.68	0.72	0.71
Lowest	0.65	0.69	0.70

TWI			
	Mar 22	Mar 23	Mar 24
Highest	75.6	75.6	75.0
Average	72.8	74.2	73.2
Lowest	70.1	72.5	72.0

Source: ASB, BNZ, Kiwibank and Westpac

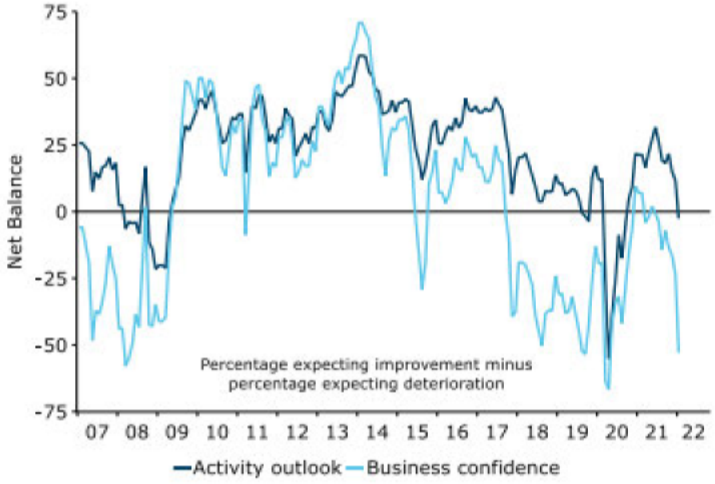
1.3 Business activity and confidence – down the gurgler

Recent surveys show business and consumer confidence have tanked.

The ANZ Business Outlook for February 2022 showed headline confidence plummeting from -23.2 to -51.8, the biggest decline since March 2020.

The 'own activity' measure, perhaps a better predictor of future growth, also declined, dropping from 11.8 in December 2021 to -2.2 in February, not too surprising given expectations of widespread Omicron-related disruption on the economy, the ratcheting up of interest rates, along with continued cost pressures and labour shortages.

ANZ Business Confidence Index



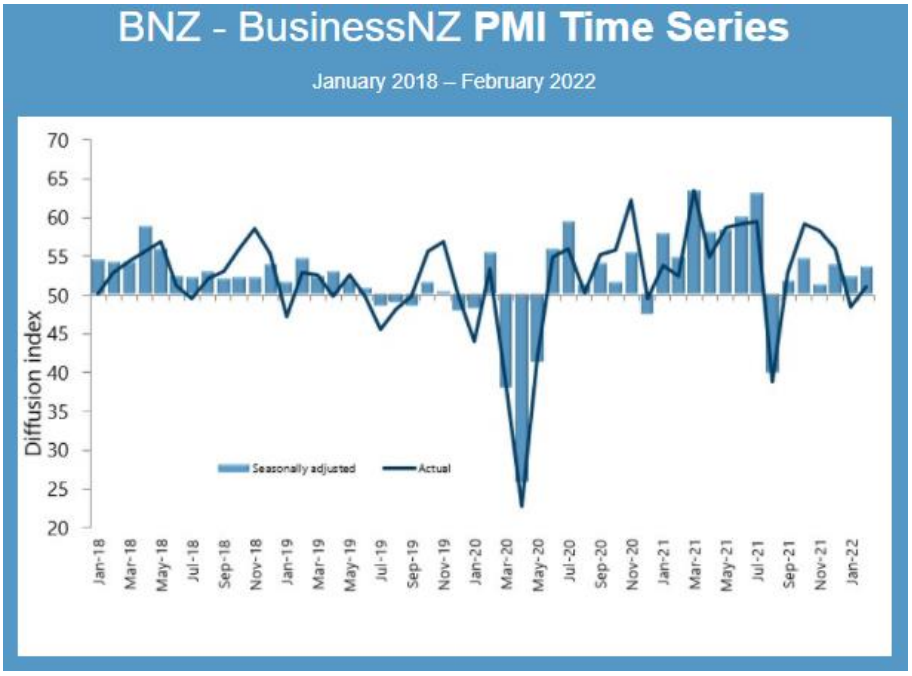
The results of this survey are likely to have been received largely before the Russian invasion so it is likely, had this been included, that the results would have been even worse.

Despite the recent massive drop in overall business confidence, some sectors are doing reasonably well while others continue to struggle.

New Zealand's manufacturing sector saw a lift in the level of expansion for February according to the latest BNZ-BusinessNZ Performance of Manufacturing Index (PMI).

The seasonally-adjusted PMI for February was 53.6 (a reading above 50.0 indicates that manufacturing is generally expanding; below 50.0 that it is declining). This was 1.3 points higher than January and above the long-term average of 53.1 for the survey.

While there were certainly some positive signs with the February result, this needs to be balanced with the wide spread of Omicron potentially affecting business plans in the months ahead, as well as comments from manufacturers still firmly in negative territory (69.9%)



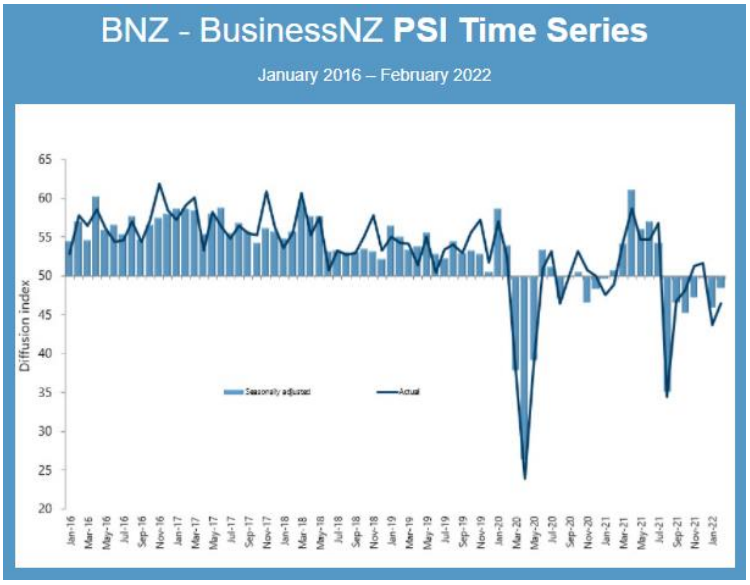
In terms of the main sub-indices, New Orders (58.2) increased to its highest level since July 2021, while Production (52.1) experienced a slight improvement, although still at its second lowest value since September 2021. Employment (51.7) rose back into expansion, while Finished Stocks (50.0) dropped to its lowest result since November 2021.



Activity levels in New Zealand's services sector saw a continuation of contraction for the second month of 2022, according to the BNZ BusinessNZ Performance of Services Index (PSI).

The PSI for February was 48.6. While this was up 2.6 points from January, it was still well down on the long-term average of 53.6 for the survey.

The ongoing trend of contraction was largely expected given the current restrictions and interference many businesses in the service sector are experiencing at present.

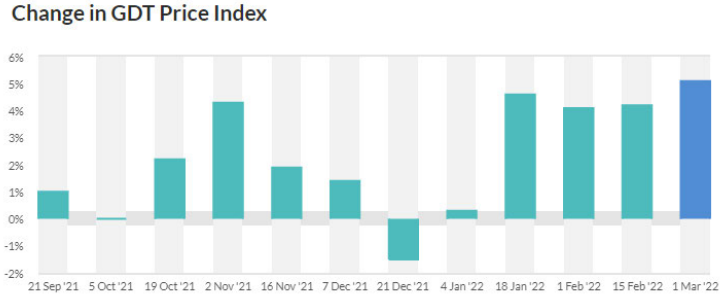


It is encouraging to see the key sub-indexes of New Orders/Business (53.6) and Activity/Sales (50.7) both return to positive territory. However, Employment (45.0) dropped to its lowest result since May 2020, while Supplier Deliveries (34.4) was at its lowest point since August 2021.



February marks the PSI's seventh consecutive month below the breakeven 50 mark. Pain is accumulating. While there were some overs and unders in the components, all remain below their respective long-term averages.

As mentioned earlier, increased global commodity prices are being reflected in increasing returns for agricultural producers in NZ. Global dairy prices have been supported this season by weaker milk production due to poor weather and higher feed costs. Fonterra has continued to upgrade its projected pay-outs to dairy farmers as the Global Dairy Trade continues to go from strength to strength as can be seen below.



Source: Global Dairy Trade (GDT)

But notwithstanding the solid performance of agriculture over recent times, there is significant concern in the agricultural community over the uncertainty arising from a number of recent and proposed environment-related regulations. As well, constraints on processing meat are evident without the migrant labour which traditionally assists when processing is at peak capacity.

The latest Federated Farmers Mid-Season Confidence Survey released 8 March 2022 reveals farm confidence at its lowest since Federated Farmers began twice-a-year surveys in 2009, and shows that despite high commodity prices, farmers are still very concerned about the future outlook. Of responses from nearly 1,000 farmers, a net 7.8 percent considered current economic conditions to be good, a 10.1-point decline from the July 2021 Survey, when 17.9 percent considered conditions to be good. Looking forward, a net 64 percent of farmers considered general economic conditions would worsen over the next 12 months, a 25-point deterioration from the 39 percent in the July survey.

Asked to list their greatest concerns, respondents chose climate change policy and ETS (18.7 percent of respondents), followed by regulation and compliance costs (13.1 percent) and freshwater policy (9.5 percent).

Commenting on the survey, Federated Farmers President Andrew Hoggard said, *"We're getting strong returns on meat and dairy right now thanks to high global demand and food security concerns but clearly farmers are seeing a lot of that revenue going right back out again with higher fuel and fertiliser prices, rising labour costs, and the hot inflation that is affecting every other New Zealander."*

The construction sector has faced setbacks over the past quarter, with an inability to source materials affecting the ability to complete work and driving up the price of materials which are available.

Other sectors, retail, tourism and hospitality, continue to do it tough for three main reasons. First, largely closed borders. Second, constraints on the ability to freely move around or allow large-scale events given Covid restrictions. Third, consumers starting to shut their wallets in response to rising interest rates and increased costs along with a general drop in real (inflation-adjusted) household income. This is being reflected in a significant drop in consumer confidence in a number of recent confidence surveys.

1.4 Labour market – tight as a drum but state dependency an issue

Unemployment remains at historically low levels according to the Household Labour Force Survey for the December 2021 quarter. Given effectively closed borders and the inability to source labour, this is not unexpected.

However, while official unemployment as measured by the HLFS remains very low, there appears to be a significant disconnect between official unemployment numbers and numbers receiving the Job Seeker benefit, suggesting a number of people have left the labour market and become dependent on state welfare support longer-term. There are now around 40,000 more people on the Job Seeker benefit than there were at the end of 2019, despite current record low unemployment recorded by the HLFS.

At the same time, it is disheartening to hear from businesses desperate to secure skilled labour from overseas, that with the Government's closed-door policy, they are effectively unable to grow or provide the goods and services demanded in a first world economy. Many sectors and businesses are frustrated that production output is being curtailed due to the inability to source labour in order to maximise output. Ultimately this will impact on economic growth and living standards.

There does not appear to be a clear plan from the Government, at least one that has been communicated to the public, as to how and when NZ as a country is to completely reopen to the world.

The danger is that NZ's risk-averse and conservative approach to opening our borders has allowed many other countries to steal a march on us in terms of gaining valuable capital and labour expertise as economies rebuild their momentum. The fact that New Zealanders are having to wait for a significant period for often basic goods and services is ominous in a first world country.

At the end of the day, labour, like capital, is now highly mobile, and will more likely gravitate to destinations where it is made most welcome (i.e., where investment returns are most attractive). In this respect NZ must compete with the rest of the world.

Forecasts: Unemployment percentage (HLFS)

	Quarter		
	Mar 22	Mar 23	Mar 24
Highest	3.3	3.7	3.8
Average	3.1	3.4	3.6
Lowest	2.9	3.1	3.4

Source: ASB, BNZ, Kiwibank and Westpac

Labour Costs – on the move higher

It is not surprising that with NZ's extremely tight labour market, forecasts below show some upward movement in labour costs.

A relatively modest growth in forecast wage rates in aggregate over the forecast period tends, however, to mask significant gains for specific sectors and for individuals within sectors. The inability to source skilled immigrants from overseas might see some job-hopping as businesses compete to obtain required expertise from a diminished pool.

The impact of impending regulatory cost increases also needs to be thrown into the mix of factors driving changes in labour costs. While overall, a number of labour market reforms (some proposed and some enacted) might result in increased wage rates for some, they will also mean reduced job opportunities, if not actual job losses, for others. The Government must recognise the need for flexible labour market practices that allow individuals and companies to agree arrangements best suited to their individual circumstances. Moves back towards more centralised wage bargaining do not take account of the unique pressures facing individual companies in particular markets and the risk remains that some people might exit the labour market altogether and become dependent on the state. While it is early days, increased numbers on the Job Seeker benefit are not encouraging given the current very tight labour market.

Forecasts: Labour cost index percentage change (wages and salaries)

	Years Ending		
	Mar 22	Mar 23	Mar 24
Highest	3.4	3.6	3.4
Average	3.1	3.4	3.0
Lowest	2.9	3.0	2.6

Source: ASB, BNZ, Kiwibank and Westpac

BusinessNZ
Major Companies Group

Major companies – growing NZ's value



BusinessNZ's sights are set on growing New Zealand's prosperity and potential.

Advocating for enterprise and representing New Zealand's outstanding businesses, we seek positive change through new thinking and solutions.

The companies represented by the BusinessNZ **Major Companies Group** represent the very best in enterprise – growing industries, jobs and value in communities all around New Zealand.

130 leading businesses belonging to the Major Companies Group participate in policy and advocacy work that helps make all New Zealanders better off.

I would like to acknowledge and thank New Zealand's business leaders for their valued contribution to this undertaking.

Kirk Hope

CHIEF EXECUTIVE BUSINESSNZ



The Major Companies Group (MCG) of the BusinessNZ Network is an exclusive group of 130 of NZ's largest companies. With MCG membership, major companies receive targeted services and unique opportunities to advocate for a better NZ. Benefits include premium events, policy forums delivering insights and learnings, and high-level networking and advocacy opportunities:

CEO Forum – The Forum meets three times a year for private exchange of insights with decision-makers including the Prime Minister, senior Ministers, Opposition Leaders and heads of key agencies. CEO Forums are confidential to allow frank advocacy and exchange of views at the highest level.

Private dinners for small groups, hosted in major cities and the regions once a month, provide Members with opportunities to discuss their business and the regional and national economy with senior Ministers and Opposition MPs.

CEO dinner with Prime Minister – An invitation to attend an annual CEO-only dinner with the Prime Minister and caucus, with pre-dinner cocktails hosted by BusinessNZ.

Corporate Affairs Forums – Corporate Affairs Forums held in Auckland and Wellington five times a year, enable senior executives from major companies to have two-way discussions with politicians and senior officials involved in work on issues important to business and the economy. Corporate Affairs Forums provide a platform for business to discuss policy and challenges, and help integrate policy directions formed at CEO level into all levels of MCG member businesses.

Premium events – Invitations to significant engagements including the Prime Minister's Pre-Budget Lunch in Wellington and the Prime Minister's End of Year Review in Auckland, and ongoing invitations to official trade delegation and industry events.

Cocktail parties – including BusinessNZ's Back to Business cocktails, the networking event most heavily attended by politicians and leading business figures.

Briefings with Treasury, MBIE, GSCB, Commerce Commission, Reserve Bank, MFAT and other key agencies based on Member demand, at least twice a year.

Policy access – Access to BusinessNZ research, surveys, submissions and updates and access to BusinessNZ's expert policy team for MCG issues.

Corporate Affairs Forums, held in Auckland and Wellington five times a year, enable senior executives of MCG companies to discuss business issues with politicians and senior officials. The Forums also help integrate policy directions formed at CEO level into all levels of Member businesses.

Partnerships – MCG Members partner with BusinessNZ on surveys, research, conferences and events, allowing Members to contribute to major policy work while showcasing their brand to stakeholders. Partners include Fonterra, BNZ, Westpac, Deloitte, Chapman Tripp, Yashili, Janssen, Southern Cross Healthcare, MYOB, Uber, IBM, Fujitsu, Christchurch Airport, Merck, and MinterEllisonRuddWatts, and partnerships include:

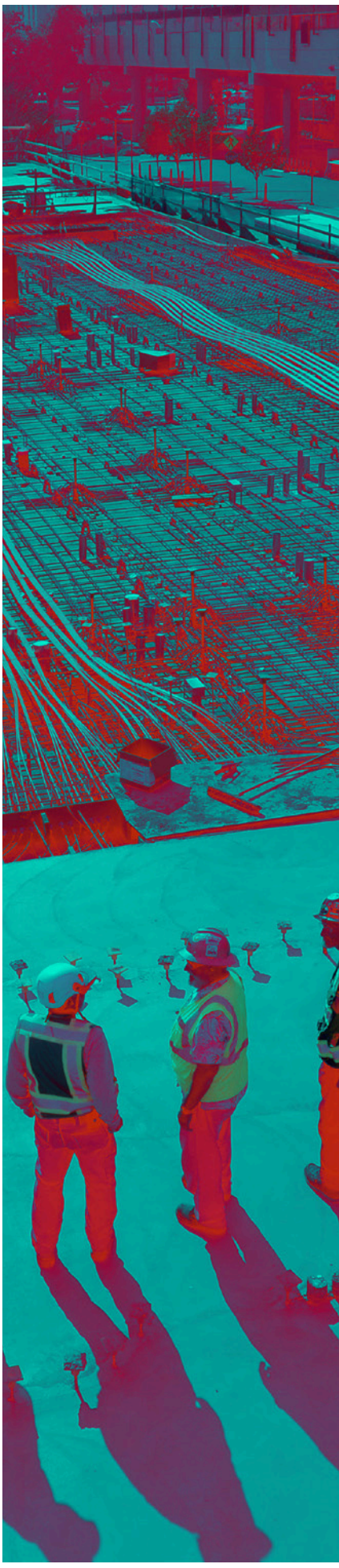
- BusinessNZ-Deloitte Major Companies Tax Survey
- Southern Cross-BusinessNZ Wellness in the Workplace Survey
- BusinessNZ Prime Minister's Update with Christchurch Airport and Janssen
- BNZ-BusinessNZ Performance of Manufacturing Index

- BNZ-BusinessNZ Performance of Services Index
- BusinessNZ Back to Business Cocktails with Westpac
- BusinessNZ Pre-Budget Lunch with Fujitsu

Engagement with Australian business – The Australia-NZ Leadership Forum (ANZLF) hosts dialogue among the top 60 companies in both NZ and Australia, helping promote trans-Tasman engagement at the highest level.

Trade delegations - MCG Members can take part in outward-bound delegations and in events with visiting delegations, assisting international engagement and export sales.

Wellington Seminar - senior executives of MCG companies attend this Seminar providing a useful way of understanding policies made in the Capital and the overall regulatory system. The Seminar provides guidance on the Select Committee process and engagement with politicians.



Significant recent advocacy BY THE Major Companies Group

Continued advocacy on behalf of all NZ enterprises during the **Covid-19** emergency.

