

29 August 2025

Hon Judith Collins KC
Attorney-General

By email: J.Collins@ministers.govt.nz

Tēnā koe Minister,

Re: Comments regarding recent appointments to the Employment Relations Authority

I am writing to you about recent comments made by the Minister for Workplace Relations and Safety, Hon Brooke van Velden (**Minister**), about the appointment of four new members to the Employment Relations Authority.

It has been reported that the Minister has said she hopes these new appointments “will lead to it lending a more sympathetic ear to business”, and “lead to smaller awards against businesses”.¹ The Law Society is concerned these comments undermine the rule of law – in particular, the requirements under the rule of law that:

- both employers and employees must have the opportunity to have their employment problem determined by fair and independent Authority members, in accordance with applicable legal frameworks; and
- Cabinet Ministers, who are members of the Executive, should not interfere in, or comment on the outcomes of, judicial proceedings.

Potential impacts on fair and independent proceedings

The rule of law requires there to be avenues for resolving disputes between parties in accordance with the law and the principles of natural justice. This means Authority members must be empowered to determine employment relationship problems:

- as contemplated in the Employment Relations Act 2000, which requires Authority members to establish facts and make determinations according to the substantial merits of each case in an impartial manner;² and
- in a way that is unbiased and free from Ministerial or other external influences.

The Law Society is concerned the Minister’s comments suggest that she expects the new Authority members to make determinations that are more favourable to employers (for example, by making smaller awards against businesses), regardless of the facts of each case. These

¹ Dileepa Fonseka “Workplace Minister Brooke van Velden hopes new ERA appointees will reduce business awards” (online ed, *BusinessDesk*, 21 August 2025), available here: <https://businessdesk.co.nz/article/law-regulation/workplace-minister-brooke-van-velden-hopes-new-era-appointees-will-reduce-business-awards>.

² Employment Relations Act 2000, ss 157 and 168.

concerns are heightened by the fact that the Minister can recommend extending those members' appointments for a further term,³ which means members who wish to be reappointed for a further term may be discouraged from making determinations which do not align with the Minister's expectations around determinations that are "more sympathetic" to businesses.

If that were to occur, it would call into question the Authority's independence, and its ability to make determinations in the manner prescribed in the Employment Relations Act, and according to the principles of natural justice. Even if the Minister's comments do not ultimately influence determinations made by Authority members (and we anticipate this is likely to be the case), her comments create the perception that she is *attempting* to influence the outcomes of Authority proceedings. These perceptions can reduce the public's trust and confidence in both the Minister and the Authority, and in New Zealand's adherence to the rule of law.

Low trust and confidence in Authority decisions could also lead to more appeals to the Employment Court – without additional resources, these could create delays and backlogs in the court system, and impose further costs on both employees and employers.

Interference in judicial proceedings

The separation of powers is a core tenet of the rule of law which ensures that those responsible for making laws cannot direct how those laws will be enforced. It requires the three arms of the State — the legislature, Executive, and judiciary — to act independently of one another, and to avoid assuming each other's functions.

While Authority members are not members of the judiciary, the Employment Relations Act expressly recognises that Authority proceedings are judicial proceedings.⁴ The separation of powers between the Executive and the judiciary therefore extends to the Authority and its members and proceedings. This means Ministers (and other members of the Executive) should not attempt to influence or interfere in Authority proceedings and outcomes; doing so risks blurring the separation of powers between the Executive and the judiciary, and weakening the rule of law.

If different outcomes (such as smaller awards against employers) are deemed desirable, the appropriate way to achieve those outcomes would be to amend the law following proper policymaking and legislative processes, rather than setting expectations of members involved in judicial processes.

We are raising these concerns with you because, as Senior Law Officer, you are responsible for addressing conduct by Cabinet members which could undermine the rule of law,⁵ and we know it is a responsibility you take seriously. We ask that you discuss these matters with Minister van Velden, and remind all Cabinet Ministers of their obligations under the *Cabinet Manual 2023* and the rule of law.

³ Employment Relations Act 2000, s 167.

⁴ Employment Relations Act 2000, s 176(2).

⁵ Cabinet Office *Cabinet Manual 2023* at [4.3].

I am available to answer any questions or discuss this further: please feel free to contact me via the Law Society's Senior Law Reform & Advocacy Advisor, Nilu Ariyaratne (nilu.ariyaratne@lawsociety.org.nz).

Nāku noa, nā

A handwritten signature in black ink, appearing to read 'Frazer Barton'.

Frazer Barton
President