



ISSUE

331

October 2022

a regular newsletter for clients of  
mcphail gibson & zwart ltd

## Client Services:

- General advice in relation to all employee-related issues
- Resolving Personal Grievances and Workplace Disputes
- Employment Agreements - drafting and negotiation
- Employment Relations Authority/Employment Court and Mediation Representation
- Employment Relations Strategies
- Training
- Monthly newsletter

# In the words of Destiny's Child: Bills, Bills, Bills

There are a number of bills currently before Parliament that, if passed, could significantly affect employers. We summarise the main points of two such bills below, and provide a brief update on the Fair Pay Agreements Bill, which was introduced earlier this year.

## Employment Relations (Restraint of Trade) Amendment Bill

The Employment Relations (Restraint of Trade) Amendment Bill ("**ROT Bill**") was introduced to Parliament on 22 September 2022 and is currently awaiting its first reading. The main purpose of the ROT Bill is to prohibit the use of restraint of trade provisions in employment agreements for lower and middle-income employees.

A restraint of trade provision is defined as a provision in an employee's employment agreement that:

1. operates after the employment ends; and
2. prohibits or restricts the former employee from 1 or more of the following:
  - a. performing work in a similar field to their former employer's business (commonly referred to as non-compete provisions);
  - b. contacting or dealing with employees or clients of their former employer's business;
  - c. offering employment to employees of their former employer's business.

(b and c are commonly referred to as non-solicitation provisions).

If the ROT Bill is passed, restraint of trade provisions would only be enforceable if the employee earned over a certain amount of money on average per week. This threshold is 3x the applicable adult minimum wage rate (currently this would amount to at least \$63.60 per hour or \$2,544.00 per week).

The employer also has to show that they have a proprietary interest, and:

1. the restraint of trade provision protects the interest; and
2. the interest is described in the employment agreement; and
3. the restrictions imposed on the employee by the restraint of trade provision are no greater than necessary having regard to the interest.

Additionally, the provision requires the employer, at the time that the employment ends, to pay reasonable compensation to the employee for the restrictions imposed by the provision. Reasonable compensation in this context must be at least half of the average weekly earnings of the employee for each week (or part week) that the restraint of trade provision applies, and must be paid separately to any salary, wages or other contractual benefit.

Restraint of trade provisions that meet the above criteria may only be in place for a maximum of six months from the date of termination of the employee's employment.

To summarise, if the ROT Bill is passed, restraint of trade provisions would be unenforceable for the majority of employees. Even if the provision meets the relevant criteria, they will become very expensive for employers to include in employment agreements.

## Disclaimer:

This newsletter is not intended as legal advice but is intended to alert you to current issues of interest. If you require further information or advice regarding matters covered or any other employment law matters, please contact **Dean Kilpatrick, Jane Taylor, Deborah Hendry or Jane Jarman.**

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## Employment Relations (Extended Time for Personal Grievance for Sexual Harassment) Amendment Bill

The Employment Relations (Extended Time for Personal Grievance for Sexual Harassment) Amendment Bill (**SH Bill**) was introduced on 21 October 2021 and had its first reading on 18 May 2022. It was referred to the Education and Workforce Committee, with the Committee's report due on 18 November 2022.

The purpose of the SH Bill will extend the time frame for raising a personal grievance that involves allegations of sexual harassment. Currently, all personal grievances must be raised within 90 days of the grievance arising or coming to the notice of the employee, with provision being made for personal grievances to be raised outside of this timeframe in limited circumstances. However, the SH Bill would extend this timeframe to 12 months for personal grievances involving allegations of sexual harassment.

## Fair Pay Agreements Bill

The Fair Pay Agreements Bill ("**FPA Bill**") was introduced to Parliament on 29 March 2022. The Education and Workforce Committee report about the FPA Bill was released on 5 October 2022.

If enacted, the Fair Pay Agreements System would operate as follows:

1. A Union must meet either a representation threshold of support from either 10% or 1000 workers in coverage, or a public interest test;
2. The Union must decide which work they want to be covered. FPAs can be an occupational FPA or an industry FPA;
3. Employers will choose representatives who meet specified requirements;
4. The parties will then bargain for a FPA;
5. Note: If there is no willing or suitable representative for either employers or employees, the other side may apply to the Employment Relations Authority for a determination to set the FPA terms;
6. All FPAs must include topics such as base wage rates, ordinary hours, overtime and penalty rates;
7. Other topics must be discussed but do not need to be agreed, such as redundancy entitlements, leave entitlements, health and safety etc.;
8. Once a FPA is finalised, it will be vetted by the Employment Relations Authority;
9. The FPA must then be ratified by both sides with a vote;
10. Mediation can be used to resolve disputes if needed;

11. If bargaining parties are unable to reach agreement, or are unable to ratify the FPA, then the Employment Relations Authority can set the FPA terms.

While Contractors are not currently included in the FPA system, the government plans to incorporate them down the track.

The FPA Bill is now awaiting its second reading. The Ministry of Business, Innovation and Employment notes on its website that the FPA Bill is anticipated to be passed later this year, with the Fair Pay Agreements System expected to commence one month after the FPA Bill has passed.

We will continue to monitor the progress of these bills and provide updates as required. If you have any questions about the application of either of these bills should they become legislation, please do not hesitate to contact us.



## ER Seminars - 2023

As a few clients have asked when we will be running our popular 2 Day Employment Relations Course in 2023 we have set the following dates:

**Wednesday 22 and Thursday 23 March 2023; or  
Tuesday 12 and Wednesday 13 September 2023**

Topics covered will include:

- Pre-employment
- Dealing with absences from the workplace
- Discipline and Termination
- Performance Management
- Holidays Act/Parental Leave
- Negotiations and Good Faith
- Redundancy and Restructuring
- Introduction to Health and Safety
- Policies/Legislative Updates

Further information in regard to the course content and registration details can be found on our website – [www.mgz.co.nz/training](http://www.mgz.co.nz/training) If you wish to enroll simply email your registration and contact details to [carey@mgz.co.nz](mailto:carey@mgz.co.nz)

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