Achieved cashflow and loan **support for businesses**, assistance for manufacturers producing facemasks and other protection, inclusions as critical businesses, requirements for government departments to pay suppliers on time and changed rules around trading while insolvent, and partnered with Government to produce and clarify guidelines for businesses to operate under Covid-19 conditions

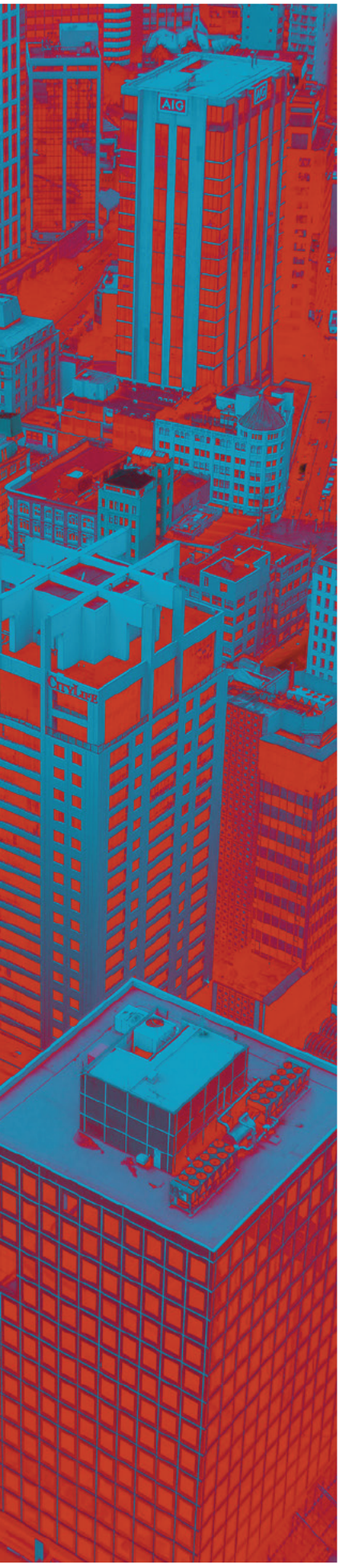
Advocated for transparent rules and processes for the **entry of critical people** into NZ to support business and investment during Covid-19 border closure, along with better regulations for temporary work visas

During lockdown MCG General Manager Phil Love was **embedded in MBIE** front line to convey rapid guidance on trading activity and business solutions. Similarly, BusinessNZ representatives are currently working with the Ministry of Health on fast-tracking **workplace vaccinations**

Advocating for **trade agreements** with large economies for NZ's food-based exports: the US, UK, EU and CPTPP. Achieving trade agreements reduces the tariff burden on NZ exporters, benefiting food product exporters and other exporters of all kinds

Advocating against **non-tariff barriers** that impede NZ exports, and activating WTO processes to remove non-tariff barriers that obstruct export sales in overseas markets

Advocating for changes to the **Overseas Investment Act** regime that places restrictions on needed investment in NZ businesses



Advocating for improvements to NZ's **competition regime**, as changes are made to the Commerce Act and Fair Trading Act

Advocating for repeal of the **RMA**, seeking an alternative to the Resource Management Act which weakens property rights and allows local government to curb business and economic development through restrictive zoning and consenting and other regulation

Seeking improvement or ditching of plans for **'fair pay agreements'** that would extend collective agreements across entire sectors of NZ

Advocating for and contributing to work to **improve the Holidays Act**, to reduce confusion about calculating holiday payments

Surveying workplace health policies to help **reduce absenteeism** and boost healthy workplaces, with the Southern Cross-BusinessNZ Wellness in the Workplace Report

Advocating for higher educational standards in secondary and tertiary education, to produce **better skills for business**, including practical, technical and customer skills

Advocating for **regional development** strategies and investment in the regions, including hub-based service provision by economic development agencies, appropriate pricing and user charges for local authority services, funding options for council-supplied infrastructure, and investment strategies, including FDI, for the regions

Developing options for encouraging **intelligent transport systems** including real-time road-charging systems and satellite geo-positioning to reduce congestion and better manage movements of freight and passenger transport on NZ roads

Advocating for a system to allow **trading in water rights**, to enable a more rational system for allocating water and allowing water to flow to its highest value uses

Major Companies Group KEY contacts



Kirk Hope

BUSINESSNZ CHIEF EXECUTIVE



Greg Lowe

BUSINESSNZ MAJOR COMPANIES GROUP CHAIR



Katharine McGhie

MCG MANAGER, BUSINESS DEVELOPMENT & EVENTS



Phil Love

MAJOR COMPANIES GROUP GENERAL MANAGER

File Note

BusinessNZ and their Major Companies Group

From: Louise Lukin

Date: 24 May 2022 File:

Hi Lance

Ahead of the proposed meeting with Elected Members here is some additional background information on Business NZ. I had to go back through some emails to check some off this, as they have dropped off my radar in the last 12 months.

Membership

Annual fee: $25,000 + GST per annum (invoiced 30 June, for period 1 July – 30 June)

We used to belong to BusinessNZ's subsidiary, EMA, when Barry was the Chief Executive. Richard cancelled this after he became Chief Executive.

Richard joined Business NZ's Major Companies Group (MCG) - another subsidiary - in 2019. I believe this was following his attendance at the Developing NZ Conference in May 2019, which was chaired by 7(2)(a) from BusinessNZ. By joining BusinessNZ's MCG we automatically become a member of the regional business organisation in our area (EMA).

I have included the list of companies which also belong to BusinessNZ's MCG.

Contacts and Correspondence

Our primary contact and correspondence has been with (in order):





7(2)(a) did meet with Richard on a number of occasions, however I cannot recall exactly how often. Richard did attend a couple of Hamilton based CEO dinners with 7(2)(a) and 7(2)(a).

Attached is an advocacy letter which Richard received from 7(2)(a) in June 2020.

Benefits

You can read more here: About Us - BusinessNZ, but this is from their website.

"MCG ensures our members have a strong advocacy voice in policy, business and economic debate. We provide a vehicle to voice and positively influence the challenges and opportunities facing businesses in New Zealand.

MCG engages with government officials, community groups, MPs and Ministers daily, ensuring business interests are represented throughout the policy making process.

Our specialist policy managers champion policies that help grow skills, investment, high- value goods, services, innovation and international competitiveness.

MCG members receive a suite of services including:

- *Specialist independent policy advice*
- *Opportunities to contribute to research and policy development*
- *Access to specialised policy forums, including Ministers and MPs*
- *An opportunity to engage in influencing the political and regulatory business framework*
- *Regulatory updates*
- *National and regional representation.*

The work of the MCG is carried out within the overarching governance of the BusinessNZ Council."

"Growing NZ's Value" is a document which outlines the benefits to members. I have **attached** a copy.

As members we have access to a variety of resources, reports and publications relevant to NZ enterprise, including the BusinessNZ Planning Forecast. The latest report from March 2022 is **attached**.

Other resources can be viewed on their website, links below:
Submissions
Surveys and Statistics
Reports and Publications
Guides and Tools

Council is also invited to participate in the Southern Cross Workplace Wellness Survey (2-yearly), and we do get complimentary access to the report. A copy of the 2021 report is **attached**.

As members we are invited to a number of events including CEO Forums, webinars, political briefings, pre-election conferences,

I understand you've been invited to the 2022 CEO Forums (see dates below) but I believe, should you choose to continue Council's membership, there is an opportunity to build a relationship with 7(2)(a) 7(2)(a) through regular (quarterly?) meetings. This may enable you to better understand and further leverage the wider resources available.

If you're not already receiving them, we can ensure you are added to the distribution list for the BusinessNZ updates – if you're interested.

Upcoming Events 2022

To date the only BusinessNZ event you have attended was the CEO Forum/Lunch on 25 March 2022. You may recall guest speakers included: Hon Chris Hipkins; Christopher Luxon; Adelle Keely (CE at Acumen); Greg Lowe (Group CE Beca); and Kirk Hope (CE BusinessNZ)

Future CE Forums are scheduled as follows:

- Friday 29 July 2022 - CEO breakfast: 7.30am - 11.00am (in Auckland)
- Friday 25 November 2022 - CEO lunch: 12.30pm - 4.00pm (in Auckland)

They are both in your diary although the latter clashes with a UNISA meeting, and a HCC/WDC Governance meeting.

Previous Events

BusinessNZ has hosted a number of events since we joined in 2019. These included:

- CEO Forums (in person initially and then via Zoom)
- Private CEO dinners in Hamilton which Richard attended when his diary permitted
- Political addresses e.g. lunch with 7(2)(a) in Auckland (Feb 2020)
- Back to Business cocktail parties (beginning of the year – Feb)
- Business Recovery Webinars (April 2020)
- Pre-election Conference with political party leaders (Sept 2020). This was a ticketed event but Richard didn't attend

Other

BusinessNZ and the FPA was referenced in Phil O'Reilly's Iron Duke January Client Update:

> **More employment costs and regulation will also apply** through the new public holiday, increased annual sick leave, as well as the potential. New worker insurance will be talked about this year and may start to be implemented. (Although on that latter issue, we think the government may slow down for reasons me will explain below.)
>
> As well as this of course we see the potential introduction of **fair pay agreements** against the bitter opposition of BusinessNZ and employers more generally. Once again, whether the government moves forward on this will be interesting, but clients should plan on some activity here to be on the safe side.

Hopefully this information helps but please let me know if you need anything else.

Lou

Memo

CE's Office

To:	Elected Members, Maangai Maaori, Executive Leadership Team		
From:	Lance Vervoort, Chief Executive		
Subject:	BusinessNZ and the Fair Pay Agreements Bill		
Date:	24 May 2022	File:	

1.0 Purpose of this Memo

1.1 To provide background information on BusinessNZ, the Fair Pay Agreements Bill and the alleged actions by BusinessNZ in relation to this.

1.2 To enable discussion and direction on what, if any, course of action Hamilton City Council (HCC) should take with BusinessNZ.

1.3 Provide an overview of other HCC business memberships.

2.0 Background

2.1 On 17 May 2022, an article was published on the Stuff news platform, reporting that "Auckland Council is seeking a 'please explain' from BusinessNZ after its alteration of a United Nations document led to accusations of misinformation."

2.2 BusinessNZ is being accused of misinformation in its handling of an International Labour Organisation (ILO) document that implied New Zealand has been found in breach of international labour laws. ILO is an agency of the United Nations.

2.3 The accusation came after BusinessNZ said the Fair Pay Agreement Bill had landed New Zealand on an international "naughty list" of worst-case breaches of international labour treaties. However, the list, compiled by ILO, was actually a list of alleged breaches which may, or may not, be heard by a committee later this year. The reason New Zealand was on the list was because BusinessNZ had successfully petitioned the ILO to consider whether the proposed Fair Pay Agreement bill was in breach of international law.

2.4 In response, [redacted], North Shore Ward Councillor, said he "had received confirmation that Mayor [redacted] and Chief Executive [redacted] were sending a joint letter to Business NZ seeking an explanation."

2.5 The article was initially brought to our attention by Cr Dave Macpherson who expressed concerns that HCC had not been consulted on BusinessNZ's stance and suggested HCC would not have supported their stance, if we had been offered the opportunity to comment.

2.6 Cr Dave has formally notified HCC's Chief Executive that he proposes we withdraw our membership, which is due for renewal at the end of June 2022.

2.7 Subsequently, the Mayor and several elected members have also expressed concern with BusinessNZ's approach.

3.0 BusinessNZ and the Major Companies Group (MCG)

3.1 BusinessNZ has a number of divisions (see fig. 1) including the Major Companies Group (MCG). This is a collective network of large companies that ensures New Zealand businesses *"have a strong voice in policy, business and economic debate."*



Fig 1: Business NZ Division Brands

3.2 They aim to provide a vehicle to *"voice and positively influence the challenges and opportunities facing NZ businesses, by engaging with government officials, community groups, MPs and Ministers."*

3.3 The work of the MCG is carried out with the overarching governance of the BusinessNZ Council. The Chair is 7(2)(a) [redacted]

3.4 The four regional shareholders are: EMA Northern; Business Central; Canterbury Chamber of Commerce; and Otago Southland Employers Association.

3.5 Kirk Hope is the Chief Executive; however our primary contacts have been 7(2)(a) [redacted] and 7(2)(a) [redacted].

3.6 More than 100 of New Zealand's largest companies (representing 67% of NZ's GDP) are active members, including HCC. We have been a member of BusinessNZ since 2020 and our current annual membership is due for renewal on 30 June 2022. A list of members is attached as Appendix A.

3.7 Whilst membership includes invites to forums, seminars, meetings and conferences our previous Chief Executive primarily attended the quarterly MCG CE Forums. The Chair for these is 7(2)(a) [redacted]

4.0 The Fair Pay Amendment Bill (#115-1)

4.1 The Fair Pay Amendment (FPA) Bill can be accessed on the Parliamentary website here. It states this bill would *"provide the framework for collective bargaining for fair pay agreements across entire industries or occupations, rather than just between unions and particular employers."*

4.2 Parliament's website also states that "*The Fair Pay Agreements Bill seeks to establish a framework for the bargaining of fair pay agreements. The overarching policy objective is to enable employers and employees to collectively bargain industry-wide or occupation-wide minimum employment terms. At present, New Zealand's employment relations and employment standards regulatory system only allows for collective bargaining at an enterprise level (i.e. between individual employers and unions). There is no mechanism for parties to co-ordinate collective bargaining across entire occupations or industries. The Bill aims to address this gap."*

4.3 Additional information, including discussion papers and the working group's report, can be accessed on the MBIE website here.

4.4 **The FPA Bill was introduced to Parliament on 29 March 2022**, with the first reading on 5 April 2022. Submissions closed on 19 May, ahead of the Select Committee Hearing.

4.5 Following the introduction to Parliament, BusinessNZ confirmed it will not accept payments included in the FPA Bill. Under the terms of the Bill, BusinessNZ would be offered $250,000 per year for supporting compulsory bargaining in major sectors of the economy.

4.6 CEO, Kirk Hope said: *"The scheme would make it compulsory for businesses to take part in collective bargaining and compulsory for them to accept union demands or imposed arbitration…. (and) the FPA scheme would be deleterious to the economy, to people's prosperity and to the human rights of those involved… I can confirm that BusinessNZ will definitely not be taking taxpayer money to support compulsory national pay schemes."*

4.7 Hamilton City Council did not make a submission to the Bill. Taituara (formerly SOLGM) did not make a submission to the Bill either.

4.8 Related information and links:

4.8.1 Parliament's **Education and Workforce Committee Report** on the Fair Pay Agreements Bill is due on 5 October 2022.

4.8.2 The **Fair Pay Agreements Bill 2022: Bills Digest 2674** (which provides useful background information) can be accessed here.

4.8.3 The **Transcript for the First Reading of the Bill** (which also provides useful background information) can be accessed here.

5.0 HCC Business Memberships

5.1 In addition to our BusinessNZ membership, Council has a number of other organisational memberships. These are listed in Appendix B.

5.2 Many of these are reviewed and renewed on an annual basis.

6.0 Discussion at Elected Member and Maangai Catch-up

6.1 It is suggested this matter be discussed at the next Elected Member and Maangai Maaori catch-up, to discuss potential opportunities for action.

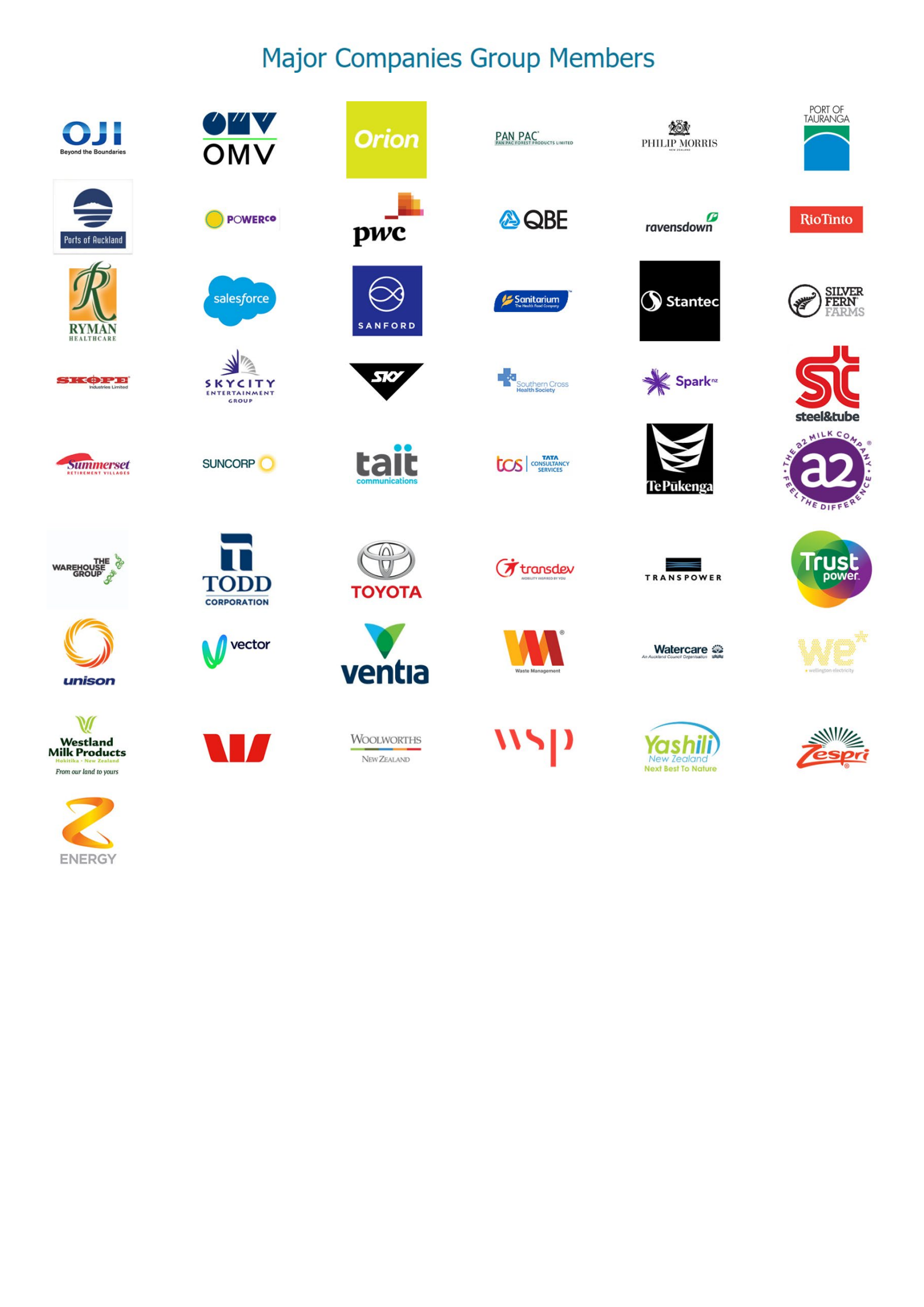
7.0 Appendices

A. BusinessNZ MCG Members
B. HCC Memberships

Major Companies Group Members



Major Companies Group Members



HAMILTON CITY COUNCIL MEMBERSHIPS - AS AT MAY 2022

Organisational Memberships	Per annum	Description
Property Council NZ	$2,000	Property Council New Zealand is the one organisation that collectively champions property, bringing together members from all corners of the property eco system to advocate for reduced red tape that enables development. Our members shape the cities and spaces where New Zealanders live, work, play and shop.
Waikato Chamber of Commence	$1,200	We Connect, Grow, and Represent our Waikato member businesses. We will represent, empower, and encourage our Waikato business members to connect and develop.
Community Housing Aotearoa	$250	Community Housing Aotearoa (CHA) is a peak body for Aotearoa's community housing sector. Our 100+ members include community housing providers and partner members such as developers, consultants and local councils. Our provider members house approximately 35,000 people nationally across 18,520 homes. Our Vision is to make sure every New Zealander is well-housed in a warm, safe, dry and affordable home.
Master Builders Association	$350	Important that our Building Control unit is a member of Master Builders. Attends all meetings and interacts and liaises with all levels of the building and construction industry.
Heritage NZ	$435	Important that HCC is member to access data bases and information on historic sites. Direct liaison with our District Plan and heritage policies etc Heritage New Zealand Pouhere Taonga is an autonomous Crown Entity under the Crown Entities Act 2004. It is supported by the Government and funded via Vote Arts, Culture and Heritage through the Ministry for Culture and Heritage. Its work, powers and functions are prescribed by the Heritage New Zealand Pouhere Taonga Act 2014. Most protective mechanisms for land-based historic heritage are administered by local authorities through their District Plan policies and heritage listings under the Resource Management Act 1991, although Heritage New Zealand Pouhere Taonga retains regulatory responsibilities regarding archaeological sites.

