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# Travel Agents Association – Employment Law Changes 2025

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## Agenda

1. Contractors vs Employees – the proposed gateway test
2. Other proposed legislative changes
3. Health and safety lessons from the Whakaari White Island prosecutions
4. Protected Disclosures (Protection of Whistleblowers) Act





# Contractor Gateway Test



## Overview of the proposal

- Hon Brooke van Velden has indicated an amendment to the Employment Relations Act to provide a gateway test that businesses can use when responding to a claim that a person is an employee and not a contractor
- If the working arrangement meets the four factors, the person is considered to be a contractor
- Indicated these changes will be introduced through the Employment relations Amendment Bill in 2025





## The four criteria

1. A written agreement with the worker, specifying they are an independent contractor, and
2. The business does not restrict the worker from working for another business (including competitors), and
3. The business does not require the worker to be available to work on specific times of day or days, or for a minimum number of hours OR the worker can sub-contract the work, and
4. The business does not terminate the contract if the worker does not accept an additional task or engagement.



## What does this mean for employers?

- Will provide businesses with more certainty to proceed with business models involving contractors
- Will enable businesses to offer better terms and conditions to contractors with less concern it might impact the contractor's status
- Examine current arrangements with contractors to ensure they fit the new requirements





# Other legislative changes





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## Crimes (Theft by Employer) Amendment Act 2025

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- Change to the Crimes Act that deems employers thieves for failing to pay employees money owed to them
- Penalties:
  - For individual employers: prison term of up to one year or a fine of up to \$5,000, or both
  - Any other employer: fine up to \$30,000
- Includes unlawful withholding of wages, salaries and other monetary entitlements within an employment relationship







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## \$180,000 income threshold for unjustified dismissal claims

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### What we know:

- No Bill yet
- Employee earning above \$180,000 base salary could no longer raise a personal grievance for termination of employment
- 12-month transition period will apply to existing employment agreements





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## \$180,000 income threshold for unjustified dismissal claims

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### What would this mean for employers?

- Employees can still raise other personal grievances
- Employees can agree to add unjustified dismissal protection or negotiate their own dismissal terms



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## The 12-month transition period

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The changes won't apply to existing employment agreements until 12-months after the Bill is passed.

### **Example scenarios:**

- If an employee earning above the income threshold was dismissed during the transition period, they could still raise a claim for unjustified dismissal within the usual 90-day period.
- If an employee moved to a new employer or to a different role at the same company, the transition period would no longer apply.
- If an employee was redeployed to a new role with the same employer due to a restructure, the transition period would continue to apply.

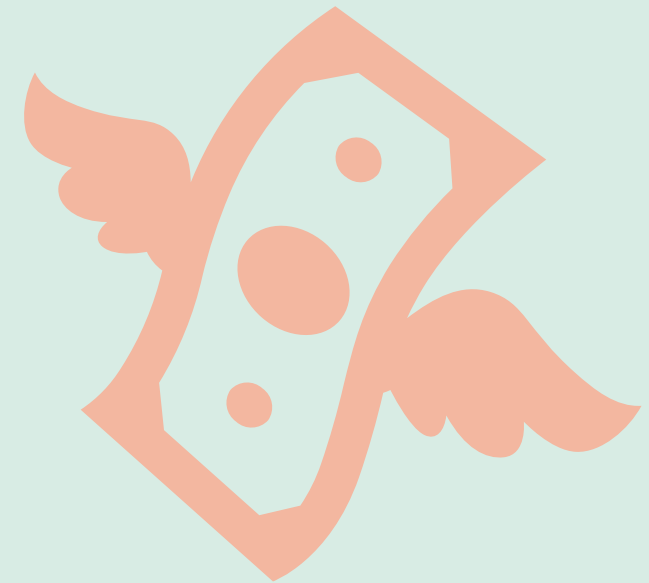


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## Employment Relations (Employee Remuneration Disclosure) Amendment Bill

### Proposed Bill

- Introduced to protect employees who discuss or disclose their remuneration
- Will allow employees to discuss their pay with others without repercussions to their employment
- Aim of the Bill is to increase transparency in pay and reduce pay discrimination

