

Legal update - Three Bills in train

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There are currently three employment-related Bills progressing through Parliament, one of them quite controversial. If passed, it would allow some employees and employers to contract out of the personal grievance, dispute and enforcement provisions in the Employment Relations Act 2000 (the ERA).

The other two Bills are concerned with pay equity and workplace support for victims of domestic violence.

Employment Relations (Allowing Higher Earners to Contract Out of Personal Grievance Provisions) Amendment Bill

If passed, this Member's Bill would allow employers and employees paid over \$150,000 annually to contract out of Part 9 of the ERA, meaning that:

- The employee could not pursue a personal grievance if he or she was dismissed or disadvantaged
- Neither party could seek penalties for breach of an employment or settlement agreement
- Neither party could seek a compliance order for breaches of an employment or settlement agreement, or legislation
- The employee could not seek remedies under the ERA for discrimination, or sexual or racial harassment (although Scott Simpson, the Member responsible for the Bill, has asked the select committee to remedy this).

Like the 90-day trial period and carve-out for contractors working in film production, the Bill would see a section of the public excluded from protections in the ERA. People will have their own views about whether that is a good thing, and whether \$150,000 is an appropriate threshold (it is just below AUD\$140,000 in Australia for the equivalent provision). The Bill does include some protections to help ensure that the employee's agreement is informed by independent legal advice.

The aim of the Bill is to provide certainty for parties, lower costs for employers and reduce pressure on the courts and mediation services. These are all positive objects, but it is not clear whether the Bill will achieve them.

Employees will still be able to pursue breach of contract claims, including 'wrongful dismissal' claims which are currently excluded by the ERA. Employees will also look for creative remedies, and may seek injunctions or pursue claims for breach of statutory duty or other torts. These involve different legal principles, open up avenues to the District and High Courts, and have limitation periods of six years rather than 90 days. Established rules around remedies, including reductions for employee contribution, will not apply. As such, the Bill may add uncertainty, complexity and cost.

Submissions on the Bill may be made to the Transport and Industrial Relations Select Committee by **5 May 2017**.

Equal Pay Amendment Bill

This Bill would amend the Equal Pay Act 1972 and the ERA, making statistical information relating to remuneration for men and women publicly available. It follows the landmark decisions in the Terranova case, and the settlement negotiations affecting tens of thousands of care workers nationally.

The Bill's aim is to help remove discrimination in pay rates between men and women in the same jobs.

The Bill would:

- Require employers to record employees' gender as part of their wage and time record
- Require all employers to deliver wage and time records to the Ministry of Business, Innovation and Employment and to provide aggregated pay and gender data as requested by or on behalf of an employee
- Reverse the burden of proof in claims brought under section 18 of the Equal Pay Act where an employer fails to keep and produce relevant records
- Provide for independent review of information where an employer considers that the information requested by or on behalf of an employee should be treated as confidential

- Substantially increase the penalty for breach of the Equal Pay Act to \$5,000 for an individual and \$10,000 for a company or other corporation.

The Bill is awaiting its first reading. If it passes, the Bill will go to the select committee at which point the public may make submissions.

Domestic Violence - Victims' Protection Bill

This Bill seeks to enhance the legal protections for victims of domestic violence and would amend several Acts including the ERA, the Health and Safety at Work Act 2015 (the HSWA), the Holidays Act 2003 and the Human Rights Act 1993.

In summary, the Bill aims to:

- Prevent discrimination against victims of domestic violence by including the status of being a victim of domestic violence as a prohibited ground of discrimination for the purposes of the ERA and the Human Rights Act 1993
- Amend the HSWA to include the effects of domestic violence within the definition of 'hazard', require employers to have policies on handling the effects of domestic violence, and provide health and safety representatives with training to support workers who are victims of domestic violence
- Create a new category of leave which would allow a victim of domestic violence to take up to 10 days leave annually
- Amend the flexible working provisions of the ERA to provide expressly for victims of domestic violence.

This Bill is currently with the Justice and Electoral Select Committee and we expect the select committee to make some amendments to ensure its workability. Submissions on the Bill are due on **28 April 2017**.

How to make a submission

You can make submissions on the Employment Relations (Allowing Higher Earners to Contract Out of Personal Grievance Provisions) Amendment Bill and the Domestic Violence - Victims' Protection Bill online through the Parliament's website [here](#).

We would be happy to assist with submissions or to advise on how the legislative changes may affect your organisation.

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