Organisational Memberships	Per annum	Description
NZ Archaeological Assn	$600	As for Heritage NZ, important that HCC is a member to access data bases and information on archaeological sites. Direct liaison with our District Plan. The New Zealand Archaeological Association is the national organisation for archaeology with a membership spanning professionals, amateurs, students, organisations, businesses and institutions involved or interested in New Zealand archaeology and heritage. We aim to advance the knowledge and practice of archaeology across New Zealand through encouraging public and professional engagement, undertaking advocacy to Government and providing access to ArchSite, the national archaeological Site Recording Scheme database.
UNISA (Upper North Island Startegic Alliance)	$689	Simply HCC's contribution to meeting costs
Equal Employment Opportunities Trust T/A Diversity Works	$2,950	Annual Membership (donation) Training & Development
WLASS	$9,431	Working Parties/Projects: L&D Shared Service Opportunities
Human Resources Institute NZ (HRINZ) 5 x person pk	$1,799	Networking, training, continuous professional development, commentary on industry legislation.
Site Safe NZ: HCC membership	$678	Networking, training, continuous professional development, commentary on industry legislation
Recruitment, Consulting and Staffing Association (RSAC)	$1,089	Up to date info re best recruitment practises and free training
NZ Remuneration Network	$1,875	Conference discounts, survey inclusion, info, etc
REM ON-Demand	$3,200	Member subscription to Annual Report, latest data, access on local govt roles/grades/sals, etc
NZ Payroll Practitioners Association	$900	Corporate Membership discount to training/webinars, Help.
Standards NZ MBIE	$4,078	Sub Group 2 Catalogue membership access
Standards NZ MBIE	$8,698	Online Library member subscription
UN Women	$500	Annual Membership (donation)
NZ Green Building Council	$3,590	NZGBC Membership Renewal 2022/2023
Project Managment Insitutiture Membership x2	$272.67	Double membership (ones international ones local)

Organisational Memberships	Per annum	Description
Infrastructure New Zealand Inc	$10,990	Corporate Membership for Engineers - FOR PUBLIC, PRIVATE AND THIRD SECTOR ORGANISATIONS OF MORE THAN 50 STAFF. Unlimited staff memberships, Unlimited access to resources, Complimentary member-only events, Discounted event pricing Sponsorship and hosting opportunities, Subscription to INZ newsletter, AGM voting and Board nomination eligibility, 2x complimentary tickets to Building Nations
IPEWA - Institute of Public Works Engineering Australia	$330.00	NZ Divsion Membership - Discounted professional development opportunities, 10% discount on all IPWEA NZ training courses (in-person and online) Significant discounts on all events/forums and conferences, Free attendance at branch meetings and most webinars, Access to technical communities, resources and expertise Industry recognition and awards, Access to the latest news, resources and best practice, Connections to government as trusted advisors.
IPEWA - Assoc of Local Govt. Engineering	$1,210.00	NZ Division Corporate Package which is made up of individual memberships (See above) - We have multiple memberships for HCC departments (Development, city waters, city delivery, city transportation) have membership - this gets coded to their own department so this might be our portion of the invoice. Discounted 1 to 9 nominated members – full membership fees for all nominated members. 10 to 30 nominated members – full membership fees less 5% for all nominated members. 31 to 50 nominated members – full membership fees less 10% for all nominated members. 51 and over nominated members – full membership fees less 15% for all nominated members

Organisational Memberships	Per annum	Description
Engineering NZ	$315.00-$525.00	Multiple HCC Memberships standard is $420 Pa (pro rata depending on when you start) - Chartered is $525 PA/. Chartered Members belong to Engineering New Zealand and get all the perks of being part of our community. CPEng is different from membership and is a registration under the CPEng Act 2002. CPEng is only open to professional engineers, who must demonstrate an ability to deal with complex engineering problems and activities. Chartered Membership is also available to professional engineers, but additional categories provide recognition for engineering technologists, engineering technicians and engineering geologists.
Learning Planet	$4,830.00	This is an online learning platform that we use across the Customer Services unit for training nad development purposes. This allows us to gro and develop our people with targeted and the most up to date training information that is available to us.
Chadha Software Technologies Knowledge Base Annual Subscription	$799.50	This is the platform that customer services use for our teams to be able to know what is required of them in relation to services that we support in our space from across our organisiation
NZ Society of Local Government Managers (SOLGM - now known as Taituara)	$275.00	Annual Full Membership - When you join Taituarā you become part of a growing network of professional local government professionals, dedicated to achieving professional excellence in the local government sector. You gain access to Members only webinars, Professional Recognition, access to hot desks, leadership scholarships
NZ Water and Wastes Associated (now known as Water NZ)	$1,312.00	Corporate Membership - Development Group to June 22 ($1515 from 1st July). A Corporate Member is any corporation, company or organisation trading, practicing or with an interest in the field of Water New Zealand's objectives, from local authorities to consultants to SOE's. Corporate Membership is required if you wish to exhibit at The Water New Zealand Conference & Expo. Each Corporate membership includes three complimentary Corporate Additional memberships
Contact Center Institute of NZ	$862.50	With us being part of this institute, we have access to networks, ideas and opportunities to better support our team and our practices in the Contact Centre space

Organisational Memberships	Per annum	Description
CAANZ - Chartered Accountants Australia New Zealand	$570.45	Pre payments 20-21. The fees for full membership renewal are A$775 / NZ$845 (including GST where applicable).Renewing your membership means you continue to enjoy the exclusive benefits of being a member of Chartered Accountants Australia and New Zealand, including using your designation. Your membership also contributes to the development of exclusive initiatives, tools and resources to support your personal and professional growth.
ALGIM – Association of Local Government Information Management	$7,189.00	ALGIM (Association of Local Government Information Management) provides professional development and thought leadership across a range of local government professions. Our roots are in ICT, but over the years we've expanded to encompass the traditional IT roles, IT infrastructure, web and digital, information and records management, customer service, and GIS.
Philanthropy New Zealand	$510	Philanthropy New Zealand is the peak body for philanthropists, Grantmakers, investors, and other types of funders, dedicated to growing effective giving.
Our Community Pty Ltd	$19,500	Our community is the engine room for creating and disseminating practical, affordable training, leadership, and technological solutions that allow not-for-profit and grant making organisations to get on with the crucial work of building stronger communities. Our partners in that work are not-for-profit organisations and social enterprises; government, philanthropic and corporate Grantmakers; donors and volunteers; enlightened businesses; and other community builders.
NZ Recreation Assn (NZ)	$1,849	Philanthropy New Zealand is the peak body for philanthropists, Grantmakers, investors, and other types of funders, dedicated to growing effective giving.
Agri Media	$185	Specialist agricultural publishing company that focuses on producing high quality specialist magazines, journals & manuals to the primary industries of NZ & Aus. Our magazine titles are all directed to specific industry sectors via our comprehensive rural databases.

Organisational Memberships	Per annum	Description
Reference Publishing (Commercial Horticulture)	$65.55	The magazine circulates by paid subscription to mainly companies throughout the nursery, garden centre, amenity and landscape industries in New Zealand, with some overseas subscribers as well. It covers industry news and views of the day, not only from NZ but also from around the world. There are features on plants, personalities and companies, and coverage of events such as conferences, trade and garden shows. There are also articles on management and marketing topics for nurseries and garden centres, book and new product reviews, etc. The magazine also carries paid advertising by companies wishing to reach buyers in the garden and related industries
PRINZ (Public Relations Institute of New Zealand)	$804 Exc GST (For 3 VDU Staff) Total for HCC $6432 Exc GST	The Public Relations Institute of New Zealand Te Pūtahi Whakakakau Tūmatanui o Aotearoa (PRINZ) is the industry body for public relations and communication management professionals in Aotearoa. Its purpose is to enhance the capability and professionalism of public relations practitioners through professional development
Museums Aotearoa	$4877 Exc GST	Our members get exclusive access to networking opportunities, services and resources that enhance their careers and benefit their workplaces. Being an active member of Museums Aotearoa connects you to a network of like-minded people and up to date with the latest news and developments from across the museum community of Aotearoa. We also provide several special benefits and discounts.
World Association of Zoos and Aquariums (WAZA)	$2,500	WAZA is the unifying organisation for regional associations, national federations, zoos and aquariums, dedicated to the care and conservation of animals and their habitats around the world. It promotes cooperation between leading zoos, aquariums, national and regional associations, as well as with leading wildlife experts, academies, and universities. WAZA provides support for species-conservation management and husbandry of animals in human care, while encouraging the highest standards in member institutions.
Zoos and Aquariums Association Australasia (ZAA)	$12,821	ZAA is the professional membership organisation representing zoos, aquariums, sanctuaries and wildlife parks across Australasia. ZAA manages the coordination of breeding programmes and sets the level of professional standards and practice for members. Hamilton Zoo is accredited under their Animal Welfare programme which promotes positive animal welfare. As an association, ZAA brings its members together, facilitating shared knowledge and continuous improvement in conservation, welfare, biosecurity, science, research, social and community programs.

Organisational Memberships	Per annum	Description
Species 360	$6,352	An international non-profit organization that maintains an online database of wild animals under human care.
		Fulfils legislative requirements Standard for Zoo Containment Facilities 2018 - 2.10 requirement to keep records.
Wildlife Disease Association (WDA)	$180	The WDA is an international, non-profit organisation dedicated to wildlife conservation through sharing the study and understanding of diseases in wildlife.
Sanctuaries of New Zealand (SONZI)	Free	An incorporated society with a management committee independent of sanctuariesnz.org and Landcare Research. Its purpose is to advocate for the sanctuaries, support network to share ideas and research, promote and enhance economic support for the sanctuary movement in New Zealand
Library and Information Association of New Zealand Aotearoa (LIANZA)	$2,059.99	LIANZA serves and promotes the interests of the New Zealand library and information industry and professionals by: '- providing continuing professional development '- professional awards and recognition '- publications and resources '- advocacy and collegial support.
Public Libraries of New Zealand (PLNZ)	$7,326.07	Public Libraries of New Zealand is the professional association for public library managers. Our role is to foster a strong and influential network of public library managers. We do this by offering our members support services, resources and shared learning opportunities. Our key national initiatives include: the Public Libraries Strategic Framework, National Data Collection, and annual Forum, as well as providing all-year-round advocacy on behalf of our members.
EVANZ - Entertainment Venues Association of NZ	$1,700	NZ's entertainment venues industry body for all three venues. Note it is the venue which is a member not an individual. This means as many of our staff can participate in EVANZ activities and have access to the members' section on the website.
NZEA - New Zealand Events Association	$900	H3 holds a 7-10 person membership for event professionals in NZ, benefits are networking, discounts to conferences etc.

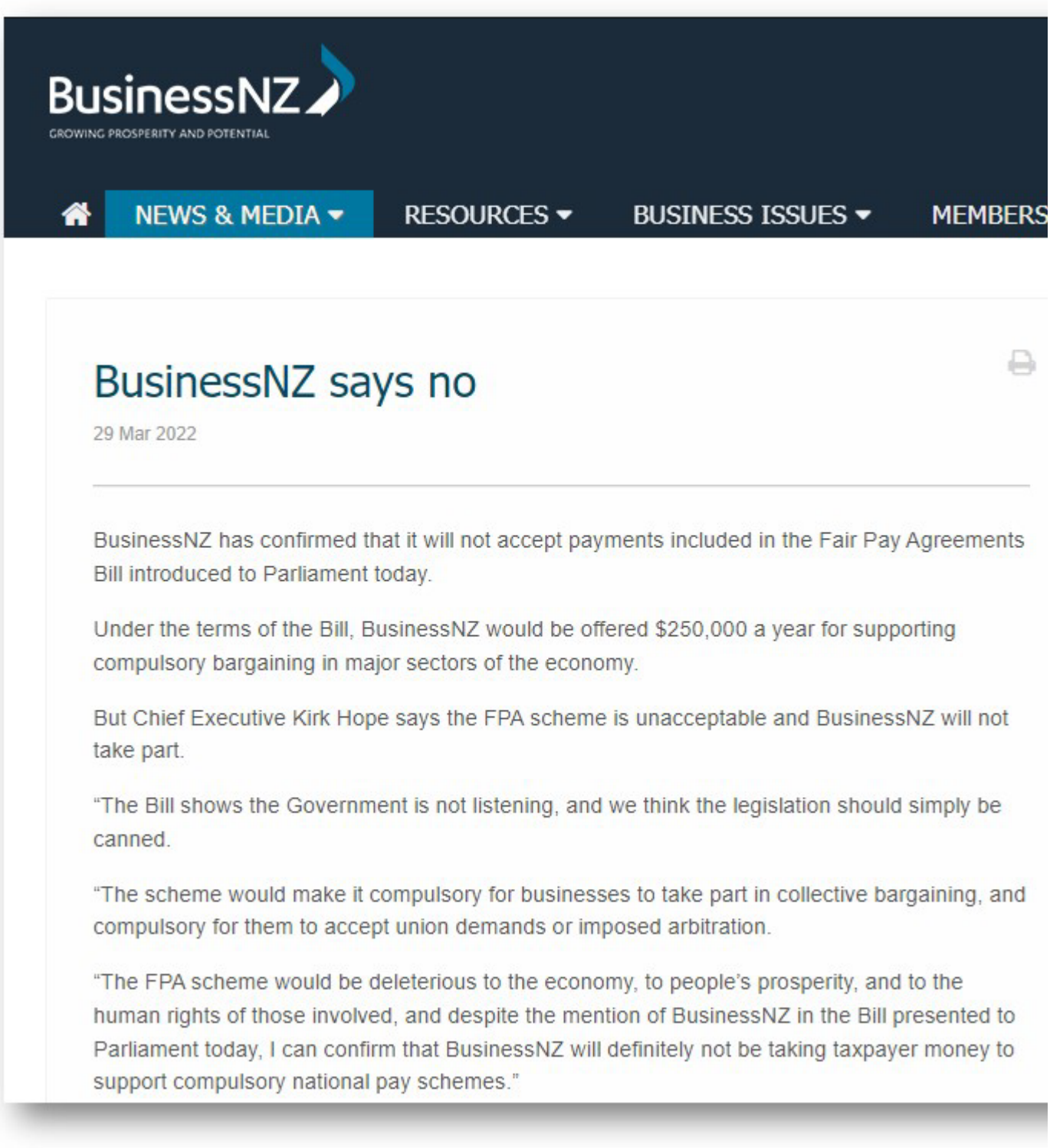
Organisational Memberships	Per annum	Description
VMA - Venues Managemetn Association (Asia and South Pacific) Limited	$1,800	The Venue Management Association is the association of venue industry professionals in Australia, New Zealand and Southeast Asia. H3 holds a 5 person membership $1.8K per annum which is a group membership with 24% savings to individual
HWT - Hamilton and Waikato Tourism - BEW Business Events Waikato Convention Bureau	$15,000	Platinum Partnership with Business Events Waikato (HWT's convention bureau arm) $15K per annum Ensures we are partnered with the bureau to help grow the highly profitable MICE (meetings, incentives, conferences and exhibitions sector) in the Waikato, with a specific focus on H3 Venues as a location, primarily Claudelands.
CINZ - Conventions and Incentives Association / Business Events Industry Aotearoa	$3,500	Business Events Industry Aotearoa (BEIA) is the marketing name for the New Zealand Convention Association Inc. Gold membership $3.5K per annum for one venue (Claudelands) This membership category is appropriate for H3 as a holder of products or services that are suitable for the international convention marketplace. Destinations. Itineraries to include BEIA Members only.
ETNZ - Entertainment Technology New Zealand	$1,500	Industry for our technical services team (lighting, AV, audio, rigging and venue networks) – the group of industry professionals to bring together and support all persons involved in the technical aspects of the event and entertainment industry. Supporting people involved in the technical aspects of the theatre, event, and entertainment industry. This includes, but is not limited to, technicians, craft persons, and designers. H3 holds a 10 person membership $1.5K per annum

Laura Bowman

From: Louise Lukin
Sent: Wednesday, 25 May 2022 1:35 pm
To: Lance Vervoort
Subject: RE: BusinessNZ and the Major Companies Group (MCG) - Supporting Info

This is it…. https://www.businessnz.org.nz/news-and-media/media-releases/2022/businessnz-says-no

And screenshot from website….



Ngaa mihi

Louise Lukin (her/she)
Director Chief Executive's Office | Kaitohutohu o te tari Tumu Whakarae
7(2)(a) | Email: louise.lukin@hcc.govt.nz

From: Lance Vervoort <Lance.Vervoort@hcc.govt.nz>
Sent: Wednesday, 25 May 2022 1:34 pm
To: Louise Lukin <Louise.Lukin@hcc.govt.nz>
Subject: RE: BusinessNZ and the Major Companies Group (MCG) - Supporting Info

cheers

From: Louise Lukin <Louise.Lukin@hcc.govt.nz>
Sent: Wednesday, 25 May 2022 1:33 pm
To: Lance Vervoort <Lance.Vervoort@hcc.govt.nz>
Subject: RE: BusinessNZ and the Major Companies Group (MCG) - Supporting Info

👍 Will have a look now.

Ngaa mihi

Louise Lukin (her/she)
Director Chief Executive's Office | Kaitohutohu o te tari Tumu Whakarae
7(2)(a) | Email: louise.lukin@hcc.govt.nz

From: Lance Vervoort <Lance.Vervoort@hcc.govt.nz>
Sent: Wednesday, 25 May 2022 1:32 pm
To: Louise Lukin <Louise.Lukin@hcc.govt.nz>
Subject: FW: BusinessNZ and the Major Companies Group (MCG) - Supporting Info

Maybe Auckland has it

From: Lance Vervoort <Lance.Vervoort@hcc.govt.nz>
Sent: Wednesday, 25 May 2022 1:29 pm
To: Dave Macpherson <Dave.Macpherson@council.hcc.govt.nz>; Ewan Wilson <Ewan.Wilson@council.hcc.govt.nz>; Geoff Taylor <geoff.taylor@council.hcc.govt.nz>; James Clarke <James.Clarke@hcc.govt.nz>; Kesh Naidoo-Rauf <Kesh.Naidoo-Rauf@council.hcc.govt.nz>; Mark Bunting <mark.bunting@council.hcc.govt.nz>; Mark Donovan <Mark.Donovan@council.hcc.govt.nz>; Martin Gallagher <Martin.Gallagher@council.hcc.govt.nz>; Maxine van Oosten <Maxine.vanOosten@council.hcc.govt.nz>; Paula Southgate <paula.southgate@council.hcc.govt.nz>; Rob Pascoe <Rob.Pascoe@council.hcc.govt.nz>; Ryan Hamilton <Ryan.Hamilton@council.hcc.govt.nz>; Sarah Thomson <Sarah.Thomson@council.hcc.govt.nz>; Amy Viggers <Amy.Viggers@hcc.govt.nz>; Angela O'Leary <Angela.OLeary@council.hcc.govt.nz>; Olly Te Ua <Oliver.TeUa@hcc.govt.nz>; Te Pora Thompson-Evans <TePora.Thompson-Evans@council.hcc.govt.nz>; Jaydene Kana <Jaydene.Kana@council.hcc.govt.nz>; Norm Hill <Norm.Hill@council.hcc.govt.nz>; James Whetu <James.Whetu@council.hcc.govt.nz>
Cc: Executive Leadership Team <ExecutiveLeadershipTeam@hcc.govt.nz>
Subject: RE: BusinessNZ and the Major Companies Group (MCG) - Supporting Info

We will try and find it and circulate

From: Dave Macpherson <Dave.Macpherson@council.hcc.govt.nz>
Sent: Wednesday, 25 May 2022 1:03 pm
To: Lance Vervoort <Lance.Vervoort@hcc.govt.nz>; Ewan Wilson <Ewan.Wilson@council.hcc.govt.nz>; Geoff Taylor <geoff.taylor@council.hcc.govt.nz>; James Clarke <James.Clarke@hcc.govt.nz>; Kesh Naidoo-Rauf <Kesh.Naidoo-Rauf@council.hcc.govt.nz>; Mark Bunting <mark.bunting@council.hcc.govt.nz>; Mark Donovan

<Mark.Donovan@council.hcc.govt.nz>; Martin Gallagher <Martin.Gallagher@council.hcc.govt.nz>; Maxine van Oosten <Maxine.vanOosten@council.hcc.govt.nz>; Paula Southgate <paula.southgate@council.hcc.govt.nz>; Rob Pascoe <Rob.Pascoe@council.hcc.govt.nz>; Ryan Hamilton <Ryan.Hamilton@council.hcc.govt.nz>; Sarah Thomson <Sarah.Thomson@council.hcc.govt.nz>; Amy Viggers <Amy.Viggers@hcc.govt.nz>; Angela O'Leary <Angela.OLeary@council.hcc.govt.nz>; Olly Te Ua <Oliver.TeUa@hcc.govt.nz>; Te Pora Thompson-Evans <TePora.Thompson-Evans@council.hcc.govt.nz>; Jaydene Kana <Jaydene.Kana@council.hcc.govt.nz>; Norm Hill <Norm.Hill@council.hcc.govt.nz>; James Whetu <James.Whetu@council.hcc.govt.nz>
Cc: Executive Leadership Team <ExecutiveLeadershipTeam@hcc.govt.nz>
Subject: Re: BusinessNZ and the Major Companies Group (MCG) - Supporting Info

Have we got a copy of their media statement attacking the Fair Pay Agreement legislation, Lance?