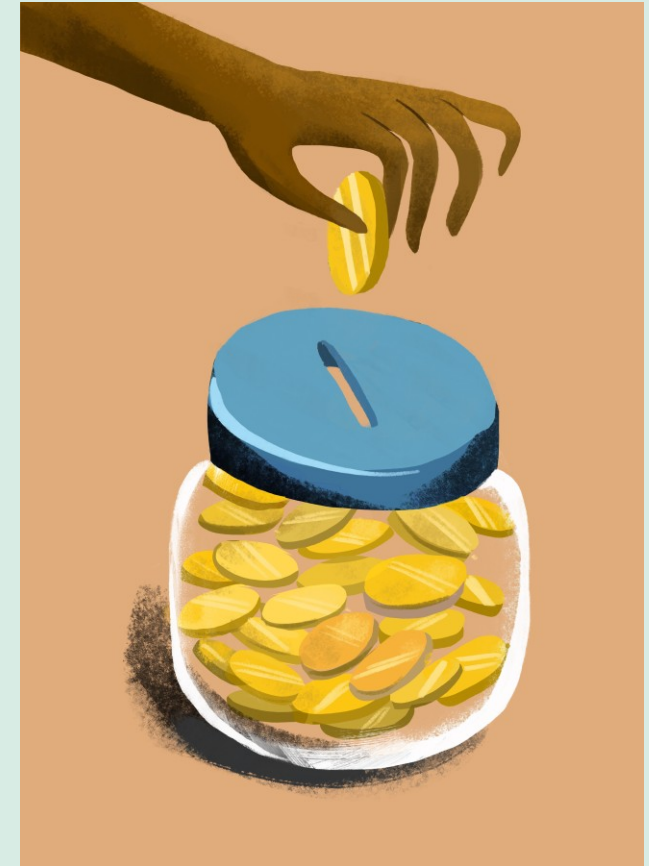




## Employment Relations (Pay Deductions for Partial Strikes) Amendment Bill

### Proposed Bill

- Currently, employers whose workers strike can either accept the partial strike or suspend or lock out employees and deduct all pay for that period as if it was a full strike.
- Would amend how employers may reduce an employee's pay in response to a partial strike:
  - Could either be done by a proportionate reduction; or
  - By deducting a fixed percentage of their pay.





## Employment Relations (Termination of Employment by Agreement) Amendment Bill

### Proposed Bill

- Will amend the ERA to allow an avenue to end employment by 'mutual consent'
- Would enable employer to offer to pay an employee with the purpose of agreeing to end their employment without the risk of a personal grievance
- 'Pre-termination negotiations' would be on a without-prejudice basis
- Has received criticism
- The Bill passed its first reading and is currently in the select committee stage





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## Changes to Employee Remedies

### Proposed amendment

- Remove an employee's right to a remedy where their behaviour constitutes serious misconduct
- Prohibit an employee from seeking reinstatement and compensation for hurt and humiliation when their behaviour has contributed to the dispute
- May be reduced by up to 100% for contributory conduct
- ERA and Court will be required to consider if employee behaviour obstructed the employer's ability to meet obligations
- Threshold for 'procedural error' will be raised where employer actions fair in the circumstances





## Changes to employers' obligations when a new employee starts work

Government removing the requirement that if an employer has workers covered by a collective employment agreement, for the first 30 days of their employment, a new employee's individual employment agreement must reflect the terms of the collective.

Employers will still need to communicate:

- an employee's right to join a union that is a party to the collective employment agreement;
- how to contact the union; and
- that if the employee joins the union, the collective agreement will bind the employee.





## Changes to the pay equity process

### Pay Equity Amendment Bill 2025

- Amends the Pay Equity Act 1972
- Passed under urgency with the support of the three coalition parties
- Discontinues all current pay equity claims and makes review clauses in settled claims unenforceable





## Changes to the pay equity process

### The changes:

- Raising the threshold of “predominantly performed by female employees” from 60% to 70% and requiring that this has been the case for at least 10 consecutive years.
- The threshold to advance a claim is higher. Applicants need to establish the claim has ‘merit’. Previously they just had to show it was ‘arguable’.
- Employers can give notice that discontinues the claim if they consider the comparator workforce selected for the claim is not appropriate. Previously, employers could only do this if they did not consider there was an arguable case the claim related to female-dominated work or had been historically undervalued.
- Amendment added that allows parties to agree any pay increases can be phased.



