Fineprint | ISSUE 97
Winter 2025

Employment law reform in 2025

Employment law continues to evolve, with several changes, or proposed changes, introduced by the government in recent months. The changes are widespread across the employment law spectrum, and it will be important for both employers and employees to be across them.

Theft by an employer

The Crimes (Theft by an Employer) Amendment Bill came into effect on 13 March 2025. Amending the Crimes Act 1961, it now states an employer will commit theft if they intentionally fail, without reasonable excuse, to pay money owed to an employee under their employment agreement and/or statutory obligations. This includes all remuneration entitlements during the notice period and any outstanding holiday pay when they leave their employment.

Whilst this does not change employer obligations, it increases their potential vulnerability to criminal prosecution if money is withheld.

If employers are found guilty of theft under this new law, they can be liable:

+ For individual employers, for a fine of $5,000, up to one year's imprisonment, or both, or
+ For corporate employers, a maximum fine of $30,000.

Equal Pay Amendment Act

On 14 May 2025, the government amended, under urgency, the Equal Pay Act 1972; this was originally implemented to promote gender pay equity by ensuring that employees received equal pay for work of equal or comparable value.

These amendments increased the threshold for what is required to raise a claim under the Act and discontinue current pay equity claims.

Pay deductions for partial strikes

On 25 June 2025, the Employment Relations (Pay Deductions for Partial Strikes) Amendment Bill was passed.

Partial strikes are a common bargaining tool used by employees in negotiations with their employer; employees report to work but reduce their usual outputs or breach their employment agreement in some way. This legislation has reintroduced the ability to make pay deductions from an employee who is involved in a partial strike.

The specified pay deduction can be calculated by either:

+ Calculating the percentage of reduction in work rate resulting from the strike, or
+ Applying a 10% deduction.

The deduction will only apply to the time period an employee took part in a partial strike (notice to an employee would be required before the deduction is made). An employee's remuneration for that period will not be subject to statutory minimum wage requirements.

There is an exception to this where an employee has reasonable grounds for believing the strike is justified on the grounds of health and safety under s84 of the Employment Relations Act 2000.

In this issue +

1 Employment law reform in 2025
3 The Ombudsman – Who is this?
4 Surrogacy in New Zealand – A complex and evolving area of law
5 Consumer Data Right – The age of open banking and beyond
6 Postscript

CRUICKSHANK PRYDE LAWYERS

Termination of employment by agreement proposal

The Employment Relations Act 2000 (ERA) currently states that an employee can only be dismissed if there is a good reason to do so (justification), and a fair and proper process is followed.

The Employment Relations (Termination of Employment by Agreement) Amendment Bill would allow an offer to be made to an employee to mutually terminate their employment by paying a specified sum to them by way of settlement. This change would allow greater freedom for parties to negotiate exits without the risk of a personal grievance claim arising from the termination offer.

Employee remuneration disclosure

The ERA currently allows employers to include provisions that prevent their employees from disclosing, or discussing, their remuneration with colleagues or third parties. Under this proposed legislation employees would not be required to keep their remuneration details confidential.

The Employment Relations (Employee Remuneration Disclosure) Amendment Bill sets out that employees will have grounds for a personal grievance under s103 of the ERA, if an employer has engaged in adverse conduct for a remuneration disclosure reason. The intent behind the Bill is to increase pay transparency, and with the hope of addressing pay inequities.

Unjustified dismissal regime

The government announced on 17 June 2025 the introduction of the Employment Relations Amendment Bill. The bill proposes that employees who earn $180,000 per annum or more (in base pay) will be prevented from raising a personal grievance for unjustified dismissal. This threshold aligns with the top tax bracket and is said to affect about 3.4% of the current workforce. The threshold would subsequently be adjusted annually to reflect the CPI.

Under this proposed legislation, an employee earning above the specified income threshold could be dismissed without the risk of an unjustified dismissal claim – unless their employment agreement explicitly preserves this right. This change will apply to all new employees and, after a 12-month transition period, to all employees.

If this bill is passed, we expect more senior employees to negotiate compensation provisions in their employment agreements in the event of termination.

Personal grievance remedies reduction

The ERA currently requires an employee's conduct to be considered when the authority or court awards remedies for successful personal grievances (PG). However, the Employment Relations Amendment Bill introduced on 17 June, gives greater weight to an employee's behaviour by:

+ Removing an employee's eligibility for remedies for a PG if their behaviour amounts to serious misconduct
+ Removing an employee's ability to apply for reinstatement or compensation (other than lost wages) if their behaviour contributed to the issue giving rise to the PG
+ Allowing courts and tribunals to reduce awards entirely
+ As part of the potential awarding of remedies, considering whether an employee delayed the disciplinary process, and
+ Removing employer penalties for minor flaws in the disciplinary process if all other conduct was fair and reasonable.

