

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

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

21 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 (Pay Deductions for Partial Strikes) Amendment Bill (**Bill**), which seeks to enable employers to make pay deductions in response to partial strikes.
- 1.2 This submission has been prepared with input from the Law Society's Employment Law Committee.<sup>1</sup>
- 1.3 The Law Society does not wish to be heard in relation to this submission.

## 2 Meaning of 'partial strike' (new section 82AA)

- 2.1 Clause 5 of the Bill inserts new section 82AA, which defines the term 'partial strike'. While this definition includes a 'partial discontinuance of work' as well as a 'reduction in the employees' normal performance of work, normal output, or normal rate of work', it does not refer to or include a reduction in the employee's *hours* of work.
- 2.2 As currently drafted, the Bill leaves open the possibility for employees to argue that they are not participating in a partial strike because there has not been any reduction in their normal performance of work or normal output even though there was a reduction in their hours of work (for example, by asserting that they worked faster at other times outside the partial strike period in order to achieve the same output). We therefore recommend amending the definition of 'partial strike' as follows (amendments in red font):

**partial strike—**

(a) means an act of the employees who are a party to a strike in continuing to perform some work for their employer or employers during the strike instead of wholly discontinuing their employment during the strike, and includes, without limitation,—

(i) a partial discontinuance of work through a refusal or failure to accept engagement for work that forms part of the employees' normal duties:

(ii) a reduction in the employees' **normal hours of work**, normal performance of work, normal output, or normal rate of work:

(b) means an act of the employees who are a party to a strike in breaking their employment agreement, whether or not the act involves any reduction in the employees' **normal hours of work**, normal duties, normal performance of work, normal output, or normal rate of work

- 2.3 We also note that subsection (a)(i) of this definition only refers to the discontinuance of work through a refusal or failure to 'accept engagement for work'. This narrow wording fails to include circumstances where the employee refuses or fails to undertake work which already forms part of the employee's normal duties. We therefore recommend amending subsection (a)(i) as follows (amendments in red font):

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<sup>1</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/>.

(i) a partial discontinuance of work through a refusal or failure **to undertake work or** to accept engagement for work that forms part of the employees' normal duties

2.4 We acknowledge that the circumstances set out in subsections (a)(i) and (ii) are only provided as examples, and are not intended to limit the definition of 'partial strike' to those circumstances. However, the amendments we have recommended above will improve the clarity of the Bill and provide more certainty as to what constitutes a partial strike.

### 3 Partial strikes which take place without notice

3.1 The Bill appears to be premised on employees participating in partial strikes after giving notice in accordance with the requirements in Part 8 of the Employment Relations Act 2000 (**Act**). It does not take into account circumstances where employees participate in a partial strike *without* notice. This gives rise to some issues which are discussed below.

#### *Requirement to give notice of specified pay deduction (new section 95B)*

3.2 New section 95B(1) in clause 6 of the Bill requires an employer to give notice to an employee if the employer intends to make a specified pay deduction in relation to a partial strike. However, subsection (2) provides that such notice may be given only if the employer has received notice of the partial strike in accordance with Part 8 of the Act. Therefore, this subsection effectively prevents an employer from giving notice of their intention to make a pay deduction (and, as a result, making a pay deduction) in circumstances where an employee participates in a partial strike without giving notice in accordance with Part 8 of the Act.

3.3 This could create an incentive for employees to go on partial strikes without giving notice in order to prevent their employers from making specified pay deductions. This appears to be an unintended consequence of the Bill, and we invite the select committee to consider whether new section 95B should be redrafted in order to enable employers to give notice of their intention to make a specified pay deduction even where the employer has not received notice of the partial strike.

3.4 We also note that the language currently used in sections 95B(1) and (2) appears to be inconsistent: subsection (1) states 'the employer *must* give notice' of their intention to make pay deductions, whereas subsection (2) states 'a notice under subsection (1) *may* be given...'. The use of the word 'may' in subsection (2) suggests it is not a mandatory requirement for employers to give notice of their intention to make pay deductions even where they have received notice of the partial strike. If the above recommendation to redraft new section 95B is not accepted, we suggest redrafting subsection (2) to state that 'a notice under subsection (1) is required only if the employer has received notice...'

#### *Identifying the work which will not be performed because of the strike (new section 95C)*

3.5 New section 95C in clause 6 of the Bill sets out how an employer must calculate the amount of a specified pay deduction for a partial strike. Subsections (1)(b) and (3) require employers to identify the work which will not be performed by its employee(s)

because of the partial strike, as well as the period of the partial strike, by reference to information contained in the relevant strike notice.

- 3.6 Where a partial strike occurs without notice, the Bill does not provide any alternative means for employers to determine the period of the partial strike or the work which will not be performed because of the partial strike. We invite the select committee to consider how these matters should be dealt with in circumstances where employees do not give notice of the partial strike, and to make necessary changes to the Bill.

#### 4 Calculation of the specified pay deduction (new section 95C)

- 4.1 New section 95C(1) provides the method of calculating the specified pay deduction with reference to the employee's 'usual hours of work'. The term 'usual hours of work' is not defined in section 5 (interpretation) nor Part 8 of the Act (strikes and lockouts). While an employee's usual hours can be more readily identified where they are required to work a set number of hours each day/week, it can be difficult to identify usual hours where an employee is routinely required to work certain hours or shifts with little advance notice.
- 4.2 We invite the select committee to consider whether further guidance could be provided to assist employers with determining an employee's usual hours of work in such circumstances.



David Campbell  
**Vice-President**