

Employment Relations (Employee Remuneration Disclosure) Amendment Bill

Member's Bill

As reported from the Education and Workforce Committee

Commentary

Recommendation

The Education and Workforce Committee has examined the Employment Relations (Employee Remuneration Disclosure) Amendment Bill and recommends by majority that it be passed. We recommend all amendments by majority.

Introduction

The Employment Relations (Employee Remuneration Disclosure) Amendment Bill is a Member's bill in the name of Camilla Belich MP.

The bill seeks to provide protection for employees who discuss or disclose their remuneration. The bill's stated intention is to "ensure that employees can discuss and disclose their own pay rate to others without detrimental repercussions to their employment". It aims to increase transparency about pay, and allow any pay discrimination to be more easily identified and remedied.

The bill would amend the Employment Relations Act 2000. In section 103 it would include a new ground for a personal grievance: "adverse conduct for a remuneration disclosure reason". This would allow an employee to raise a complaint against their employer for adverse conduct due to the employee's disclosure of their remuneration. Examples of adverse conduct would include the employer dismissing the employee, refusing to give them the same terms, conditions, or opportunities as others, or forcing them to retire.

The bill would create a new section setting out a two-part test that must be met for a personal grievance to be established under the new ground. There must be:

- "adverse conduct" by the employer
- a "remuneration disclosure reason" for the employer engaging in such conduct.

Currently in New Zealand, an employer can require an employee to keep their pay secret if this is agreed to through an employment agreement or other type of contract or understanding. The bill would not prohibit pay secrecy clauses from being agreed to. However, where pay secrecy clauses were in place, the bill would prohibit employers from undertaking enforcement action that was deemed “adverse conduct” for a reason related to remuneration disclosure.

Our consideration of the bill

Background

This bill addresses the fact that in New Zealand some contracts may include terms prohibiting employees from discussing or disclosing their pay to third parties, including other employees of the same employer, or even family members. These terms, sometimes known as “pay secrecy” clauses, are currently permitted and may result in disciplinary action, up to and including dismissal if they are breached.

Additionally, even where there is no contractual provision, some employees may face disciplinary action when discussing their pay with others.

Other jurisdictions have addressed the issues pay secrecy clauses raise, including Australia, Ontario in Canada, the United Kingdom, at least 19 states and the District of Columbia in the USA, and the European Union whose member states will need to implement domestic legislation banning pay secrecy clauses by 2026.

This bill would ensure that employees can voluntarily discuss and disclose their own pay rate to others without detrimental repercussions to their employment. The policy statement of this bill states that it is hoped that this would then lead to greater transparency in pay and allow any pay discrimination to be more easily identified and remedied.

The member in charge of the bill advised us that the origins of this bill had arisen out of the briefing that the Education and Workforce Committee conducted into pay transparency in the 53rd Parliament. That committee drew heavily on submissions and the Pacific Pay Gap Inquiry undertaken by the New Zealand Human Rights Commission.

That committee recommended that the Government develop pay transparency measures in line with its report. That committee was supportive of a mandatory pay transparency regime for large entities in New Zealand to report the gender pay gaps and the ethnic pay gaps within their organisations. There was also strong support for reporting of disability pay gaps.

Allowing employees to discuss their pay will particularly benefit those who are impacted by gender and ethnic pay gaps. The gender pay gap in Aotearoa is 8.2 percent as of 2024, and the gap gets wider when considering ethnicity. There is also a significant pay gap for people with disabilities. Any steps taken towards pay transparency, which has proven results in reducing gender and ethnic pay gaps, will likely go towards helping to remedy this income disparity between groups.

What we heard at select committee

We thank submitters for their feedback on the bill. About 89 percent of submitters expressed support for the bill and about 4 percent opposed it, with the remainder either neutral or unclear. Submitters who supported the bill considered that greater transparency will help reduce pay gaps. They referenced international obligations and best practice, and te Tiriti o Waitangi/the Treaty of Waitangi. Submitters who opposed the bill expressed concern about workplace friction and privacy implications.