Ngaa Mihi
Councillor Dave Macpherson
Kirikiriroa/Hamilton City Council
7(2)(a)
dave.macpherson@hcc.govt.nz

From: Lance Vervoort <Lance.Vervoort@hcc.govt.nz>
Date: Wednesday, 25 May 2022 at 8:18 AM
To: Dave Macpherson <Dave.Macpherson@council.hcc.govt.nz>, Ewan Wilson <Ewan.Wilson@council.hcc.govt.nz>, Geoff Taylor <geoff.taylor@council.hcc.govt.nz>, James Clarke <James.Clarke@hcc.govt.nz>, Kesh Naidoo-Rauf <Kesh.Naidoo-Rauf@council.hcc.govt.nz>, Mark Bunting <mark.bunting@council.hcc.govt.nz>, Mark Donovan <Mark.Donovan@council.hcc.govt.nz>, Martin Gallagher <Martin.Gallagher@council.hcc.govt.nz>, Maxine van Oosten <Maxine.vanOosten@council.hcc.govt.nz>, Paula Southgate <paula.southgate@council.hcc.govt.nz>, Rob Pascoe <Rob.Pascoe@council.hcc.govt.nz>, Ryan Hamilton <Ryan.Hamilton@council.hcc.govt.nz>, Sarah Thomson <Sarah.Thomson@council.hcc.govt.nz>, Amy Viggers <Amy.Viggers@hcc.govt.nz>, Angela O'Leary <Angela.OLeary@council.hcc.govt.nz>, Olly Te Ua <Oliver.TeUa@hcc.govt.nz>, Te Pora Thompson-Evans <TePora.Thompson-Evans@council.hcc.govt.nz>, Jaydene Kana <Jaydene.Kana@council.hcc.govt.nz>, Norm Hill <Norm.Hill@council.hcc.govt.nz>, James Whetu <James.Whetu@council.hcc.govt.nz>
Cc: Executive Leadership Team <ExecutiveLeadershipTeam@hcc.govt.nz>
Subject: BusinessNZ and the Major Companies Group (MCG) - Supporting Info

Morena Elected Members and Maangai,

To help provide background to the BusinessNZ discussion tomorrow please find attached what I hope is relevant information on BusinessNZ, including membership details, benefits and events. You will see links included which will take you to the relevant pages on the website for further info (if interested).

Also attached are a couple of documents which have been referenced in my memo.

- Business Advocacy Letter from 7(2)(a) (June 2020)
- MCG – Growing New Zealand (benefits, forums, events etc)
- BusinessNZ Planning Forecast (March 2022)
- Latest Southern Cross Health Insurance / BusinessNZ Workplace Wellness Survey Report (2021)

Note that we asked Auckland Council to see their letter but they wouldn't share it but said: 'The crux of the letter was that it was a 'please explain', outlining some of the concerns raised in the media last week about the heading assigned to the report.'

Ngaa mihi
Lance

Lance Vervoort
Tumu Whakarae | Chief Executive

7(2)(a) | Email: lance.vervoort@hcc.govt.nz

Hamilton City Council
Te kaunihera o Kirikiriroa

Hamilton City Council | **260 Anglesea St** | **Hamilton 3240** | **www.hamilton.govt.nz**

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Laura Bowman

From: Louise Lukin
Sent: Wednesday, 25 May 2022 1:36 pm
To: Lance Vervoort
Subject: RE: BusinessNZ and the Major Companies Group (MCG) - Supporting Info

Also this https://www.businessnz.org.nz/news-and-media/media-releases/2022/governments-phone-off-the-hook-to-fpa-concerns

Ngaa mihi

Louise Lukin (her/she)
Director Chief Executive's Office | Kaitohutohu o te tari Tumu Whakarae
7(2)(a) | Email: louise.lukin@hcc.govt.nz

From: Lance Vervoort <Lance.Vervoort@hcc.govt.nz>
Sent: Wednesday, 25 May 2022 1:34 pm
To: Louise Lukin <Louise.Lukin@hcc.govt.nz>
Subject: RE: BusinessNZ and the Major Companies Group (MCG) - Supporting Info

cheers

From: Louise Lukin <Louise.Lukin@hcc.govt.nz>
Sent: Wednesday, 25 May 2022 1:33 pm
To: Lance Vervoort <Lance.Vervoort@hcc.govt.nz>
Subject: RE: BusinessNZ and the Major Companies Group (MCG) - Supporting Info

👍 Will have a look now.

Ngaa mihi

Louise Lukin (her/she)
Director Chief Executive's Office | Kaitohutohu o te tari Tumu Whakarae
7(2)(a) | Email: louise.lukin@hcc.govt.nz

From: Lance Vervoort <Lance.Vervoort@hcc.govt.nz>
Sent: Wednesday, 25 May 2022 1:32 pm
To: Louise Lukin <Louise.Lukin@hcc.govt.nz>
Subject: FW: BusinessNZ and the Major Companies Group (MCG) - Supporting Info

Maybe Auckland has it

From: Lance Vervoort <Lance.Vervoort@hcc.govt.nz>
Sent: Wednesday, 25 May 2022 1:29 pm
To: Dave Macpherson <Dave.Macpherson@council.hcc.govt.nz>; Ewan Wilson <Ewan.Wilson@council.hcc.govt.nz>; Geoff Taylor <geoff.taylor@council.hcc.govt.nz>; James Clarke <James.Clarke@hcc.govt.nz>; Kesh Naidoo-Rauf <Kesh.Naidoo-Rauf@council.hcc.govt.nz>; Mark Bunting <mark.bunting@council.hcc.govt.nz>; Mark Donovan <Mark.Donovan@council.hcc.govt.nz>; Martin Gallagher <Martin.Gallagher@council.hcc.govt.nz>; Maxine van Oosten <Maxine.vanOosten@council.hcc.govt.nz>; Paula Southgate <paula.southgate@council.hcc.govt.nz>; Rob Pascoe <Rob.Pascoe@council.hcc.govt.nz>; Ryan Hamilton <Ryan.Hamilton@council.hcc.govt.nz>; Sarah Thomson <Sarah.Thomson@council.hcc.govt.nz>; Amy Viggers <Amy.Viggers@hcc.govt.nz>; Angela O'Leary

Laura Bowman

From: Louise Lukin
Sent: Wednesday, 25 May 2022 1:45 pm
To: Dave Macpherson; Lance Vervoort; Ewan Wilson; Geoff Taylor; James Clarke; Kesh Naidoo-Rauf; Mark Bunting; Mark Donovan; Martin Gallagher; Maxine van Oosten; Paula Southgate; Rob Pascoe; Ryan Hamilton; Sarah Thomson; Amy Viggers; Angela O'Leary; Olly Te Ua; Te Pora Thompson-Evans; Jaydene Kana; Norm Hill; James Whetu
Cc: Executive Leadership Team
Subject: RE: BusinessNZ and the Major Companies Group (MCG) - Supporting Info

Good afternoon Cr Dave and all

These are the media releases relating to this issue:

24 March 2022 - https://www.businessnz.org.nz/news-and-media/media-releases/2022/governments-phone-off-the-hook-to-fpa-concerns (please note the additional links at the bottom of this media release)

29 March 2022 - https://www.businessnz.org.nz/news-and-media/media-releases/2022/businessnz-says-no

I trust this helps.

Ngaa mihi

Louise Lukin (her/she)
Director Chief Executive's Office | Kaitohutohu o te tari Tumu Whakarae
7(2)(a) | Email: louise.lukin@hcc.govt.nz

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Cc: Executive Leadership Team <ExecutiveLeadershipTeam@hcc.govt.nz>
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Ngaa Mihi
Councillor Dave Macpherson
Kirikiriroa/Hamilton City Council
7(2)(a)
dave.macpherson@hcc.govt.nz

Laura Bowman

From: Louise Lukin
Sent: Thursday, 26 May 2022 5:39 pm
To: Lance Vervoort
Subject: Cancellation of Membership - BusinessNZ (updated letter)
Attachments: Kirk Hope; BusinessNZ - Non-Renewal of Membership - 27 May 2022.docx

Hi Lance

Following our chat where it was agreed you should probably call 7(2)(a) first, attached is a slightly modified letter (acknowledging the phone call). Let me know if you need any changes and then I can PDF it.

7(2)(a) details are attached (they are also in your contacts folder in Outlook).

Ngaa mihi

Louise Lukin (her/she)
Director Chief Executive's Office | Kaitohutohu o te tari Tumu Whakarae
7(2)(a) | Email: louise.lukin@hcc.govt.nz

From: Louise Lukin
Sent: Thursday, 26 May 2022 11:54 am
To: Lance Vervoort <Lance.Vervoort@hcc.govt.nz>
Subject: Cancellation of Membership - BusinessNZ

Hi Lance

There was a very strong direction to cancel our membership with BusinessNZ.

As such, I have drafted the attached letter for your review. I've kept it fairly succinct, yet polite, but please let me know if there's anything you'd like to add.

Once you're comfortable I can add your signature and send it off to 7(2)(a)

Ngaa mihi

Louise Lukin (her/she)
Director Chief Executive's Office | Kaitohutohu o te tari Tumu Whakarae
7(2)(a) | Email: louise.lukin@hcc.govt.nz

Hamilton City Council
Te kaunihera o Kirikiriroa

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Te kaunihera o Kirikiriroa

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New Zealand

TEL 07 838 6699
FAX 07 838 6599
EMAIL info@hcc.govt.nz
hamilton.govt.nz

20 July 2022

7(2)(a)
BusinessNZ
PO Box 1925
Wellington 6011

Via email: 7(2)(a)@businessnz.org.nz

Dear 7(2)(a)

Non-Renewal of BusinessNZ Membership – Hamilton City Council

Thank you for your time on the phone earlier. As we discussed, I wanted to give you advance notice that Hamilton City Council will not be renewing our membership with BusinessNZ, when it comes up for renewal on 30 June 2022. Please accept this letter as formal notice to cancel our membership.

I acknowledge the services your organisation has provided over the past two years, including the advice and support you offered my predecessor, Richard Briggs. However, as a Council, we now see limited value in our continued membership.

I would appreciate, by return email, an acknowledgement of this letter and subsequent cancellation of our membership.

I wish you and your organisation all the best going forward.

Yours faithfully



Lance Vervoort
Chief Executive

Laura Bowman

From: Louise Lukin
Sent: Friday, 3 June 2022 11:11 am
To: Lance Vervoort
Subject: FW: Cancellation of Membership - BusinessNZ
Attachments: BusinessNZ - Non-Renewal of Membership - 3 June 2022.pdf

Hi Lance

Let me know if you need anything changed following your phone call, otherwise we can end this to 7(2)(a)

Ngaa mihi

Louise Lukin (her/she)
Director Chief Executive's Office | Kaitohutohu o te tari Tumu Whakarae
7(2)(a) | Email: louise.lukin@hcc.govt.nz

From: Louise Lukin
Sent: Thursday, 26 May 2022 11:54 am
To: Lance Vervoort <Lance.Vervoort@hcc.govt.nz>
Subject: Cancellation of Membership - BusinessNZ

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Ngaa mihi

Louise Lukin (her/she)
Director Chief Executive's Office | Kaitohutohu o te tari Tumu Whakarae
7(2)(a) | Email: louise.lukin@hcc.govt.nz

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Te kaunihera o Kirikiriroa

Private Bag 3010
Hamilton 3240
New Zealand

TEL 07 838 6699
FAX 07 838 6599
EMAIL info@hcc.govt.nz
hamilton.govt.nz

3 June 2022

7(2)(a) [redacted]
BusinessNZ
PO Box 1925
Wellington 6011

Via email: 7(2)(a) [redacted]@businessnz.org.nz

Dear 7(2)(a) [redacted]

Non-Renewal of BusinessNZ Membership – Hamilton City Council

Thank you for your time on the phone. As we discussed, I wanted to give you advance notice that Hamilton City Council will not be renewing our membership with BusinessNZ, when it comes up for renewal on 30 June 2022. Please accept this letter as formal notice to cancel our membership.

I acknowledge the services your organisation has provided over the past two years, including the advice and support you offered my predecessor, Richard Briggs. However, as a Council, we now see limited value in our continued membership.

I would appreciate, by return email, an acknowledgement of this letter and subsequent cancellation of our membership.

I wish you and your organisation all the best going forward.

Yours faithfully



Lance Vervoort
Chief Executive

Laura Bowman

From: Lance Vervoort
Sent: Tuesday, 7 June 2022 9:49 am
To: Louise Lukin
Subject: RE: Cancellation of Membership - BusinessNZ

Hi Lou,

Revised wording below and happy for you to attach my signature and send.

I want to give you advance notice that HCC will not be renewing our membership of BusinessNZ, when it comes up for renewal on 30 June 2022. Please accept this letter as formal notice to cancel our membership.

I acknowledge the services your organisation has provided over the past two years, especially the advice and support you provided my predecessor, Richard Briggs. However, as the new CE I have been reviewing all our organisational memberships and could only see limited value in our continued membership with BusinessNZ. We will continue to connect with business through the Waikato Chamber of Commerce and get updates on key matters through specific advisors.

I would appreciate, by return email, an acknowledgement of this letter and subsequent cancellation of our membership.

I wish you and BusinessNZ all the best for the future.

Yours sincerely

Lance Vervoort
Chief Executive

From: Louise Lukin <Louise.Lukin@hcc.govt.nz>
Sent: Friday, 3 June 2022 11:11 am
To: Lance Vervoort <Lance.Vervoort@hcc.govt.nz>
Subject: FW: Cancellation of Membership - BusinessNZ

Hi Lance

Let me know if you need anything changed following your phone call, otherwise we can end this to 7(2)(a)

Ngaa mihi

Louise Lukin (her/she)
Director Chief Executive's Office | Kaitohutohu o te tari Tumu Whakarae
7(2)(a) | Email: louise.lukin@hcc.govt.nz

From: Louise Lukin
Sent: Thursday, 26 May 2022 11:54 am
To: Lance Vervoort <Lance.Vervoort@hcc.govt.nz>
Subject: Cancellation of Membership - BusinessNZ

Hi Lance

There was a very strong direction to cancel our membership with BusinessNZ.

Laura Bowman

From: Louise Lukin
Sent: Wednesday, 8 June 2022 9:16 am
To: Emma Edgecombe
Subject: FW: Hamilton City Council - Non-Renewal of Membership
Attachments: Letter to BusinessNZ - HCC Non-Renewal of Membership - 7 June 2022.pdf

FYI 😊

Ngaa mihi

Louise Lukin (her/she)
Director Chief Executive's Office | Kaitohutohu o te tari Tumu Whakarae
7(2)(a) | Email: louise.lukin@hcc.govt.nz

From: Louise Lukin
Sent: Tuesday, 7 June 2022 9:56 am
To: 7(2)(a) @businessnz.org.nz) 7(2)(a) @businessnz.org.nz>
Subject: Hamilton City Council - Non-Renewal of Membership

Good morning 7(2)

Please refer to the attached letter from Lance Vervoort, Chief Executive Hamilton City Council.

Ngaa mihi

Louise Lukin (her/she)
Director Chief Executive's Office | Kaitohutohu o te tari Tumu Whakarae

---

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New Zealand

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FAX 07 838 6599
EMAIL info@hcc.govt.nz
hamilton.govt.nz

7 June 2022

7(2)(a)
BusinessNZ
PO Box 1925
Wellington 6011

Via email: 7(2)(a) @businessnz.org.nz

Dear 7(2)(a)

Non-Renewal of BusinessNZ Membership – Hamilton City Council

I want to give you advance notice that HCC will not be renewing our membership of BusinessNZ, when it comes up for renewal on 30 June 2022. Please accept this letter as formal notice to cancel our membership.

I acknowledge the services your organisation has provided over the past two years, especially the advice and support you provided my predecessor, Richard Briggs. However, as the new CE I have been reviewing all our organisational memberships and could only see limited value in our continued membership with BusinessNZ. We will continue to connect with business through the Waikato Chamber of Commerce and get updates on key matters through specific advisors.

I would appreciate, by return email, an acknowledgement of this letter and subsequent cancellation of our membership.

I wish you and BusinessNZ all the best for the future.

Yours faithfully

Lance Vervoort
Chief Executive

Laura Bowman

From: 7(2)(a)
Sent: Tuesday, 21 June 2022 10:42 pm
To: Lance Vervoort; Paula Southgate; James Clarke
Subject: Business NZ - Stuff

https://www.stuff.co.nz/business/129032243/auckland-council-not-renewing-its-business-nz-membership

HCC might also want to consider coming out publically on this issue.

7(2)(a)
SAGE PR
FPRINZ | BSocSc | APR
7(2)(a)@sagepr.co.nz
7(2)(a)

7(2)(a)
SagePR
FPRINZ | BSocSci | APR
7(2)(a)

Laura Bowman

From: Lance Vervoort
Sent: Thursday, 26 May 2022 5:47 pm
To: Louise Lukin
Subject: Re: Cancellation of Membership - BusinessNZ (updated letter)

Thanks Lou will look at it in the morning

regards
Lance

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From: Louise Lukin <Louise.Lukin@hcc.govt.nz>
Sent: Thursday, May 26, 2022 5:39:04 PM
To: Lance Vervoort <Lance.Vervoort@hcc.govt.nz>
Subject: Cancellation of Membership - BusinessNZ (updated letter)

Hi Lance

Following our chat where it was agreed you should probably call 7(2)(a) first, attached is a slightly modified letter (acknowledging the phone call). Let me know if you need any changes and then I can PDF it.

7(2)(a) details are attached (they are also in your contacts folder in Outlook).

Ngaa mihi

Louise Lukin (her/she)
Director Chief Executive's Office | Kaitohutohu o te tari Tumu Whakarae
7(2)(a) | Email: louise.lukin@hcc.govt.nz

From: Louise Lukin
Sent: Thursday, 26 May 2022 11:54 am
To: Lance Vervoort <Lance.Vervoort@hcc.govt.nz>
Subject: Cancellation of Membership - BusinessNZ

Hi Lance

There was a very strong direction to cancel our membership with BusinessNZ.

As such, I have drafted the attached letter for your review. I've kept it fairly succinct, yet polite, but please let me know if there's anything you'd like to add.

Once you're comfortable I can add your signature and send it off to 7(2)(a)

Ngaa mihi

Louise Lukin (her/she)
Director Chief Executive's Office | Kaitohutohu o te tari Tumu Whakarae
7(2)(a) | Email: louise.lukin@hcc.govt.nz

Laura Bowman

From: James Clarke
Sent: Wednesday, 1 June 2022 8:27 am
To: Louise Lukin
Subject: Re: BusinessNZ/Chamber

Thanks v much

James Clarke
Director of Mayor's Office
7(2)(a) | Email: james.clarke@hcc.govt.nz

From: Louise Lukin <Louise.Lukin@hcc.govt.nz>
Sent: Wednesday, June 1, 2022 8:06:13 AM
To: James Clarke <James.Clarke@hcc.govt.nz>
Subject: RE: BusinessNZ/Chamber

No, we've already drafted a letter advising we're not renewing our membership at the end of June. Lance is going to ring 7(2)(a) (or 7(2)(a)) first to let them know verbally.