# Health and Safety Lessons



## Overview of the Whakaari / White Island prosecutions

- 13 defendants (including booking agents, tour companies, boating and helicopter companies) investigated by WorkSafe following the volcanic eruption that tragically killed 22 people.
- 7 of the 13 defendants found guilty of failures under the Health and Safety at Work Act 2015 (HSWA).
- One defendant left at the time of the trial – Whakaari Management Limited. WML granted access to Whakaari and managed licences with tour operators.
- In the District Court, WML convicted of charge under s 37 of the HSWA. Charge under s 36 HSWA dismissed.
- Appealed to the High Court.



## High Court decision

- High Court held that WML did not manage or control the workplace in which the walking tours took place.
- Therefore, no duty under s 37 of the HSWA.
- Even if WML did have a duty under s 37, it did not breach that duty because:
  - It required operators to be aware of the risks, including by obtaining their own independent advice.
  - It was not reasonably practicable for it to have undertaken its own risk assessment or to have taken further steps which would have been identified in a further risk assessment.







## Key takeaways for employers



- Owning land does not automatically give someone a duty under section 37 of the HSWA.
- To have a duty under section 37, a landowner must have active, practical control over the workplace.
- Passive landowners will have limited exposure to health and safety liability.





# **Protected Disclosures (Protection of Whistleblowers) Act 2022**



## Overview of the Act

- Provides an employee making a protected disclosure with protection from retaliation
- A protected disclosure cannot be made in bad faith
- Must be done in line with workplace policies
- Can be made to the employer or an appropriate authority
- If an employer takes action, an employee can raise a personal grievance





## What makes a complaint a protected disclosure?



A disclosure of information is a protected disclosure if the discloser –

- Believes on reasonable grounds that there is, or has been, serious wrongdoing in or by the discloser's organisation; and
- Discloses information about that in accordance with the Act; and
- Does not disclose it in bad faith.

Just because the complainant doesn't cite the Act when making the complaint that does not mean it is not a protected disclosure.



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## What to do if you receive a protected disclosure

### **Within 20 days:**

1. Acknowledge receipt
2. Consider the disclosure and whether it warrants investigation
3. Check with the discloser whether the disclosure has been made elsewhere (and any outcome)
4. Deal with the matter by doing one or more of the following:
  - a) Investigating
  - b) Addressing any serious wrongdoing by acting or recommending action
  - c) Referring the disclosure
  - d) Deciding that no action is required
5. Inform the discloser about what you are doing to deal with the matter.



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## *Bowen v Bank of New Zealand*

### **Facts:**

- Ms Bowen made a complaint about the conduct of various employees within BNZ.
- Following her complaint, BNZ proposed a restructure where her role would be disestablished.
- Ms Bowen raised a PG for unjustified disadvantage alleging that the restructure was motivated by retaliation for her first complaint.
- Ms Bowen made a second complaint about IWV's business conduct.
- An independent investigator was appointed to investigate the complaints. Following the investigation, the BNZ recommenced the restructure proposal and Ms Bowen's employment was terminated for redundancy.
- She then pursued PGs against BNZ for unjustified disadvantages and unjustified dismissal.



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## *Bowen v Bank of New Zealand*

### **The Authority held:**

- Ms Bowen's first and second complaints were protected disclosures. BNZ's internal procedures were confusing but the complaints complied with section 6 of the Protected Disclosures Act 2000.
- Ms Bowen succeeded in her PGs for unjustified disadvantage and unjustified dismissal. BNZ's proposed disestablishment of Ms Bowen's role following her complaint was retaliatory and there was no commercial basis for the restructure.
- Decision to recommence the proposed restructure following investigation was not retaliatory. However, that did not mean that Ms Bowen's dismissal was justified. She also succeeded in her unjustified dismissal grievance.



# Questions?





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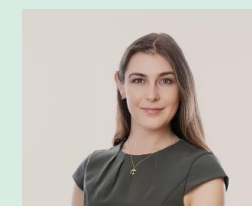
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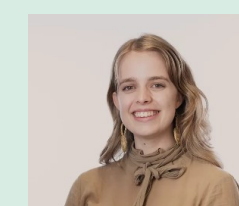
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