During the select committee process we heard numerous examples of issues that arise when there is secrecy around pay, and many examples of unfairness.

The majority of us consider that many of the small number of issues raised in opposition to the bill have been addressed through the agreed amendments outlined in our report, including clarifying that there is no requirement to make a disclosure, and that any pay disclosure is entirely voluntary.

Observations about the bill's objective

This bill sets out to achieve a simple objective: to allow people to talk about their own pay if they want to. It makes it safe for people to share their own information with colleagues and with family. It draws a clear line that your own pay is your own business and if you decide to share it that is your own decision. The wider objective of this bill is that allowing these conversations in homes and workplaces will more clearly show when there is unfairness in pay, so this can be addressed. Many of the submissions we heard were about people doing the same job and getting different pay for it for no justified reason. This bill does not provide a remedy for injustice, but it does allow it to be more easily identified and addressed.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Clause 5 sets out the proposed new section that would be inserted into the Act. We propose renumbering it as new section 110AB.

Adverse conduct—meaning of detriment

New section 110AB(1) sets out what constitutes “adverse conduct” for a remuneration disclosure reason. Paragraph (c) refers to the employer subjecting the employee to any “detriment” which their other employees in similar circumstances are not, or would not be, subjected to.

We note that section 110A(1) of the Employment Relations Act—relating to adverse conduct for a prohibited health and safety reason—is nearly identical to the proposed

new subsection 110AB(1). Section 110A includes a subsection defining “detriment” as including anything that has a detrimental effect on the employee’s employment, job performance, or job satisfaction.

For consistency, we consider that the new section should clarify the meaning of “detriment” as well. We recommend including the same definition in new section 110AB(6).

Definition of remuneration

The new section does not define what “remuneration” means in relation to remuneration disclosures. After discussing this matter, we consider that “remuneration” in this context should include any of the following:

- salary or wages (including payment for overtime and penal rates)
- allowances
- productivity-based, bonus, or incentive payments (including commission)
- any employer contribution to a superannuation scheme for the benefit of the employee
- any other type of payment for work.

However, we also consider that “remuneration” in this context should not include any payment or other benefit received by the employee as an owner of the business. We recommend inserting new section 110AB(6) accordingly.

Descriptions of “remuneration disclosure reason”

New section 110AB(2) sets out the situations in which remuneration disclosures by employees would be protected. We have considered the subsection and propose amending it to reflect the following three points.

Who remuneration disclosures can be made to

We propose clarifying the scope of who the employee can make disclosures to or have discussions with. We understand that the intention of the bill is to ensure that an employee can discuss their remuneration with any other person, including other employees, friends, and family. On that basis, we recommend redrafting subsection (2) to provide that an employee may discuss their remuneration with any other person, which includes the disclosure of their remuneration.

Who inquiries can be made to

Subsection (2) as introduced covers an employee inquiring about the remuneration of another employee in the workplace (whether employed by the same employer or another employer). We recommend amending the section to:

- remove the reference to “workplace” so it would cover an employee inquiring about other employees’ remuneration in other workplaces
- explicitly limit inquiries to direct inquiries to another employee about that employee’s remuneration (that is, not a third employee’s remuneration).

Employees receiving information or inquiries

In a situation where an employee discloses and discusses their own remuneration with another employee, we consider that both employees should be covered by the remuneration disclosure reason for adverse conduct by an employer. Similarly, we consider that an employee who receives an inquiry from another employee about their remuneration should also be covered by the provision. The bill as introduced could be interpreted as covering both of these situations, but we wish to make it clearer. Accordingly, we recommend inserting paragraph (c) into new section 110AB(2).

No obligation on employee to disclose remuneration

The bill as introduced would not create obligations on any party to disclose their remuneration. We consider that the bill should make this expressly clear. We recommend inserting subsection (7) into new section 110AB to specify that the new section does not require an employee to discuss their remuneration with, or disclose their remuneration to, any other person.

Transitional arrangements

The Schedule of the bill would insert new Part 7 into Schedule 1AA of the Act. New Part 7 would set out the transitional provisions for the new sections.