As we mentioned to EMs last week, we regularly review our memberships when they come up for renewal (usually annually). This is the first time the BusinessNZ membership has come up for renewal/review whilst Lance has been CE.

Our reason for not renewing the membership is primarily due to the limited value we see in the membership, as opposed to their response to the FPA Bill. Timing was just coincidental.

Obviously this is confidential until Lance has had those conversations and sent the letter.

Ngaa mihi

Louise Lukin (her/she)
Director Chief Executive's Office | Kaitohutohu o te tari Tumu Whakarae
7(2)(a) | Email: louise.lukin@hcc.govt.nz

From: James Clarke <James.Clarke@hcc.govt.nz>
Sent: Tuesday, 31 May 2022 11:09 pm
To: Louise Lukin <Louise.Lukin@hcc.govt.nz>
Subject: RE: BusinessNZ/Chamber

Thanks. So is Dave going to table a notice of motion or something at a Council meeting to seek to withdraw us from BusinessNZ?

James Clarke
Director of Mayor's Office
7(2)(a) | Email: james.clarke@hcc.govt.nz

From: Louise Lukin <Louise.Lukin@hcc.govt.nz>
Sent: Tuesday, 31 May 2022 11:04 pm
To: James Clarke <James.Clarke@hcc.govt.nz>
Subject: Re: BusinessNZ/Chamber

Hi James

There was no further questioning or discussion on our other memberships. For the purpose of your discussion, you can assume a continued membership with Chamber of Commerce.

Regards
Louise

From: James Clarke <James.Clarke@hcc.govt.nz>
Sent: Tuesday, May 31, 2022 10:27:27 PM
To: Louise Lukin <Louise.Lukin@hcc.govt.nz>
Subject: BusinessNZ/Chamber

Hi Louise,

I think the EMs were still discussing the BusinessNZ item in Cmtee Rm 1 last week when Paula, Martin, Sarah and I had to leave. Did it reach a conclusion or do we have to revisit? My primary reason for asking now is I'm meeting my Chamber of Commerce contact tomorrow. I'm just checking if my update is 'we'll put out a reminder to all staff about our membership of the Chamber in the next few days', or whether, if EMs have asked for a wider discussion about the various organisations we're members of, we should hold fire for now and maybe do something in the round once we've completed that work.

Thanks,
James

James Clarke
Director of Mayor's Office
7(2)(a) | Email: james.clarke@hcc.govt.nz

Laura Bowman

From: Dave Macpherson
Sent: Sunday, 5 June 2022 3:17 pm
To: CouncillorsOnly; Maangai Maaori; Senior Leadership Team
Subject: Fair Pay Agreements discussed.....what 'BusinessNZ' didn't tell you

https://www.nzherald.co.nz/business/craig-renney-setting-the-story-straight-on-fair-pay-agreements/VNDA7UC7WXMKSRGS2TDFH5ELVU/
Craig Renney: Setting the story straight on Fair Pay Agreements

Dave Macpherson
7(2)(a)
dave.macpherson@xtra.co.nz

As such, I have drafted the attached letter for your review. I've kept it fairly succinct, yet polite, but please let me know if there's anything you'd like to add.

Once you're comfortable I can add your signature and send it off to 7(2)(a)

Ngaa mihi

Louise Lukin (her/she)
Director Chief Executive's Office | Kaitohutohu o te tari Tumu Whakarae
7(2)(a) | Email: louise.lukin@hcc.govt.nz

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Laura Bowman

From: Louise Lukin
Sent: Tuesday, 7 June 2022 9:56 am
To: 7(2)(a) @businessnz.org.nz)
Subject: Hamilton City Council - Non-Renewal of Membership
Attachments: Letter to BusinessNZ - HCC Non-Renewal of Membership - 7 June 2022.pdf

Good morning 7(2)(a)

Please refer to the attached letter from Lance Vervoort, Chief Executive Hamilton City Council.

Ngaa mihi

Louise Lukin (her/she)
Director Chief Executive's Office | Kaitohutohu o te tari Tumu Whakarae

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7 June 2022

7(2)(a)
BusinessNZ
PO Box 1925
Wellington 6011

Via email: 7(2)(a) @businessnz.org.nz

Dear 7(2)(a)

Non-Renewal of BusinessNZ Membership – Hamilton City Council

I want to give you advance notice that HCC will not be renewing our membership of BusinessNZ, when it comes up for renewal on 30 June 2022. Please accept this letter as formal notice to cancel our membership.

I acknowledge the services your organisation has provided over the past two years, especially the advice and support you provided my predecessor, Richard Briggs. However, as the new CE I have been reviewing all our organisational memberships and could only see limited value in our continued membership with BusinessNZ. We will continue to connect with business through the Waikato Chamber of Commerce and get updates on key matters through specific advisors.

I would appreciate, by return email, an acknowledgement of this letter and subsequent cancellation of our membership.

I wish you and BusinessNZ all the best for the future.

Yours faithfully



Lance Vervoort
Chief Executive

Laura Bowman

From: Dave Macpherson
Sent: Monday, 13 June 2022 7:05 am
To: CouncillorsOnly; Maangai Maaori; Senior Leadership Team
Subject: Business lobby group fails in complaint to international body about Fair Pay Agreements

Despite BusinessNZ's BS claims, their complaint against NZ's Fair Pay Agreements Bill has NOT been upheld.

https://www.beehive.govt.nz/release/businessnz-complaint-ilo-fair-pay-agreements-fails?fbclid=IwAR2YcERnHhAM_yS4xs9rqYlz11eKPb39dMxvR5nFLKFgiqoFVbQyZuijIb0&fs=e&s=cl

Cr Dave Macpherson
7(2)(a)
dave.macpherson@xtra.co.nz

Laura Bowman

From: Louise Lukin
Sent: Wednesday, 18 May 2022 10:09 am
To: Lance Vervoort
Cc: Emma Edgecombe (Emma.Edgecombe@hcc.govt.nz)
Subject: FW: Question regarding Hamilton CC's ongoing membership of 'BusinessNZ'

Hi Lance

Unsure on your thoughts around this, but I see 7(2)(a) has also sent something through.

We will receive the next Business NZ invoice next month (for the period 1 July 2022 – 31 June 2023).

The cost is $25,000 per annum to the CE's cost centre, which is a reasonable saving against our budget if you wish to discontinue our membership.

We can arrange to cancel if this is your preference.

Ngaa mihi

Louise Lukin (her/she)
Director Chief Executive's Office | Kaitohutohu o te tari Tumu Whakarae
7(2)(a) | Email: louise.lukin@hcc.govt.nz

From: Dave Macpherson <Dave.Macpherson@council.hcc.govt.nz>
Sent: Tuesday, 17 May 2022 9:08 pm
To: Paula Southgate <paula.southgate@council.hcc.govt.nz>; Lance Vervoort <Lance.Vervoort@hcc.govt.nz>
Cc: Councillors <Councillors@hcc.govt.nz>; Maangai Maaori <MaangaiMaaori@hcc.govt.nz>
Subject: Question regarding Hamilton CC's ongoing membership of 'BusinessNZ'

Kia ora Paula & Lance

Please see below an article below published by the Stuff business section today outlining Business NZ's misuse of a United Nations document to attack the Government's upcoming Fair Pay Agreement legislation.

https://www.stuff.co.nz/business/300590647/auckland-council-wants-a-please-explain-from-businessnz-over-altered-document

While any organisation in New Zealand has the democratic right to disagree with Government policy on any matter, I point out that Hamilton City Council, as a current 'Major Companies Group Member' of Business NZ has not been consulted at all about this Business NZ stance, nor would it agree with it, should we have been given that opportunity, I suggest.

Our membership of this sector group comes up for renewal over the next 2 months, I believe, and I formally notify you that I wish to propose that we withdraw from that organisation, rather than renew our membership.

Among other things, the Fair Pay Agreement legislation is an important tool in the campaign to provide fairer wages for bus drivers, of which this city is extremely short of at the moment, and which our representatives, along with the Regional Council are working on, to ensure we can build our PT services back up to the levels that residents expect.

I have no doubt that other low-paid sectors of our local workforce, such as allied health and education workers, and traditionally underpaid private sector workers, will also materially benefit from the Fair Pay Legislation, when enacted.

I am outraged that this group, which has never consulted our Council, gets many thousands of dollars from us annually in membership fees, and has misused it in this fashion.

I look forward to your response.

Ngaa Mihi
Councillor Dave Macpherson
Hamilton City Council
7(2)(a)
dave.macpherson@hcc.govt.nz

Laura Bowman

From: Louise Lukin
Sent: Thursday, 19 May 2022 10:23 am
To: James Clarke; Rochelle Miller; Melanie Hill (Governance); Amy Viggers
Cc: Emma Edgecombe
Subject: RE: Question regarding Hamilton CC's ongoing membership of 'BusinessNZ'

After Tuesday (pretty please) 😊 as we're just gathering the info from staff around our memberships.

Ngaa mihi

Louise Lukin (her/she)
Director Chief Executive's Office | Kaitohutohu o te tari Tumu Whakarae
7(2)(a) | Email: louise.lukin@hcc.govt.nz

From: James Clarke <James.Clarke@hcc.govt.nz>
Sent: Thursday, 19 May 2022 10:17 am
To: Rochelle Miller <Rochelle.Miller@hcc.govt.nz>; Melanie Hill (Governance) <Melanie.Hill1@hcc.govt.nz>; Amy Viggers <Amy.Viggers@hcc.govt.nz>
Cc: Louise Lukin <Louise.Lukin@hcc.govt.nz>; Emma Edgecombe <Emma.Edgecombe@hcc.govt.nz>
Subject: RE: Question regarding Hamilton CC's ongoing membership of 'BusinessNZ'

Hi Ro/Mel (/Amy),

Pls can you work out a time for a discussion btwn Lance/ELT and EMs on this. It looks like the 30 May Zoom won't work (ELT clash) so can we consider other options, such as an extra Zoom, or a few minutes at the end of another meeting? Next week would be ideal.

Thanks,
James

James Clarke
Director of Mayor's Office
7(2)(a) | Email: james.clarke@hcc.govt.nz

From: Paula Southgate <paula.southgate@council.hcc.govt.nz>
Sent: Wednesday, 18 May 2022 1:04 pm
To: Lance Vervoort <Lance.Vervoort@hcc.govt.nz>
Cc: Dave Macpherson <Dave.Macpherson@council.hcc.govt.nz>; Councillors <Councillors@hcc.govt.nz>; Maangai Maaori <MaangaiMaaori@hcc.govt.nz>
Subject: Re: Question regarding Hamilton CC's ongoing membership of 'BusinessNZ'

Agree. There has been a lot of negative reaction. P

> On 18/05/2022, at 9:37 AM, Lance Vervoort <Lance.Vervoort@hcc.govt.nz> wrote:
>
> Thanks for this Dave,
>
> I'll have a look into this and get back to you. Definitely interesting that they appear not to have consulted members.

Ngaa mihi
Lance

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From: Dave Macpherson <Dave.Macpherson@council.hcc.govt.nz>
Sent: Tuesday, May 17, 2022 9:07:35 PM
To: Paula Southgate <paula.southgate@council.hcc.govt.nz>; Lance Vervoort <Lance.Vervoort@hcc.govt.nz>
Cc: Councillors <Councillors@hcc.govt.nz>; Maangai Maaori <MaangaiMaaori@hcc.govt.nz>
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I am outraged that this group, which has never consulted our Council, gets many thousands of dollars from us annually in membership fees, and has misused it in this fashion.

I look forward to your response.

Ngaa Mihi
Councillor Dave Macpherson
Hamilton City Council
7(2)(a)
dave.macpherson@hcc.govt.nz

Laura Bowman

From: Amy Viggers
Sent: Thursday, 19 May 2022 10:29 am
To: Rochelle Miller; James Clarke; Melanie Hill (Governance)
Cc: Louise Lukin; Emma Edgecombe
Subject: RE: Question regarding Hamilton CC's ongoing membership of 'BusinessNZ'

Follow Up Flag: Follow up
Flag Status: Completed

Hey,

Can we sit on this request until Monday… I may have some time open up following the closure of consultation on the Annual Plan.

Amy 😊

From: Rochelle Miller <Rochelle.Miller@hcc.govt.nz>
Sent: Thursday, 19 May 2022 10:28 am
To: James Clarke <James.Clarke@hcc.govt.nz>; Melanie Hill (Governance) <Melanie.Hill1@hcc.govt.nz>; Amy Viggers <Amy.Viggers@hcc.govt.nz>
Cc: Louise Lukin <Louise.Lukin@hcc.govt.nz>; Emma Edgecombe <Emma.Edgecombe@hcc.govt.nz>
Subject: RE: Question regarding Hamilton CC's ongoing membership of 'BusinessNZ'

Hi All

Can I suggest Thursday morning, 26 May before the AP Meeting, say at 8.30am if that suits everyone's diaries? That is really all Mayor Paula has unless you have it after the Council Meetings on Wednesday or Thursday afternoons?

Kind Regards

Rochelle Miller
Executive Assistant to Mayor of Hamilton – Paula Southgate | Mayor's Office

7(2)(a) | Email: rochelle.miller@hcc.govt.nz

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Hi Ro/Mel (/Amy),

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James

James Clarke
Director of Mayor's Office
7(2)(a) | Email: james.clarke@hcc.govt.nz

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Sent: Wednesday, 18 May 2022 1:04 pm
To: Lance Vervoort <Lance.Vervoort@hcc.govt.nz>
Cc: Dave Macpherson <Dave.Macpherson@council.hcc.govt.nz>; Councillors <Councillors@hcc.govt.nz>; Maangai Maaori <MaangaiMaaori@hcc.govt.nz>
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Agree. There has been a lot of negative reaction. P

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> Ngaa mihi
> Lance
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> Get Outlook for iOS
>
> **From:** Dave Macpherson <Dave.Macpherson@council.hcc.govt.nz>
> **Sent:** Tuesday, May 17, 2022 9:07:35 PM
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> **Cc:** Councillors <Councillors@hcc.govt.nz>; Maangai Maaori <MaangaiMaaori@hcc.govt.nz>
> **Subject:** Question regarding Hamilton CC's ongoing membership of 'BusinessNZ'
>
> Kia ora Paula & Lance
>
> Please see below an article below published by the Stuff business section today outlining Business NZ's misuse of a United Nations document to attack the Government's upcoming Fair Pay Agreement legislation.

https://www.stuff.co.nz/business/300590647/auckland-council-wants-a-please-explain-from-businessnz-over-altered-document

While any organisation in New Zealand has the democratic right to disagree with Government policy on any matter, I point out that Hamilton City Council, as a current 'Major Companies Group Member' of Business NZ has not been consulted at all about this Business NZ stance, nor would it agree with it, should we have been given that opportunity, I suggest.

Our membership of this sector group comes up for renewal over the next 2 months, I believe, and I formally notify you that I wish to propose that we withdraw from that organisation, rather than renew our membership.

Among other things, the Fair Pay Agreement legislation is an important tool in the campaign to provide fairer wages for bus drivers, of which this city is extremely short of at the moment, and which our representatives, along with the Regional Council are working on, to ensure we can build our PT services back up to the levels that residents expect.

I have no doubt that other low-paid sectors of our local workforce, such as allied health and education workers, and traditionally underpaid private sector workers, will also materially benefit from the Fair Pay Legislation, when enacted.

I am outraged that this group, which has never consulted our Council, gets many thousands of dollars from us annually in membership fees, and has misused it in this fashion.

I look forward to your response.

Ngaa Mihi
Councillor Dave Macpherson
Hamilton City Council
7(2)(a)
dave.macpherson@hcc.govt.nz

From:	Louise Lukin
To:	Mark Brougham
Subject:	RE: Question regarding Hamilton CC"s ongoing membership of "BusinessNZ"
Date:	Friday, 20 May 2022 11:24:00 am
Attachments:	Fair Pay Agreements Bill.pdf

This is really helpful – thanks Mark. Much appreciated.

Enjoy the rest of your day.

Ngaa mihi

Louise Lukin (her/she)
Director Chief Executive's Office | Kaitohutohu o te tari Tumu Whakarae
7(2)(a) | Email: louise.lukin@hcc.govt.nz

From: Mark Brougham <Mark.Brougham@hcc.govt.nz>
Sent: Friday, 20 May 2022 11:22 am
To: Louise Lukin <Louise.Lukin@hcc.govt.nz>
Cc: Mark Brougham <Mark.Brougham@hcc.govt.nz>
Subject: RE: Question regarding Hamilton CC's ongoing membership of 'BusinessNZ'

Hi Louise

As discussed, the **Fair Pay Agreements Bill** can be **accessed here**

A PDF copy of the Bill is attached.

Parliament's website notes that:
The Fair Pay Agreements Bill seeks to establish a framework for the bargaining of fair pay agreements. The overarching policy objective is to enable employers and employees to collectively bargain industry-wide or occupation-wide minimum employment terms. At present, New Zealand's employment relations and employment standards regulatory system only allows for collective bargaining at an enterprise level (i.e. between individual employers and unions). There is no mechanism for parties to co-ordinate collective bargaining across entire occupations or industries. The Bill aims to address this gap.

Submissions to the Bill closed on 19 May 2022.

The report of Parliament's **Education and Workforce Committee** on the Fair Pay Agreements Bill is due on 5 October 2022.

The **Fair Pay Agreements Bill 2022: Bills Digest 2674** (which provides useful background information) can be **accessed here**

The **Transcript for the First Reading of the Bill** (which also provides useful background information) can be **accessed here**

Taituarā (formerly SOLGM) did **not** make a submission to the Bill.

Let me know if you need further information.

Regards

Mark

From: Louise Lukin <Louise.Lukin@hcc.govt.nz>
Sent: Friday, 20 May 2022 10:44 am
To: Mark Brougham <Mark.Brougham@hcc.govt.nz>
Cc: Louise Lukin <Louise.Lukin@hcc.govt.nz>
Subject: FW: Question regarding Hamilton CC's ongoing membership of 'BusinessNZ'
Importance: High

Hi Mark

Unsure if this has hit your radar, but we have a number of elected members who are now questioning our involvement with Business NZ, following what Cr Dave Macpherson describes as a "misuse of a United Nations document to attack the Government's upcoming Fair Pay Agreement legislation."

Here is the new article that Cr Dave has referred to in his email below, and an excerpt around what the issue is:

https://www.stuff.co.nz/business/300590647/auckland-council-wants-a-please-explain-from-businessnz-over-altered-document

"BusinessNZ is being accused of misinformation in its handling of an International Labour Organisation document that implied New Zealand had been found to be in breach of international labour law.
*On Monday morning BusinessNZ said the **Fair Pay Agreement Bill,** currently under select committee consultation, had landed New Zealand on an international "naughty list" of the 40 "worst case breaches" of international labour treaties.*

But the list, compiled by the International Labour Organisation (ILO), an agency of the United Nations, was actually a list of alleged breaches, which may or may not be heard by a committee later this year.

The reason New Zealand was on the list was because BusinessNZ had successfully petitioned the ILO to consider whether the proposed Fair Pay Agreement bill was in breach of international law."

We have an annual membership with Business NZ which is due for renewal at the end of June. Mayor Paula and Lance have asked for meeting with ELT and elected members to discuss the issue and decide what action, if any, we as a Council will take. Note Auckland Council has written a "please explain" letter to Business NZ.

Ahead of this meeting Lance would like to know if we (HCC) were aware of the Fair Pay Agreement Bill and did we put in a submission in relation to this? I don't recall seeing anything but if we did, what was our position and could I have a copy please?

Do you have any more information on the Fair Pay Agreement Bill (or – hopefully – a synopsis of the key points of note)?

Happy to chat on the phone if that's easier.