Review of health and safety

In 2024 the government undertook a consultation aimed at understanding how the current health and safety legislation works. In response, the following changes have been proposed:

+ An exemption for small, 'low risk' businesses from some general Health and Safety at Work Act 2015 (HSWA) requirements. These businesses will only have to manage critical risks and provide basic facilities to ensure worker welfare
+ Landowners will not be responsible if someone is injured on their land while doing recreational activities. These responsibilities will lie with the organisation that is running the activity
+ Addressing overlapping health and safety duties by clarifying boundaries between the HSWA and regulatory systems that manage the same risk
+ Amending the notification requirements, so that only significant workplace events are reported, and
+ Clarifying the distinction between governance and management's role in managing health and safety risks, ie: the board leaving the day-to-day management of risks to management.

Additional proposed changes to note

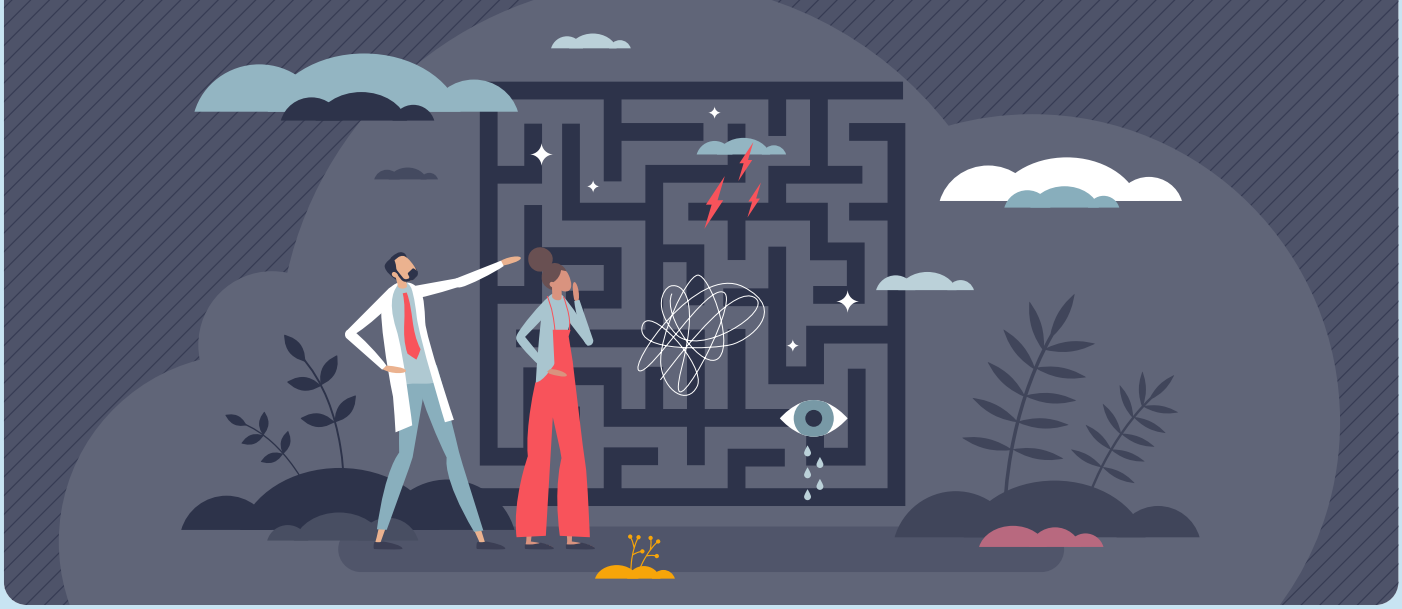
The Employment Relations (Restraint of Trade) Amendment Bill is awaiting its second reading. This bill seeks to limit circumstances where restraint of trade provisions can be enforced by having an income threshold, requiring compensation for the period of the restraint and ensuring they are reasonable.

The Employment Relations Amendment Bill introduced on 17 June 2025, included the long awaited 'gateway test' to be used when determining whether a worker is a contractor. For clarification on this proposed test, please get in contact with us.