The bill as introduced provides that the new section would apply even if the remuneration disclosure by the employee occurred prior to the commencement of the new sections.

We consider the bill should make it clear that, while the remuneration disclosure by the employee may have occurred prior to the commencement of the new sections, the conduct by the employer that is complained of must have occurred on or after the commencement date.

We recommend amending the Schedule of the bill accordingly.

ACT New Zealand differing view

ACT does not support the Employment Relations (Employee Remuneration Disclosure) Amendment Bill as this bill introduces mechanisms that are not appropriate or necessary and will not result in delivering the intended purpose of resolving inequality.

ACT maintains that remuneration is a private matter. ACT is concerned that this bill will undermine the principle of freedom to contract. If both an employer and employee enter a contractual agreement that includes confidentiality about pay because they value it, they should be allowed to and it should be enforceable.

The current labour law framework already offers strong protection against unjustified discrimination and mistreatment. This bill will complicate workplace relations with little benefit.

Appendix

Committee process

The Employment Relations (Employee Remuneration Disclosure) Amendment Bill was referred to this committee on 6 November 2024. We invited the member in charge of the bill to provide an oral submission on the bill. She did so on 12 February 2025.

We called for submissions on the bill with a closing date of 23 January 2025. We received and considered submissions from 225 interested groups and individuals. We heard oral evidence from 16 submitters at hearings in Wellington and via videoconference.

Advice on the bill was provided by the Ministry of Business, Innovation and Employment. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Katie Nimon (Chairperson)

Carl Bates

Camilla Belich (until 12 March 2025)

Mike Butterick (until 29 January 2025)

Shanan Halbert (from 12 March 2025)

Francisco Hernandez (from 29 January 2025)

Grant McCallum

Dr Parmjeet Parmar

Hon Willow-Jean Prime (from 12 March 2025)

Hon Jan Tinetti (until 12 March 2025)

Hon Phil Twyford

Dr Vanessa Weenink (from 29 January 2025)

Dr Lawrence Xu-Nan (until 29 January 2025)

Related resources

The documents we received as advice and evidence are available on the Parliament website.

**Employment Relations (Employee Remuneration
Disclosure) Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Camilla Belich

Employment Relations (Employee Remuneration Disclosure) Amendment Bill

Member's Bill

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7	Schedule 1AA amended	4
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	New Part 7 inserted into Schedule 1AA	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Employment Relations (Employee Remuneration Disclosure) Amendment Act **2024**.

2 Commencement

This Act comes into force on the day after ~~the date on which it receives the~~ Royal assent.

Part 1**Amendments relating to employee remuneration disclosure**

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3 Principal Act

This Act amends the Employment Relations Act 2000.

4 Section 103 amended (Personal grievance)

After section 103(1)(~~k~~)(j), insert:

- (~~1~~**ja**) that the employee's employer has, in relation to the employee, engaged in adverse conduct for a remuneration disclosure reason; or

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5 ~~Section 110C~~ New section 110AB inserted (Adverse conduct for remuneration disclosure reason)

After section ~~110B~~ 110A, insert:

110C 110AB Adverse conduct for a remuneration disclosure reason

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- (1) For the purposes of **section 103(1)(~~4~~)(ja)**, an employer engages in **adverse conduct for a remuneration disclosure reason** if the employer or a representative of the employer, for a remuneration disclosure reason,—

- (a) dismisses an employee; or
- (b) refuses or omits to offer or afford to the employee the same terms of employment, conditions of work, fringe benefits, or opportunities for training, promotion, and transfer as are made available to other employees of the same or substantially similar qualifications, experience, or skills employed in the same or substantially similar circumstances; or
- (c) subjects the employee to any detriment in circumstances in which other employees employed by the employer in work of that description are not or would not be subjected to such detriment; or
- (d) retires the employee, or requires or causes the employee to retire or resign.