Ngaa mihi

Louise Lukin (her/she)
Director Chief Executive's Office | Kaitohutohu o te tari Tumu Whakarae
7(2)(a) | Email: louise.lukin@hcc.govt.nz

From: Dave Macpherson <Dave.Macpherson@council.hcc.govt.nz>
Sent: Tuesday, 17 May 2022 9:08 pm
To: Paula Southgate <paula.southgate@council.hcc.govt.nz>; Lance Vervoort <Lance.Vervoort@hcc.govt.nz>
Cc: Councillors <Councillors@hcc.govt.nz>; Maangai Maaori <MaangaiMaaori@hcc.govt.nz>
Subject: Question regarding Hamilton CC's ongoing membership of 'BusinessNZ'

Kia ora Paula & Lance

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Ngaa Mihi
Councillor Dave Macpherson
Hamilton City Council
7(2)(a)
dave.macpherson@hcc.govt.nz

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

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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.

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.

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.

(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.

(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**).

(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.

(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—

- (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
- (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
- (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.

(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:

(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.

(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:

(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:

(d) **Schedule 4** contains consequential amendments to other legislation.

5 Interpretation

(1) In this Act, unless the context otherwise requires,—

Authority means the Employment Relations Authority established by section 156 of the Employment Relations Act 2000

bargaining, in relation to a proposed 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

(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

(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)**

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,—

(a) to represent the bargaining side; and

(b) to act as primary spokesperson for the bargaining side; and

(c) to perform any other role specified in the bargaining side's inter-party side agreement

chief executive means the chief executive of the department

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

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

coverage overlap means that 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)

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**

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

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

(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

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

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)**)

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—

(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

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

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:

(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

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

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

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

(a) which may include a starting-out rate of wages or a training rate of wages; but

(b) excludes any overtime 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)**

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

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

(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

(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

(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

(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

(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—

(a) the Chief of Defence Force appointed under section 8 of the Defence Act 1990:

(b) the Chief Parliamentary Counsel holding that office under section 135 of the Legislation Act 2019:

(c) the Commissioner of Police holding office under section 12 of the Policing Act 2008:

(d) 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

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

(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

(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.

(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.

(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.

6 Transitional, savings, and related provisions

The transitional, savings, and related provisions (if any) set out in **Schedule 1** have effect according to their terms.

7 Act binds the Crown

This Act binds the Crown.

8 No contracting out

The provisions of this Act have effect despite anything to the contrary in any contract, agreement, or other arrangement.

Compare: 2000 No 24 s 238

Part 2
General principles and obligations

9 Object of this Part

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

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

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

(c) no person may unduly influence any other person in relation to joining or not joining a union or an employer association; and

(d) the specified good faith obligations apply to the relevant parties.

Subpart 1—Freedom of association

Voluntary membership

10 Voluntary membership of union or employer association

(1) A contract, an agreement, or any other arrangement between persons must not require an employee, for the purpose of bargaining,—

(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,—

(a) to become or remain a member of an employer association or a particular employer association; or

(b) to stop being a member of an employer association or a particular employer association; or

(c) not to become a member of an employer association or a particular employer association.

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

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

(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.

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.

(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

(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

13 Prohibition on preference: employees

(1) A fair pay agreement or any other contract, agreement, or arrangement must not confer on a person, because the person is or is not a member of a union or a particular union,—

(a) any preference in obtaining or retaining employment; or

(b) any preference in relation to terms of employment (including terms relating to redundancy, fringe benefits, or opportunities for training, promotion, or transfer).

(2) However, a fair pay agreement may provide that a union member payment may be paid to an employee who—

(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—

(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.

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).

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

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—

(a) to become or remain a member of a union, a particular union, an employer association, or a particular employer association; or

(b) to stop being a member of a union, a particular union, an employer association, or a particular employer association; or

(c) not to become a member of a union, a particular union, an employer association, or a particular employer association; or

(d) in the case of an individual who is authorised to act on behalf of employees or employers, not to act on their behalf or to stop acting on their behalf; or

(e) to resign from or leave any employment because the other person is or, as the case may be, is not a member of a union or a particular union.

(2) **Subsection (1)** does not limit the application of section 11 of the Employment Relations Act 2000.

(3) A person who contravenes **subsection (1)** is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 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

(b) without limiting **paragraph (a)**, must not, whether directly or indirectly, do anything—

(i) to mislead or deceive each other; or

(ii) that is likely to mislead or deceive each other.

(2) The relationships are between—

(a) an employer and an employee employed by the employer:

(b) an employer and a union that is an employee bargaining party but not 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:

(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:

(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:

(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:

(i) an employer bargaining party and another employer bargaining party, where both employer bargaining parties are parties to the same fair pay agreement:

(j) the employee bargaining parties on the employee bargaining side and the employer bargaining parties on the employer bargaining side, where both bargaining sides are bargaining for the same proposed 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—

(i) a proposed FPA:

(ii) a proposed variation:

(iii) a proposed renewal:

(iv) a proposed replacement:

(b) any activity under or in relation to a fair pay agreement while the agreement is in force:

(c) any activity relating to bargaining for—

(i) a proposed FPA:

(ii) a proposed variation:

(iii) a proposed renewal:

(iv) a proposed replacement.

(4) The duty of good faith in **subsection (1)**—

(a) is wider in scope than the implied mutual obligations of trust and confidence; and

(b) requires the parties to be active and constructive in establishing and maintaining a productive relationship in which the parties are, among other things, responsive and communicative.

(5) This section does not prevent an employer from communicating with the employer's employees during bargaining (including, for example, 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)**.

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**.

(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

(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—

(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

(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.

(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

(b) from time to time, to meet with each other for the purpose of bargaining; and

(c) to consider and respond to each proposal made by the other bargaining side; and

(d) 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

(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

(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—

(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.

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**.

(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—

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

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

(3) A party who fails to comply with the 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

(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

(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**.

(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) 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

(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.

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)**)—

(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).

(3) In this section, **personal information** has the same meaning as in section 7(1) of the Privacy Act 2020.

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:

(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).

(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

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.

(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.

(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)**.

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.

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

(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.

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

(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.

(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—

(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

(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.

(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:

(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.

(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.

(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.

30 Application for approval for union to initiate bargaining

(1) A union's application to the chief executive for approval to initiate bargaining for a proposed FPA must—

(a) be in writing; and

(b) state the following details:

(i) the name of the union:

(ii) the name of a primary contact person for the union:

(iii) the email address of the primary contact person; and

(c) specify the coverage of the proposed FPA (*see* **section 31**), including,—

(i) for a proposed occupation-based agreement, a description of the work or the type of work that is intended to be within the coverage of the proposed FPA; or

(ii) for a proposed industry-based agreement, a description of—

(A) the industry or type of industry that is intended to be within the coverage of the proposed FPA; and

(B) the occupation, including the work or the type of work, that is intended to be within the coverage of the proposed FPA; and

(d) specify which initiation test the union's application meets; and

(e) provide evidence of—

(i) the applicant being an eligible union; and

(ii) how the application meets the relevant initiation test; and

(f) be signed by an authorised representative of the union; and

(g) include any other information required by regulations.

(2) Evidence provided to demonstrate how the application meets the relevant initiation test must—

(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**.

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

Example

Coverage of occupation-based agreement

A proposed FPA that would cover all commercial cleaners is an occupation-based agreement.

(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**).

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.

(2) An occupation-based agreement must apply to all employees who are employed in the occupation covered by the agreement.

(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

(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; 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.

(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.

(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

(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

(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.

(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)**.

(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:

(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.

(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.

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:

(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**):

(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—

(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.

(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

(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.

(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

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

(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.

(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

(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:

(ii) the process by which an employee who does not want their contact details to be provided to the initiating union can elect not to have their contact details provided:

(iii) the reason for providing the employee's contact details to the initiating union:

(iv) an explanation of to whom the initiating union is able to provide the employee's contact details:

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

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

(vii) how an employee who has elected not to have their contact details provided can rescind that election so that the employer must provide the employee's contact details to the initiating union.

(3) A statement provided under **subsection (2)(c)** must—

(a) be in writing; and

(b) be drafted in plain language; and

(c) be drafted in such a way that the employer is able to provide it to their covered employees without needing to redraft it; and

(d) advise the covered employee about the proposed FPA, including at least the following information:

(i) that the union has been approved to initiate bargaining for a proposed FPA and that the employee is within the coverage of the proposed FPA:

(ii) the name of the initiating union:

(iii) how the proposed FPA could affect the employee and the work they do:

(iv) that, when bargaining for a proposed FPA, the initiating union and any other employee bargaining parties represent all employees within the coverage of the proposed FPA, including employees who are not members of the initiating union or of any other union:

(v) where to find further information about the proposed FPA and the bargaining process:

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

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—

(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 (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

(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 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 it to the employer's covered employees; but

(b) may provide information to the covered employees that is additional to the information contained in the statement and the form.

(5) An employer that intentionally or recklessly fails to comply with **subsection (2), (3), or (4)(a)** is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 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 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

(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

(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:

(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:

(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)**.

(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.

(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.

(2) However, **subsection (1)** does not apply to an employee's contact details that an initiating union or employee bargaining party receives if—

(a) the employee is or becomes a member of the initiating union or employee bargaining party; and

(b) the contact details provided by the employee as part of being or becoming a member of the initiating union or the employee bargaining party match those provided under a section listed in **subsection (1)**.

(3) Any communication from an initiating union or employee bargaining party using the contact details received under **section 39, 101, 102, 141(3), 171(4), 172(2)(c), 173(4), or 193(8)**—

(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

(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.

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—

(a) the contact details are stored separately from any other information held by the union; and

(b) access to the contact details is limited to only those employees of the union who need to use the contact details for a purpose set out in this Act (for example, to communicate with the employee about bargaining for a proposed FPA, or for the union to access the workplace to discuss a proposed FPA).

(2) Nothing in this section limits an initiating union's or employee bargaining party's obligation to ensure the security of employees' contact details under the Privacy Act 2020.

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

(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

(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

(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.

(2) An application must—

(a) be in writing; and

(b) state the following details:

(i) the name of the employer association:

(ii) the name of a primary contact person for the employer association:

(iii) the email address of the primary contact person; and

(c) contain evidence that the employer association is an eligible employer association; and

(d) be signed by an authorised representative of the employer association; and

(e) include any other information required by regulations.

(3) An eligible employer association may only form or join an employer bargaining side 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**.

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.

(2) The chief executive must, as soon as practicable,—

(a) assess each application and,—

(i) if satisfied that the application is from an eligible employer association, approve the application; or

(ii) if not satisfied (after considering the application and any further information or evidence provided in response to a request under **subsection (1)**) that the application is from an eligible employer association, decline the application; and

(b) notify the applicant of the chief executive's decision.

(3) If the chief executive declines an application, the chief executive must also, by written notice,—

(a) advise the employer association of the reasons for declining the application; and

(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.

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.

(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

(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

(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

(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.

(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.

(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

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.

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—

(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.

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

(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**.

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:

(i) the name of the union:

(ii) the name of a primary contact person for the union:

(iii) the email address of the primary contact person; and

(c) contain evidence that the union is an eligible union; and

(d) be signed by an authorised representative of the union; and

(e) include any other information required by regulations.

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

(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.

(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) 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

(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,—

(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—

(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.

(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

(b) give all covered employees the opportunity to provide feedback to the employee bargaining side in relation to the bargaining; and

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

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

(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

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

(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,—

(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

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.

Bargaining sides

57 Employee bargaining side

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

(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 FPAs being consolidated in accordance with **section 107**; and

(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.

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

(b) any other employer association that joins the bargaining side as a result of 2 proposed FPAs being consolidated in accordance with **section 107**; and

(c) the employer default bargaining party if it becomes a bargaining party under **subpart 3**.

(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

(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

(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

(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.

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.

(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

(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—

(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

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

education service has the same meaning as in section 10(7) of the Education and Training Act 2020, but excludes service in the employment of an institution

institution has the same meaning as in section 10(1) of the Education and Training Act 2020

Police employee has the same meaning as in section 4 of the Policing Act 2008

public service agency has the same meaning as in paragraph (a) of the definition of public service in section 10 of the Public Service Act 2020

public service chief executive has the same meaning as in section 5 of the Public Service Act 2020

Secretary for Education means the Secretary as defined in section 10(1) of the Education and Training Act 2020

State enterprise has the same meaning as in section 2 of the State-Owned Enterprises Act 1986

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

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

(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.

(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:

(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.

(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.

(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) 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

(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.

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:

(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:

(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.

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—

(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.

(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)**.

(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.

(5) **Subsection (4)** applies despite **section 46**.

66 Other specified State employers

(1) This section applies to—

(a) a State enterprise:

(b) an employer in the State services, other than—

(i) an employer in the education service:

(ii) a chief executive of a public service agency:

(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

(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)**—

(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.

(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

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

(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:

(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.

(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.

71 Chief executive to notify absence of bargaining party

(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

(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—

(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

(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 subpart.

(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

(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).

(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

(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-

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

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

(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

(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—

(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—

(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.

(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,—

(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.

(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

(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—

(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,—

(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.

(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

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:

(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.

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—

(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.

(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

(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—

(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.

(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

(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

(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

(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—

(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,—

(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

(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.

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,—

(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

(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

(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.

(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.

(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)**.

(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.

(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.

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,—

(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.

(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.

(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,—

(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

(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.

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,—

(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.

(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) 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)**.

(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

(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.

(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.

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—

(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

(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.

(2) An employee bargaining party may arrange an FPA meeting in relation to a proposed variation only if—

(a) the employee bargaining party is a member of the employee bargaining side for the fair pay agreement; and

(b) the employee bargaining party has received approval from the employee bargaining side to hold the meeting on behalf of the employee bargaining side.

(3) Before holding an FPA meeting, the employee bargaining party must—

(a) give at least 14 days' notice of the date and time of the meeting to each employer who has employees who are eligible to attend the meeting; and

(b) make arrangements with each employer to ensure that the employer's business is maintained during the FPA meeting, including, where appropriate, an arrangement for sufficient employees to remain available during the meeting to enable the employer's operations to continue.

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

(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

(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**.

(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—

(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.

(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**.

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.

(2) For the purposes of **subsection (1)**, the employee bargaining party that arranges the FPA meeting must—

(a) supply to the employer a list of the employer's employees who attended the meeting; and

(b) advise the employer of the duration of the meeting.

(3) An employee must resume work as soon as practicable after attending an FPA meeting.

(4) An employee who is absent from work for more than 2 hours to attend an FPA meeting is entitled to ordinary pay for a maximum of 2 hours.

(5) An employer who fails to comply with this section is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**.

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—

(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**).

(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)**:

(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

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.

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:

(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)**.

(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.

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—

(a) may do so only at reasonable times during any period when any covered employee is employed to work in the workplace; and

(b) must do so in a reasonable way, having regard to normal business operations in the workplace; and

(c) must comply with any existing reasonable procedures and requirements applying in respect of the workplace that relate to—

(i) safety or health; or

(ii) security.

(2) A representative of an employee bargaining party who is exercising the right to enter a workplace must, at the time of the initial entry and, if requested by the employer, a representative of the employer, or a person in control of the workplace, at any time after entering the workplace,—

(a) state the purpose of the entry; and

(b) produce evidence of the representative's identity and authority to represent the employee bargaining party.

(3) If a representative of an employee bargaining party exercises the right to enter a workplace and is unable, despite reasonable efforts, to find the employer, a representative of the employer, or the person in control of the workplace, the representative of the employee bargaining party must leave in a prominent place in the workplace a written statement of—

(a) the identity of the person who entered the premises; and

(b) the employee bargaining party that the person represents; and

(c) the date and time of entry; and

(d) the purpose or purposes of the entry.

(4) Nothing in **subsections (1) to (3)** allows an employer, a representative of the employer, or the person in control of a workplace to unreasonably deny a representative of an employee bargaining party access to a workplace.

(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**.

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—

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

(b) the investigation or detection of offences.

(2) A certificate given in accordance with **subsection (3)** is conclusive evidence that grounds exist under **subsection (1)** for denying entry to the premises or part of the premises.

(3) A certificate is given in accordance with this subsection if—

(a) it is given by the Attorney-General; and

(b) it certifies, in respect of the premises or part of the premises concerned, that permitting entry under **section 86** might prejudice—

(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—

(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

(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

(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.

(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.

(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.

(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.

(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

(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)**—

(a) must be used only for the purposes of the bargaining concerned; and

(b) must be treated as confidential by the persons conducting the bargaining concerned; and

(c) must not be disclosed by those persons to anyone else, including persons who would be 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

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

(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—

(a) all other bargaining parties on the bargaining side agree that the bargaining party may cease to be a bargaining party; or

(b) it ceases to be a bargaining party in accordance with a process specified in the inter-party side agreement; or

(c) other than any specified employer bargaining party, it is the final bargaining party on the bargaining side.

(2) A bargaining party that wishes to cease being a bargaining party must apply to the chief executive in writing for approval to cease being a bargaining party.

(3) An application to the chief executive must include—

(a) details of the proposed FPA, the proposed variation, the proposed renewal, the proposed replacement, or the fair pay agreement for which it is a bargaining party; and

(b) the reason for the bargaining party's application to cease being a bargaining party (which must be a criterion set out in **subsection (1)**); and

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

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

(e) any other information required by regulations.

(4) A bargaining party ceases to be a bargaining party on the date on which the chief executive approves the application.

(5) A 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,—

(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

(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).

(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

(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

(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

(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.

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**.

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—

(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

(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.

(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.

100 Obligation to submit further information if coverage changed during bargaining

(1) This section applies when—

(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.

(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

(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

(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—

(a) assess the application; and

(b) notify the applicant in writing—

(i) whether or not the chief executive has approved the application; and

(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—

(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

(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.

(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)**.

(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,—

(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.

(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

(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

(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

(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.

(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

(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**.

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.

(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

(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.

(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**.

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

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

(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—

(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**).

(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

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

(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.

Consolidation of bargaining for fair pay agreements

106 Application of sections 107 to 111

(1) **Sections 107 to 111** apply when—

(a) bargaining is taking place for a proposed industry-based agreement, or for a proposed renewal or a proposed replacement of an industry-based agreement (the **first proposed agreement**); and

(b) the chief executive approves an application to initiate bargaining for a proposed industry-based agreement, or for a proposed renewal or a proposed replacement of an industry-based agreement, that covers an occu-

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

(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

(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.

(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.

(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.

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—

(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

(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

(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—

(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

(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.

(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**),—

(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

(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

(d) new bargaining parties may join the combined employee bargaining side or the combined employer bargaining side (as applicable); and

(e) the obligations in **sections 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.

(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,—

(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

(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)**).

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.

(2) If a bargaining party decides to make a request referred to in **subsection (1)**,—

(a) it must make the request within 20 working days of—

(i) the date on which the chief executive provides notice under **section 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

(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

(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

(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—

(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

(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

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.

(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

(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

(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—

(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

(b) explain to the union that **section 112** applies and how **section 112** applies.

Part 6
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:

(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:

(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:

(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:

(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**:

(g) the date on which the agreement expires.

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

(a) a fair pay agreement must apply for a period that is no less than 3 years, but no more than 5 years; and

(b) a fair pay agreement must specify—

(i) 1 commencement date, which must apply to each provision in the fair pay agreement; and

(ii) 1 date on which it expires, which must apply to each provision in the fair pay agreement.

(3) 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.

(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.

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

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

(b) include all details required in regulations.

(6) **Subsection (2)(b)(i)** is subject to the bargaining sides approving an employer's application for delayed commencement under **section 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:

(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:

(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—

(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—

(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**.

(2) However, any term of a fair pay agreement that does not relate to the employment of covered employees, that is contrary to law, or that is inconsistent with this Act is void and has no application.

Minimum entitlement provisions

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:

(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:

(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—

(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.

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:

(c) the Wages Protection Act 1983.

(2) However, if a minimum entitlement provision in a fair pay agreement provides a level of entitlement that is below the level required under an Act listed in **subsection (1)**,—

(a) the level of entitlement in the fair pay agreement does not apply; and

(b) the level of entitlement in the relevant listed Act applies.

