

# Employment Relations (Employee Remuneration Disclosure) Amendment Bill

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Submission of the New Zealand Law Society Te Kāhui  
Ture o Aotearoa

13 January 2025

## 1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Employment Relations (Employee Remuneration Disclosure) Amendment Bill (**Bill**), which amends the Employment Relations Act 2000 (**Act**).
- 1.2 This submission does not comment on the underlying policy to protect employees who discuss or disclose their remuneration;<sup>1</sup> it offers feedback on the drafting and the structure of the Bill in order to improve the clarity of the legislation.
- 1.3 This submission has been prepared with input from the Law Society's Employment Law Committee.<sup>2</sup>
- 1.4 The Law Society does not wish to be heard.

## 2 The scope and reasons for disclosure under new section 110C

- 2.1 New section 110C, as currently drafted, would prohibit any kind of adverse conduct in relation to a disclosure to *any* person, either inside or outside of the organisation. This appears to be without reference to the reason why the disclosure was made. As a result, an employer would have no ability to take any disciplinary action against an employee who discloses their remuneration in bad faith (for example, to a competitor, with intent to harm the current employer).
- 2.2 We invite the select committee to consider whether this is intended to be the effect of the Bill.

## 3 Improvements to new section 110C(2)(a)

- 3.1 The Law Society makes the following suggestions to improve the clarity of new section 110C(2), which prohibits employers from engaging in 'adverse conduct for a remuneration disclosure reason' where an employee:
  - (a) inquires about the remuneration of another employee employed in the workplace;
  - (b) discusses, together with another employee employed in the workplace (whether by the same employer, or another employer), their remuneration; or
  - (c) discloses their remuneration to any other person.

### *The meaning of 'remuneration'*

- 3.2 The scope of the term 'remuneration' in this section is ambiguous. That term is not defined in the Act, and as a result, it is unclear whether 'remuneration' is limited to the amount the employee receives in wages or salary, or whether it extends to (for example):
  - (a) the contractual terms governing the employee's remuneration;

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<sup>1</sup> Explanatory Note of the Bill.

<sup>2</sup> More information about this committee is available on the Law Society's website: <https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/employment-law-committee/>.

- (b) any policies and/or terms governing bonus schemes or employee share schemes; and
- (c) salary bands or other provisions in employment agreements.

3.3 Clarity on this point may be beneficial, as there may be arguments in favour of enabling employers to protect the confidentiality of some of these types of information.

*Meaning of 'workplace'*

3.4 The references in new sections 110C(2)(a) and (b) to inquiries or discussions 'in the workplace' limit the protections in the Bill to inquiries or discussions which occur in 'a place where an employee works from time to time', including 'a place where an employee goes to do work'.<sup>3</sup>

3.5 We query whether this is the intention of the Bill, and whether the protections in the Bill should instead apply (for example) to inquiries or discussions between two employees who are employed by the same employer. This would extend the protections in the Bill to inquiries and discussions between employees who work in different workplaces for the same employer (for example, in company groups, or in an organisation with multiple offices or branches across the country).

*Inquiries about the remuneration of another employee*

3.6 It would be helpful to clarify whether the intention of new section 110C(2)(a) is to provide protection to an employee when they make 'inquiries about the remuneration of another employee employed in the workplace' to the relevant 'other employee' themselves, rather than extending to circumstances where Employee A makes inquiries of Employee B about the remuneration of Employee C.



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**Vice-President**

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<sup>3</sup> This is the definition of 'workplace' in section 5 of the Act.