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- (2) For the purposes of **subsection (1)**, conduct described in that subsection is engaged in for a remuneration disclosure reason if it is engaged in because ~~an~~ employee:—

- (a) ~~inquires about the remuneration of another employee employed in the workplace (whether by the same employer, or another employer):~~

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- ~~(b) discusses, together with another employee employed in the workplace (whether by the same employer, or another employer), their remuneration;~~
- ~~(e) discloses their remuneration to any other person.~~
- (a) an employee discusses their remuneration with any other person, whether or not that includes disclosing their remuneration to that person; 5
or
- (b) an employee inquires into the remuneration of another employee, whether or not that other employee discusses or discloses their remuneration to the employee inquiring; or 10
- (c) an employee—
- (i) participates in a discussion with the employee referred to in **paragraph (a)** about that employee's remuneration; or
- (ii) receives an inquiry about their remuneration from the employee referred to in **paragraph (b)**. 15
- (3) An employer may be found to have engaged in adverse conduct for a remuneration disclosure reason only if the remuneration disclosure reason was a substantial reason for the conduct.
- (4) For the purposes of **subsection (3)**, a remuneration disclosure reason is presumed to be a substantial reason for the conduct unless the employer proves, on the balance of probabilities, that the reason was not a substantial reason for the conduct. 20
- (5) To avoid doubt, an employer also engages in adverse conduct if the employer or a representative of the employer, in relation to the employee,—
- (a) organises to take any action referred to in **subsection (1)** or threatens to organise or take that action; or 25
- (b) requests, instructs, induces, encourages, authorises, or assists another person to engage in adverse conduct for a remuneration disclosure reason;.
- (6) In this section,— 30
- detriment** includes anything that has a detrimental effect on the employee's employment, job performance, or job satisfaction
- remuneration—**
- (a) includes any of the following:
- (i) salary or wages (including payment for overtime and penal rates); 35
- (ii) allowances;
- (iii) productivity-based, bonus, or incentive payments (including commission);

- (iv) any employer contribution to a superannuation scheme for the benefit of the employee;
- (v) any other type of payment for work; but
- (b) does not include any payment or other benefit received by the employee as an owner of the business.
- (7) This section does not require an employee to discuss their remuneration with, or disclose their remuneration to, any other person.

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6 Section 111 amended (Definitions relating to personal grievances)

- (1) ~~In section 111, replace “and retaliate” with “retaliate, and adverse conduct for a remuneration disclosure reason”.~~
- (2) ~~In section 111, replace “and 110B” with “110B, and 110C”.~~
- (1) In section 111, after “adverse conduct for prohibited health and safety reason,”, insert “adverse conduct for remuneration disclosure reason,”.
- (2) In section 111, after “110A,”, insert “110AB,”.

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Part 2

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Further amendment to principal Act

7 Schedule 1AA amended

In ~~Schedule 1AA~~ Schedule 1AA,—

- (a) insert the Part set out in the ~~Schedule~~ Schedule of this Act as the last Part; and
- (b) make all necessary consequential amendments.

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Schedule
New Part 7 inserted into Schedule 1AA

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	Part 7	
	Provisions relating to Employment Relations (Employee Remuneration Disclosure) Amendment Act 2024	5
22	Application to pre-commencement remuneration disclosure Sections 103(1)(i), 110C, and 111 apply even if the remuneration disclosure occurred before the commencement of the Employment Relations (Employee Remuneration Disclosure) Amendment Act 2024.	10
23	<u>Interpretation</u> In this Part,— <u>2024 amendment Act</u> means the Employment Relations (Employee Remuneration Disclosure) Amendment Act 2024 <u>commencement date</u> means the commencement of the 2024 amendment Act.	15
24	<u>Application of sections 103(1)(ja), 110AB, and 111</u> <u>Sections 103(1)(ja), 110AB, and 111 (as amended by the 2024 amendment Act) apply to an employer’s conduct on or after the commencement date in relation to an act by an employee described in section 110AB(2) that occurs before the commencement date.</u>	20

Legislative history

20 March 2024
6 November 2024

Introduction (Bill 32–1)
First reading and referral to Education and Workforce
Committee