(3) If a fair pay agreement provides a minimum base wage rate that is higher than the minimum wage payable under the Minimum Wage Act 1983, the Acts listed in **subsection (1)** apply as if the minimum base wage rate provided under the fair pay agreement were the minimum wage provided under the Minimum Wage Act 1983.

(4) If a fair pay agreement provides a leave entitlement that is higher than the leave entitlement under the Holidays Act 2003, the Acts listed in **subsection (1)** apply as if the leave entitlement provided under the fair pay agreement were the leave entitlement provided under the Holidays Act 2003.

Example

Relationship between minimum entitlement and entitlement under fair pay agreement

If the Minimum Wage Act 1983 sets the minimum wage for adult employees to be $20 per hour, and a fair pay agreement provides that the minimum base wage rate for 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.

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.

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—

(a) the minimum rate of wages prescribed under the Minimum Wage Act 1983:

(b) the relevant minimum base wage rate set under the fair pay agreement.

(2) However, **subsection (3)** applies if—

(a) an employee was issued, before the date on which this Act came into force, with a minimum wage exemption permit under section 8 of the Minimum Wage Act 1983; and

(b) the employee is within the coverage of a fair pay agreement; and

(c) the fair pay agreement sets a minimum base wage rate that is equal to or greater than the minimum adult wage rate set under section 4 of the Minimum Wage Act 1983.

(3) In the circumstances described in **subsection (2)** and while the permit remains in force,—

(a) if the permit is expressed as a percentage of the minimum adult wage rate set under section 4 of the Minimum Wage Act 1983, the rate of wages must be calculated by applying that percentage to the minimum base wage rate set in the fair pay agreement; or

(b) in all other cases, the rate of wages stated in the permit is the minimum rate of wages payable to the employee for the purpose of the Minimum Wage Act 1983 and the fair pay agreement.

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

(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.

(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—

(i) the date on which the employee has completed 6 months' continuous employment (or any shorter period of continuous employment specified in the fair pay agreement) with any employer or the employee's current employer (as the case requires):

(ii) the day before the date on which the employee ceases to satisfy one or both of the criteria in section 4A(1)(a) and (b) of the Minimum Wage Act 1983; and

(b) then must pay the employee no less than the minimum base wage rate specified in the fair pay agreement.

(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

(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—

(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—

(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.

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.

(2) Despite **subsection (1)**, a fair pay agreement must not include a term that applies differently to different classes of covered employees if the term relates to any of the following:

(a) the objectives of the agreement:

(b) the date from which the agreement applies:

(c) the coverage of the agreement:

(d) the process for amending the agreement:

(e) the date on which the agreement expires.

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:

(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:

(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:

(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

(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

(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—

(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.

(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.

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—

(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

(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).

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):

(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

(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**.

(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

(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.

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):

(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—

(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.

(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.

(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

(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

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.

(2) **Subpart 1** provides that the Authority must complete a compliance assessment and decide whether to approve a proposed agreement.

(3) **Subpart 2** provides that a proposed agreement must be ratified.

(4) **Subpart 3** provides that the chief executive must verify that a proposed agreement has been ratified.

(5) **Subpart 4** requires the chief executive to 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

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—

(a) jointly submit the proposed agreement to the Authority for a compliance assessment; and

(b) ensure that they submit the proposed agreement in the form prescribed in regulations.

(2) A bargaining side lead advocate must not submit the proposed agreement for a compliance assessment unless—

(a) the bargaining side lead advocate is satisfied that—

(i) both bargaining sides have agreed to the wording of the proposed agreement; and

(ii) the wording of the proposed agreement is in the form prescribed in any regulations; and

(b) the proposed agreement—

(i) is in writing; and

(ii) is signed by the bargaining side lead advocate 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—

(a) it is satisfied that the terms of the proposed agreement comply with—

(i) the requirements of this Act; and

(ii) employment standards (as defined in section 5 of the Employment Relations Act 2000); and

(iii) any other relevant employment law requirements; and

(b) it has not identified any terms that are contrary to any other law.

(2) There is no right of appeal from the Authority's decision whether or not to approve a proposed agreement.

(3) However, despite the Authority approving a proposed agreement, a term of the proposed agreement may still be legally challenged on the basis that it is contrary to any other law.

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

(c) that the bargaining sides may resubmit the proposed agreement for another compliance assessment, once the bargaining sides are satisfied that they have addressed the reasons for the Authority not approving the proposed agreement.

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

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.

(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.

(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.

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

(b) no later than 20 working days after it receives the proposed agreement.

(2) If the Authority approves the proposed agreement but also considers that there is coverage overlap, it must notify the bargaining sides for the proposed agreement that the Authority has provisionally approved the proposed agreement, subject to determining which agreement provides the better terms overall.

(3) However, the Authority may advise the bargaining sides later than the date specified in **subsection (1)** if the Chief of the Authority decides that exceptional circumstances exist.

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

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

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

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

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

(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.

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.

(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

(c) each employee who, as a result of **paragraph (b)**, is no longer within the coverage of agreement B—

(i) is not entitled to vote in the ratification process for agreement B; and

(ii) remains 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

(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

(f) the employer bargaining side for agreement B must use its best endeavours to advise each employer who, as a result of **paragraph (b)**, no longer employs an employee who is within the coverage of agreement B that the employer is not entitled to vote in the ratification process for agreement B.

(3) If the Authority determines that agreement B provides better terms overall,—

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

(i) that the proposed coverage of agreement B remains as proposed; and

(ii) of the requirements set out in **paragraphs (b) to (h)**; and

(b) the Authority must advise both bargaining sides for agreement A—

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

(ii) of the requirements set out in **paragraphs (c) and (d)**; and

(c) each 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

(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

(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—

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

(ii) as a result of the determination, the employee is entitled to vote in the ratification process for agreement B; and

(iii) if agreement B is 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—

(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

(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

(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.

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.

(2) Before the bargaining side lead advocates for each bargaining party for the proposed agreement jointly submit the proposed agreement to the chief executive for verification, it must be ratified in accordance with—

(a) this subpart; and

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

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**,—

(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

(b) the employer bargaining side must use its best endeavours to notify all covered employers that a ratification vote will soon be held.

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

(a) advise each of its covered employees—

(i) that a ratification vote for the proposed agreement will soon be held; and

(ii) that a previous election not to have their contact details provided to the employee bargaining side does not apply for the purposes of this section; and

(iii) that the employee may, within 5 working days of being advised, elect not to have their details provided under this section by 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

(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

(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

(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

(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.

(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.

(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,—

(a) the employee bargaining side must ensure that all covered employees for whom the bargaining side has contact details have access to—

(i) a copy of the proposed agreement; and

(ii) a plain language summary of the proposed agreement; and

(b) the employer bargaining side must ensure that all covered employers that the bargaining side is aware of have access to—

(i) a copy of the proposed agreement; and

(ii) a plain language summary of the proposed agreement.

(6) An employer who intentionally or recklessly fails to comply with **subsection (2), (3), or (4)** is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 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—

(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 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 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 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

(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**.

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

(a) if the ratification vote is the first ratification vote for the proposed agreement, the bargaining sides must restart bargaining for the proposed agreement; or

(b) if the ratification vote is the second ratification vote for the proposed agreement, the bargaining side lead advocate for either bargaining side may apply to the Authority for a determination to fix the terms of the proposed agreement.

146 Obligation to keep records of ratification

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

(a) the process followed to vote on whether to ratify the proposed agreement; and

(b) the votes cast on whether to ratify the proposed agreement.

(2) A bargaining side must ensure that its records are adequate to demonstrate that—

(a) the bargaining side held the ratification vote in accordance with this Act and any process agreed by the bargaining side; and

(b) each vote was cast by a person who was eligible to vote.

Subpart 3—Verification

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.

(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

(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

(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**.

(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—

(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.

(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**.

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

(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.

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**.

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.

(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

(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

(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**.

(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.

(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

(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

(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

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**.

(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,—

(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.

(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.

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.

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**:

(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:

(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:

(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:

(i) obvious errors of the following kinds may be corrected:

(i) typographical and clerical errors:

(ii) grammatical and spelling errors, and errors of punctuation:

(iii) errors in numbering, cross-referencing, and alphabetical ordering:

(iv) any other errors of a similar nature:

(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.

(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

(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.

(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)**.

(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:

(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:

(c) a covered employer who has a delayed commencement date specified for 1 or more terms in the fair pay agreement, in which case each term of the agreement applies to the covered employer and the employer's covered employees from the relevant date specified in the fair pay agreement for that employer.

(4) However, if, after the 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:

(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

(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.

(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.

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-

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.

(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).

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.

(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.

(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

(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.

Part 8
Variation, renewal, and replacement of fair pay agreements

Subpart 1—Variation

164 Application

(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.

(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

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.

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.

(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

(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:

(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,—

(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.

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):

(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).

(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

(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—

(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:

(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—

(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.

(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

(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

(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

(b) must not amend the wording of the information, the address, or the form before providing it to an employer.

(3) Each employer that receives the information, the address, and the form—

(a) must, within 15 working days of receiving them, provide them to each of its covered employees; but

(b) must not amend the wording of the information, the address, or the form before providing them to a covered employee.

(4) After providing the information, the address, and the form to its covered employees, each employer must provide 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.

(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.

(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

(d) how each covered employee will be able to participate in the process of bargaining for the proposed variation; and

(e) the address to which the employer is required to send the covered employee's contact details; and

(f) where a covered employee can access further relevant information; and

(g) who, on the employee bargaining side, a covered employee can contact for further relevant information.

(7) An employer who intentionally or recklessly fails to comply with **subsection (3), (4), or (5)** is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**.

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

(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—

(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).

(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**.

173 Employer bargaining side must provide information to new employer

(1) If, after the bargaining sides for a fair pay agreement have agreed to bargain for a variation of the fair pay agreement, the employer bargaining side becomes aware of a new employer that 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.

(3) A new employer that receives the information and the form under **subsection (1)**—

(a) must, within 15 working days of receiving the information and the form, provide the information and the form to each of its covered employees; but

(b) must not amend the wording of the information or the form before providing the information and the form to a covered employee.

(4) After providing the information and the form to its covered employees, a new employer must provide 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.

(5) A new employer must comply with **subsection (4)** no earlier than 5 working days after the date on which it provides the information and the form to its covered employees, but no later than 10 working days after that date.

(6) An employer who intentionally or recklessly fails to comply with this section is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 196**.

174 Procedure for finalising variation

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:

(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:

(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)**).

(2) Before the bargaining side lead advocates for each bargaining party for the proposed variation jointly submit the proposed variation to the chief executive for verification, the proposed variation must be ratified in accordance with—

(a) this section and **section 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

(b) the employer bargaining side must use its best endeavours to notify all covered employers that a ratification vote will soon be held.

(4) No later than 15 working days after being notified under **subsection (3)(b)**, each covered employer must advise each of its covered employees that a ratification vote for the proposed variation will soon be held.

(5) At least 5 working days before the covered employees and covered employers vote whether to ratify the proposed variation,—

(a) the employee bargaining side must ensure that all covered employees for whom the bargaining side has contact details have access to—

(i) a copy of the proposed variation; and

(ii) a plain language summary of the proposed variation; and

(b) the employer bargaining side must ensure that all covered employers that the bargaining side is aware of have access to—

(i) a copy of the proposed variation; and

(ii) a plain language summary of the proposed variation.

(6) An employer who intentionally or recklessly fails to comply with **subsection (4)** is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **section 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**.

(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.

(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.

(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.

(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**).

(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.

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.

(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.

(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

(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.

(2) A bargaining side must not seek a recommendation from the Authority in relation to a proposed variation unless the other bargaining side agrees to do so.

(3) If the bargaining sides for a proposed variation seek a recommendation from the Authority in relation to a matter,—

(a) **section 216** applies with any necessary modifications; and

(b) before making a recommendation, the Authority must consider the considerations listed in **section 220**.

(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.

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.

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

(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—

(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:

(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.

(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

(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

(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

(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.

(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—

(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

(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

(1) A renewed fair pay agreement comes into force on a date specified in the renewed agreement, which date must be no earlier than the expiry date specified in the fair pay agreement immediately prior to being renewed.

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

Coverage

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.

(2) An application to initiate bargaining for an agreement to replace a fair pay agreement that has expired must be for a replacement agreement with the same coverage as, or a broader coverage than, the coverage of the expired fair pay agreement on the date on which it expired.

(3) Bargaining to renew or replace a fair pay agreement must not reduce the coverage of the agreement contained in the application to start bargaining.

Application for approval to renew or replace fair pay agreement

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

(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

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

(i) for an occupation-based agreement, a description of the work or type of work that is intended to be within the coverage; or

(ii) for an industry-based agreement, a description of—

(A) the industry or type of industry that is intended to be within the coverage; and

(B) the work or type of work that is intended to be within the coverage; and

(e) provide evidence of—

(i) the applicant being either an eligible union or an eligible employer association; 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.

(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**.

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.

(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

(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—

(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—

(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

(1) After receiving an application for approval to initiate bargaining for a proposed renewal or a proposed replacement, the chief executive must—

(a) assess the application; and

(b) as soon as practicable, notify the applicant in writing whether or not the chief executive has approved the application.

(2) For the purpose of **subsection (1)**, **sections 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

(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

(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

(1) If the chief executive approves an application for approval to initiate bargaining for a proposed renewal or a proposed replacement, the chief executive must—

(a) publicly notify the chief executive's approval of the application; and

(b) notify each bargaining party to the fair pay agreement of the chief executive's approval of the application.

(2) A notification under **subsection (1)(a) or (b)** must comply with the requirements of **section 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:

(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,—

(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

(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—

(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.

(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

(d) in the case of a notification to a specified employer bargaining party, include a statement for the specified employer bargaining party to provide to each of its covered employers; and

(e) in the case of a notification to an employer, include a statement for the employer to provide to each of its covered employees; and

(f) in each case, include a form that has been approved and issued by the chief executive under **section 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:

(ii) the process by which an employee who does not want their contact details to be provided to the employee bargaining side can elect not to have their contact details provided:

(iii) the reason for providing the employee's contact details to the employee bargaining side:

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

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

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

(vii) how an employee who has elected not to have their contact details provided can rescind that election so that the employer must provide the employee's contact details to the eligible union or the employee bargaining party.

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

(a) be in writing; and

(b) be drafted in plain language; and

(c) be drafted in such a way that it is able to be provided to the covered employees without the employer association or specified employer bargaining party needing to redraft it; and

(d) advise the covered employee about the proposed renewal or the proposed replacement including at least the following information:

(i) that the applicant has been approved to initiate bargaining for a proposed renewal or a proposed replacement and that the employee is within the coverage of the proposed renewal or the proposed replacement:

(ii) how the proposed renewal or the proposed replacement could affect the employee and the work they do:

(iii) that, when bargaining for a proposed renewal or a proposed replacement, 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:

(iv) where to find further information about the proposed renewal or the proposed replacement and the bargaining process:

(v) how to contact the employee bargaining side or the employer bargaining side (as applicable) to request any further information.

(5) Within 15 working days of receiving notice under **subsection (2)**, 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.

(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.

(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**.

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.

(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

(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:

(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.

Part 9
Penalties and enforcement

Penalties

196 Penalty for non-compliance with obligation when bargaining

(1) This section applies to an obligation if a provision of this Act provides that the Authority may impose a penalty, not exceeding the applicable amount specified in this section, for a breach of that obligation.

(2) A person who breaches an obligation to which this section applies is liable,—

(a) if the person is an individual, to a penalty not exceeding $20,000:

(b) in the case of any other person, to a penalty not exceeding $40,000.

(3) A person who incites, instigates, aids, or abets a breach of an obligation to which this section applies is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **subsection (2)**.

197 Penalty for non-compliance with obligation when fair pay agreement in force

(1) This section applies to an obligation if a provision of this Act provides that the Authority may impose a penalty, not exceeding the applicable amount specified in this section, for a breach of that obligation.

(2) A person who breaches an obligation to which this section applies is liable,—

(a) if the person is an individual, to a penalty not exceeding $10,000:

(b) in the case of any other person, to a penalty not exceeding $20,000.

(3) A person who incites, instigates, aids, or abets a breach of an obligation to which this section applies is liable to a penalty imposed by the Authority not exceeding the applicable amount specified in **subsection (2)**.

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—

(a) for any breach of a fair pay agreement; or

(b) for a breach of any provision of this Act for which a penalty in the Authority is provided in the particular provision.

(2) **Subsection (1)** is subject to—

(a) sections 177 and 178 of the Employment Relations Act 2000 (which allow for the referral or removal of certain matters to the Employment Court); and

(b) any right to have the matter heard by the court under **clause 11 of Schedule 3** of this Act.

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

(b) proceedings may not be brought under both Acts.

(2) If a fair pay agreement sets a minimum wage for covered employees that is the same as, or higher than, the minimum wage that would otherwise have applied under the Minimum Wage Act 1983, any proceedings relating to a failure to pay the minimum wage specified in the agreement must be brought under that Act.

(3) If a fair pay agreement provides a leave entitlement, and payment for that leave entitlement, for covered employees that is the same as, or greater than, the leave entitlement and payment for that leave entitlement that would otherwise have applied under the Holidays Act 2003, any proceedings relating to a failure to provide the leave entitlement, or payment for that leave entitlement, specified in the agreement must be brought under that Act.

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

In determining an appropriate penalty for a breach referred to in **section 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

(e) whether the person in breach or the person involved in the breach has paid an amount of compensation, reparation, or restitution, or has taken other steps to avoid or mitigate any actual or potential adverse effects of the breach; and

(f) the circumstances in which the breach, or involvement in the breach, took place, including the vulnerability of the employee; and

(g) whether the person in breach or the person involved in the breach has previously been found by the Authority or the court in proceedings under this Act, or any other enactment, to have engaged in any similar conduct.

Compare: 2000 No 24 s 133A

201 Recovery of penalties

(1) Any action for the recovery of a penalty may be brought,—

(a) in the case of a breach of a fair pay agreement, at the suit of 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)**.

(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

(b) may dismiss the action.

(4) The Authority or the court may order payment of a penalty by instalments, but only if the financial position of the person paying the penalty requires it.

(5) An action for the recovery of a penalty under this Act must be commenced within 12 months after the earlier of the following:

(a) the date on which the cause of action first became known to the person bringing the action:

(b) the date on which the 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.

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.

(2) The Authority or the court may order that the whole or any part of any penalty recovered must be paid to any person.

Compare: 2000 No 24 s 136

Part 10
Institutions

Subpart 1—Mediation services

204 Mediation services

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

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

(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:

(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:

(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:

(b) provide information about what services are available for persons (including unions, employee bargaining parties, covered employees, covered employers, and employer associations) who have problems related to fair pay relationships:

(c) assist the smooth conduct of fair pay agreements:

(d) assist persons to resolve, promptly and effectively, problems related to fair pay relationships:

(e) assist persons to resolve any problem in relation to bargaining for the terms of a fair pay agreement.

(4) A person employed or engaged to provide mediation services under this section may also be employed or engaged to provide mediation services under section 144 of the Employment Relations Act 2000, or bargaining support services under **section 207** of this Act.

Compare: 2000 No 24 s 144

205 Application of provisions in Employment Relations Act 2000

In relation to mediation services provided under this Act (rather than those provided under the Employment Relations Act 2000), sections 145 to 153 of that Act apply, with all necessary modifications, including the following:

(a) each reference to the Employment Relations Act 2000 must also be read as a reference to this Act:

(b) each reference to the object of the Employment Relations Act 2000 must be read as a reference to the purpose of this Act (*see* **section 3**):

(c) section 148(5) of the Employment Relations Act 2000 applies only to mediation for the terms of a proposed FPA, a proposed variation, a proposed renewal, or a proposed replacement:

(d) in addition to applying to the payments specified in section 148A(3) of the Employment Relations Act 2000, section 148A of that Act also applies to any wages, holiday pay, or other money payable by an employer to an employee under a fair pay agreement:

(e) sections 149A and 150 of the Employment Relations Act 2000 do not authorise a person employed or engaged by the chief executive to provide mediation services to make a recommendation (under section 149A of that Act) or a decision (under section 150 of that Act) as to what terms are to be included in a fair pay agreement:

(f) the reference in section 150A(3)(a) of the Employment Relations Act 2000 to an employment relationship problem must be read as a reference to a problem relating to a fair pay relationship listed in **section 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.

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

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.

(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:

(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.

(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.

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

(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,—

(a) by a telephone, facsimile, Internet, or email service (whether as a means of explaining where information can be found or as a means of providing the information or of otherwise seeking to resolve a problem); or

(b) by publishing pamphlets, brochures, booklets, or codes; or

(c) by specialists who—

(i) respond to requests or themselves identify how, where, and when their services can best support the purpose of this Act; or

(ii) provide their services in the manner, and at the time and place (including wherever practicable the workplace itself), that are most likely to provide the required support; or

(iii) provide their services in all of the ways described in this paragraph.

(3) Any of the bargaining support services may be provided—

(a) by a combination of the ways described in **subsection (2)**; or

(b) in any other way the chief executive thinks best supports the purpose of this Act.

(4) **Subsections (2) and (3)** do not limit **subsection (1)**.

(5) The chief executive, in managing the overall provision of bargaining support services, may give general instructions about the manner in which, and the times and places at which, bargaining support services are to be provided.

(6) Any such general instructions may include general instructions about how bargaining support services are to be provided in relation to particular types of matters or particular types of situations, or both.

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

210 Other bargaining support services

Nothing in this Part prevents any person from seeking and using bargaining support services other than those provided by the chief executive under **section 207**.

Compare: 2000 No 24 s 154

Subpart 3—Employment Relations Authority

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:

(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**).

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

(a) comply with the principles of natural justice; and

(b) aim to promote good faith behaviour; and

(c) support successful employment relationships; and

(d) generally further the object of this Act.

(3) The Authority must act as it thinks fit in equity and good conscience, but may not do anything that is inconsistent with—

(a) the Employment Relations Act 2000; or

(b) any regulations made under the Employment Relations Act 2000; or

(c) this Act; or

(d) any regulations made under this Act; or

(e) a fair pay agreement.

Compare: 2000 No 24 s 157

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:

(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:

(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:

(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.

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—

(i) forming bargaining sides:

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

(iii) whether an employee is a covered employee:

(iv) whether an employer is a covered employer; 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:

(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:

(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

(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

(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

(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

(b) the Authority must determine whether the proposed FPA, the proposed renewal, or the proposed replacement must include such a term.

(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.

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)—

(a) may apply to the Authority asking it to recommend the content of the term; but

(b) is not permitted to apply for a recommendation under section 173A of the Employment Relations Act 2000.

(2) The Authority 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—

(a) consider whether the party has attempted to resolve the matter by using mediation before applying to the Authority; and

(b) if the Authority does not consider that the party has attempted to resolve the matter by using mediation, direct the party to use mediation or another process to resolve the matter before the Authority makes the determination or recommendation.

(2) However, the Authority is not required to direct a party to use mediation or another process if the Authority considers that mediation or another process—

(a) would not contribute constructively to resolving the matter; or

(b) would not, in all the circumstances, be in the public interest; or

(c) would undermine the urgent nature of the application; or

(d) would otherwise be impractical or inappropriate in the circumstances.

(3) The Authority must, when investigating a matter before making a determination or recommendation, consider from time to time whether to direct the parties to use mediation or another process before the Authority makes the determination or recommendation.

(4) If the Authority gives a direction under **subsection (1)(b) or (3)**, the parties must comply with the direction and attempt in good faith to reach an agreed settlement of their differences, and proceedings in relation to the request before the Authority are suspended until the parties have done so or the Authority otherwise directs (whichever occurs first).

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,—

(a) an employee is a covered employee:

(b) an employer is a covered employer.

(2) For the purposes of **subsection (1)**, the parties are,—

(a) during bargaining for a proposed 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

(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

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.

(2) However, before making an application,—

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

(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.

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—

(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:

(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

(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

(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 chairperson of the panel.

(3) The Chief of the Authority must replace a panel member who is temporarily or permanently unable to perform their function as panel member (for example, due to ill health) by appointing another panel member.

General provisions relating to Employment Relations Authority

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

(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:

(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.

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.

Compare: 2000 No 24 s 210

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.

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,—

(a) issue a determination or recommendation:

(b) resolve a dispute:

(c) fix the terms of a fair pay agreement.

Part 11
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

(b) in respect of an employee bargaining party; or

(c) in the Authority; or

(d) in the court.

(2) The employee may choose any person to represent the employee for the purpose of doing anything or taking any action described in **subsection (1)**.

(3) **Subsection (4)** applies only if this Act confers on an employer the right to do anything or take any action—

(a) in respect of an employee; or

(b) in respect of an employee bargaining party; or

(c) in respect of an employer bargaining party; or

(d) in the Authority; or

(e) in the court.

(4) The employer may choose any person to represent the employer for the purpose of doing anything or taking any action described in **subsection (3)**.

(5) Any person purporting to represent any employee or employer must establish that person's authority for that representation.

Compare: 2000 No 24 s 236

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—

(a) in respect of an employer; or

(b) in respect of an employee bargaining party; or

(c) in respect of an employer bargaining party; or

(d) in the Authority; or

(e) in the court.

(2) The employee bargaining party may choose any person to represent the employee bargaining party for the purpose of doing anything or taking any action described in **subsection (1)**.

(3) **Subsection (4)** applies only if this Act confers on an employer bargaining party the right to do anything or take any action—

(a) in respect of an employer; or

(b) in respect of an employee bargaining party; or

(c) in respect of an employer bargaining party; or

(d) in the Authority; or

(e) in the court.

(4) The employer bargaining party may choose any person to represent the employer bargaining party for the purpose of doing anything or taking any action described in **subsection (3)**.

(5) Any person purporting to represent any employee bargaining party or employer bargaining party must establish that person's authority for that representation.

Compare: 2000 No 24 s 236

Record-keeping requirements

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)—

(a) the hours of each day that the employee worked; and

(b) the days of the week on which the employee worked; and

(c) for each hour of each day that the employee worked, the district in which the employee worked.

(2) If the hours of each day that the employee is to work, the days of the week on which the employee is to work, and the district in which the employee is to work for each hour are agreed and the employee works those hours in the agreed district or districts (the **usual hours**), it is sufficient compliance with **subsection (1)** if those details are stated in—

(a) the wages and time record; or

(b) the employment agreement; or

(c) a roster or any other document or record used in the normal course of the employee's employment.

(3) In **subsection (2)**, the **usual hours** of an employee who is remunerated by way of salary include any additional hours worked by the employee in accordance with the employee's employment agreement.

(4) Despite **subsection (3)**, the employer must keep a record of any additional hours worked that need to be recorded for the employer to comply with section 4B(1) of the Employment Relations Act 2000.

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—

(a) the number of hours the employee worked each day, including the time at which the employee started and finished working each day; and

(b) the days of the week on which the employee worked; and

(c) the pay rates the employee received for the hours worked, including the base wage rate, any penalty rate, and any overtime rate.

(2) If the number of hours an employee is to work each day in a pay period (including the time at which the employee is to start and finish working each day) and the pay rates for those hours (including the base wage rate, any penalty rate, and any overtime rate) are agreed and the employee works those hours (the **usual hours**), it is sufficient compliance with **subsection (1)** if those usual hours and pay rates are stated in—

(a) the wages and time record; or

(b) the employment agreement; or

(c) a roster or any other document or record used in the normal course of the employee's employment.

(3) In **subsection (2)**, the **usual hours** of an employee who is remunerated by way of salary include any additional hours worked by the employee in accordance with the employee's employment agreement.

(4) Despite **subsection (3)**, the employer must keep a record of any additional hours worked that need to be recorded for the employer to comply with section 4B(1) of the Employment Relations Act 2000.

Compare: 2000 No 24 s 130

234 How records must be kept

(1) A record kept under **section 232 or 233**—

(a) must form part of the employer's wages and time record kept under section 130 of the Employment Relations Act 2000; but

(b) is additional to the requirements under that section.

(2) A record must be kept—

(a) in written form; or

(b) in a form or in a manner that allows the information in the record to be easily accessed and converted into written form.

(3) An employer that fails to comply with **section 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.

(2) An application must be made using a form approved by the chief executive.

(3) A Labour Inspector must not make a determination under **subsection (1)** in relation to an employee unless satisfied that the application is from—

- (a) the employee; or
- (b) the employer of the employee; or
- (c) a representative of the employee or the employee's employer, and the employee or employer has consented in writing to the representative applying on their behalf.

236 Labour Inspector may determine coverage under fair pay agreement

(1) A Labour Inspector may determine whether an employee is covered by a fair pay agreement if the Labour Inspector—

- (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—

- (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
- (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,—

- (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

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

(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.

(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**.

(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.

(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)**.

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:

(b) the power to interview any—

(i) person at any premises of the kind described in **paragraph (a)**:

(ii) employer:

(iii) controlling third party:

(iv) employee (including an employee of a controlling third party):

(v) employee of a business that has a contract with the employer of the employee who is the subject of the determination:

(c) the power to require the production of, to inspect, and to take copies from,—

(i) any wages and time record or any holiday and leave record whether kept under this Act, the Employment Relations Act 2000, or any other Act:

(ii) any records that an employer is required to keep under **sections 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):

(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**:

(d) the power to require any employer or controlling third party to supply to the Labour Inspector, in relation to any employee of that employer or controlling third party, 1 or more of the following:

(i) a copy of the wages and time record or holiday and leave record or employment agreement:

(ii) any records that an employer is required to keep under **sections 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.

(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**.

(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.

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

(c) are subject to sections 230 to 233 of the Employment Relations Act 2000; and

(d) are in addition to the Labour Inspector's powers under section 229 of that Act.

(2) A Labour Inspector may only interview an employee under **section 240(1)(b)(iv) or (v)** if—

(a) the employee consents to being interviewed; and

(b) the interview takes place at a reasonable time of the day.

(3) A Labour Inspector may only interview an employee under **section 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

(b) the employee holds information that would contribute meaningfully to the Labour Inspector's determination.

(4) A Labour Inspector may interview—

(a) a person described in **section 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.

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

(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).

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.

(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

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

Schedule 1
Transitional, savings, and related provisions

s 6

Part 1
Provisions relating to this Act as enacted

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

Schedule 2
Ratification process: number of votes for covered employers

s 144(3)

Number of covered employees	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
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:

(a) section 156:

(b) section 158:

(c) section 160(1), (2), (2A), and (4):

(d) section 162:

(e) section 164:

(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):

(j) sections 175 to 178A:

(k) section 179B:

(l) section 185:

(m) section 186:

(n) section 188:

(o) section 188A:

(p) section 189:

(q) section 190:

(r) section 191:

(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

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.

(2) The Authority must give priority to investigating and recommending, determining, or resolving the matter referred to in **subclause (1)** over any other matters where mediation has not been used unless the Authority considers that providing mediation services would be inappropriate having regard to section 159(1) of the Employment Relations Act 2000.

(3) Despite **subclause (2)**, and even if no attempt has been made to resolve the matter by mediation, the Authority may give priority to proceedings in relation to determining whether—

(a) an employee is a covered employee:

(b) an employer is a covered employer.

Compare: 2000 No 24 s 159A

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.

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.

(2) This clause is subject to **clause 7**.

Compare: 2000 No 24 s 174

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

(c) specify what orders (if any) it is making.

(2) The Authority must record an oral determination in writing as soon as practicable and not later than 1 month after the date on which the investigation meeting concluded.

(3) However, the Authority may record an oral determination later than the date specified in **subclause (2)** if the Chief of the Authority decides that exceptional circumstances exist.

(4) The Authority may amend an oral determination when it is recorded under **subclause (2)** if it is necessary to correct a mistake caused by an error or omission in the determination.

Compare: 2000 No 24 s 174A

6 Oral indication of preliminary findings

(1) If the Authority gives an oral indication of its preliminary findings under **clause 4(1)(b)**, it—

(a) must—

(i) give an indication of its likely conclusions on the matters or issues it considers require determination in order to dispose of the matter; and

(ii) state any likely relevant findings of fact or law to the extent that it considers it necessary to do so in order to explain its likely conclusions; and

(b) may express the oral indication of its preliminary findings as being subject to any further evidence or information from the parties or any other person.

(2) The Authority must provide a written determination in respect of a matter for which it has given an oral indication of its preliminary findings as soon as practicable and not later than the later of the following dates:

(a) the day that is 3 months after the date on which the investigation meeting concluded; and

(b) the day that is 3 months after the date on which the Authority received the last evidence or information from the parties or other person referred to in **subclause (1)(b)**.

(3) However, the Authority may provide a written determination in respect of a matter for which it has given an oral indication of its preliminary findings later than the latest date specified in **subclause (2)** if the Chief of the Authority decides that exceptional circumstances exist.

Compare: 2000 No 24 s 174B

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.

(2) If the Authority reserves its determination of a matter under **subclause (1)**, it may, before providing a written determination of its findings in accordance with **subclause (3)**, require the parties or any other person to provide any further evidence or information that the Authority thinks fit.

(3) If the Authority reserves its determination of a matter under **subclause (1)**, it must provide a written determination of its findings as soon as practicable and not later than the later of the following dates:

(a) the day that is 3 months after the date on which the investigation meeting concluded; and

(b) the day that is 3 months after the date on which the Authority received the last evidence or information from the parties or any other person.

(4) However, the Authority may provide a written determination of its findings later than the latest date specified in **subclause (3)** if the Chief of the Authority decides that exceptional circumstances exist.

Compare: 2000 No 24 s 174C

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.

(3) When the Authority reserves its determination of a matter under **subclause (1)**, it must provide a written determination of its findings as soon as practicable and not later than the later of the following dates:

(a) the day that is 3 months after the date on which the investigation meeting concluded; and

(b) the day that is 3 months after the date on which the Authority received the last evidence or information from the parties or any other person.

(4) However, the Authority may provide a written determination of its findings later than the latest date specified in **subclause (3)** if the Chief of the Authority decides that exceptional circumstances exist.

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.

(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.

(4) However, the Authority may provide a written determination of its findings later than the latest date specified in **subclause (3)** if the Chief of the Authority decides that exceptional circumstances exist.

Compare: 2000 No 24 s 174D

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—

(i) state relevant findings of fact; and

(ii) state and explain its findings on relevant issues of law; and

(iii) express its conclusions on the matters or issues it considers require determination in order to dispose of the matter; and

(iv) specify what orders (if any) it is making; but

(b) need not—

(i) set out a record of all or any of the evidence heard or received; or

(ii) record or summarise any submissions made by the parties; or

(iii) indicate why it made, or did not make, specific findings as to the credibility of any evidence or person; or

(iv) record the process followed in investigating and determining the matter.

(2) However, if a written determination fixes the terms of a fair pay agreement, the terms must be in a format that complies with any requirements prescribed in regulations.

Compare: 2000 No 24 s 174E

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.

(3) The election must—

(a) specify the determination, or the part of the determination, to which the election relates; and

(b) state whether the party making the election is seeking a full hearing of the entire matter (referred to as a **hearing de novo** in this schedule and in Part 10 of the Employment Relations Act 2000).

(4) If the party making the election is not seeking a hearing *de novo*, the election must specify, in addition to the matters specified in **subclause (3)**,—

(a) any error of law or fact alleged by that party; and

(b) any question of law or fact to be resolved; and

(c) the grounds on which the election is made, which grounds are to be specified with such reasonable particularity as to give full advice to both the court and the other parties of the issues involved; and

(d) the relief sought.

(5) **Subclause (1)** does not apply—

(a) to an oral determination or an oral indication of preliminary findings given by the Authority under **clause 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

(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

(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,—

(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

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

(1) Where the election states that the person making the election is seeking a hearing *de novo*, the Authority must, if the court so requests, as soon as practicable, submit to the court a written report giving the Authority's assessment of the extent to which the parties involved in the investigation have—

(a) facilitated rather than obstructed the Authority's investigation; and

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

(2) The court may request a report under **subclause (1)** only where the court considers, on the basis of the determination made by the Authority under **clause 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.

(3) The Authority must, before submitting the report to the court, give each party to the proceedings a reasonable opportunity to supply to the Authority written comments on the draft report.

(4) A party that supplies written comments to the Authority under **subclause (3)** must, immediately after doing so, serve a copy of those comments on each other party to the proceedings.

(5) The Authority must, in submitting the final report to the court, submit with it any written comments received from any party.

Compare: 2000 No 24 s 181

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—

(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*.

(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

(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.

(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.

(2) No review proceedings under **clause 19** may be initiated in relation to any matter before the Authority unless—

(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

(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

(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—

(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):

(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.

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,—

(a) to apply for review under the Judicial Review Procedure Act 2016; or

(b) to bring proceedings seeking a writ or order of, or in the nature of, mandamus, prohibition, or certiorari, or a declaration or 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

(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

(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) 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.

Compare: 2000 No 24 s 194

Appeals

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.

(2) Section 56 of the Senior Courts Act 2016 applies to an appeal under **subclause (1)**.

(3) A party that wishes to appeal to the Court of Appeal under this clause against a decision of the Employment Court must, within 28 days after the date of the issue of the decision or within such further time as the Court of Appeal may allow, apply to the Court of Appeal, in such manner as may be directed by rules of court, for leave to appeal to that court.

(4) The Court of Appeal may grant leave accordingly if, in the opinion of that court, the question of law involved in that appeal is one that, by reason of its general or public importance or for any other reason, ought to be submitted to the Court of Appeal for decision.

(5) The Court of Appeal, in granting leave under this clause, may, in its discretion, impose 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.

(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.

(2) In its determination of the appeal, the Supreme Court may confirm, modify, or reverse the decision appealed against or any part of that decision.

(3) Neither an application for leave to appeal nor an appeal operates as a stay of proceedings on the decision to which the application or the appeal relates unless the court or the Supreme Court so orders.

(4) This clause is subject to section 75 of the Senior Courts Act 2016 (which provides that the Supreme Court must not give leave to appeal directly to it against a decision made in a court other than the Court of Appeal unless it is satisfied that there are exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court).

Compare: 2000 No 24 s 214A

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.

(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.

(3) In reconsidering the matter, the court must have regard to—

(a) the Court of Appeal's reasons for giving a direction under **subclause (1)**; and

(b) the Court of Appeal's directions under **subclause (2)(b)**.

Compare: 2000 No 24 s 215

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

(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** that is dissatisfied with any final or interlocutory order in respect of the application may appeal to the Court of Appeal.

(2) Section 56 of the Senior Courts Act 2016 applies to an appeal under **subclause (1)**.

Compare: 2000 No 24 s 218

Schedule 4
Consequential amendments

s 244

Employment Relations Act 2000 (2000 No 24)

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

(ba) the minimum entitlement provisions under **section 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

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:

(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

Replace section 132(2) with:

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

(a) the wages actually paid to the employee, 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**).

After section 137(1)(a)(xi), insert:

(xii) the Fair Pay Agreements Act **2022**.

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

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

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.

After section 223(1)(b), insert:

(ba) the Fair Pay Agreements Act **2022**; and

Replace section 224(1)(a) with:

(a) an employee makes a complaint to the Labour Inspector, or the Labour Inspector believes on reasonable grounds, that an employee has not received wages or holiday pay or other money payable by the employer to the employee under—

(i) the Fair Pay Agreements Act **2022**; or

(ii) the Holidays Act 2003; or

(iii) the Minimum Wage Act 1983; and

Replace section 228(1) with:

(1) A Labour Inspector may commence an action on behalf of an employee to recover any wages or holiday pay or other money payable by an employer to that employee under—

(a) the Fair Pay Agreements Act **2022**; or

(b) the Holidays Act 2003; or

(c) the Minimum Wage Act 1983.

Replace section 235A(a) with:

(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:

Equal Pay Act 1972 (1972 No 118)

After section 13ZN, insert:

13ZNA Relationship between pay equity claims and fair pay agreements

(1) Bargaining for a proposed 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.

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:

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**.

Judicial Review Procedure Act 2016 (2016 No 50)

Replace section 7 with:

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

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

(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):

(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):

(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.

(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,—

(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 for the worker.

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