Wide impact

There will be few employers and employees who are not impacted by the proposed changes; these will require employment agreements to be reviewed, change the way employment relationships are terminated and result in a different focus in personal grievance disputes.

We are happy to advise on how to work your way through the impacts of both the proposed changes and the recently passed legislation. +



The Ombudsman

Who is this?

Have you ever felt as though you've tried every avenue to resolve a battle with bureaucracy and got nowhere? The Office of the Ombudsman is an option you could consider.

The Ombudsman's role

The Ombudsman is a concept that originated in Scandinavia. The word itself is loosely translated to mean 'grievance person.' The role was introduced to New Zealand in 1962. Despite the title 'Ombudsman', it is not a role reserved for men; one woman (Beverley Wakem) held the office from 2008-15. The current Ombudsman is newly-appointed John Allen.

The Ombudsman is appointed by the Governor-General on the recommendation of Parliament. The Ombudsman is independent of the government; it is an integral part of our public law framework. The service is free.

The Office of the Ombudsman investigates complaints from members of the public about the decisions or conduct of government agencies, local councils, regional authorities and other public bodies, including school boards of trustees.

The Ombudsman has other powers including inspecting places such as prisons, secure aged care facilities and Oranga Tamariki residences.

Process

The Ombudsman does not need lengthy letters and information to help resolve complaints. In fact, succinct complaints are encouraged. A straightforward letter giving a brief overview of the matter and efforts to resolve the issue is acceptable. Supporting documents are useful and should be included as it can help the enquiry process.

Before you make a complaint to the Ombudsman, however, you must try and resolve the issue with the agency concerned. The Ombudsman can refuse to investigate a complaint unless this option has been explored.

On receiving a complaint the Ombudsman reviews it and decides if the matter will be taken further, and then will conduct an investigation. Any investigation can be wide-ranging.

The Ombudsman is also the body to investigate complaints regarding the refusal of a government agency to release official information.

Powers of Ombudsman

While the Ombudsman cannot reverse a decision that has been made, the Ombudsman can make findings on the fairness of the process.

Recommendations are often made for future situations; these are likely to be published on the Ombudsman's website. The Ombudsman can also investigate situations where an agency has failed to do something it should have.

The Ombudsman can also decide to investigate an issue on its own initiative.

Recent case

Decisions made by school boards can be investigated by the Ombudsman. The example below highlights the ability of the Ombudsman to scrutinise process – an integral part of our democratic system.

In a case note issued in 2024, a school board of trustees excluded a student who admitted bringing marijuana to school. The student was suspended by the principal and later excluded by the board that determined that the student's behaviour was gross misconduct. The board was concerned about the impact on other students and the reputation of the school. The student's parents complained to the board and then the Ombudsman. The Ombudsman decided that the board's decision to exclude the student was unreasonable.

Restrictions

The Ombudsman will not investigate when there is a specific body set up to review processes, for example, the ACC Tribunal (any accident compensation complaint must go through the tribunal). It cannot investigate complaints about private individuals, companies and incorporated societies, nor can it review the decision of a court or judicial body.

The Office of the Ombudsman has scope to investigate a range of issues. If you believe you've been treated unfairly by a government agency, lodging a complaint with the Ombudsman is worth considering. +

Surrogacy in New Zealand

A complex and evolving area of law

For many of us, having a baby is relatively straightforward. For some, however, the road to parenthood is marked with U-turns, blind alleys, stop/go and much more. In the last few years, surrogacy has become an option for people for whom parenthood is not a straight path. And it's all embedded in a legal framework.

In this country, surrogacy is a complex and evolving area of law, shaped by a combination of outdated statutes, modern reproductive technologies and ongoing legislative reform.

Legal framework

Surrogacy arrangements in New Zealand are legal, but is strictly regulated. The key, and very out-of-date, statutes governing surrogacy include the Human Assisted Reproductive Technology Act 2004, the Status of Children Act 1969 and the Adoption Act 1955. It's worth noting that commercial surrogacy is prohibited — only altruistic arrangements are allowed – there can be no fee involved. The intended parents may only reimburse their surrogate for reasonable expenses, not pay for their services.

Under current law, the woman who gives birth to the child (the surrogate) and her partner (if she has one and they consent) are the legal parents at the birth of the child, regardless of genetic connection. The intended parents, even if they are genetically related to the expected child, have no legal parental rights until they complete an adoption process through the Family Court.

Intended parents can be married, a de facto couple, same sex couple or single female applicant. There is a restriction on a single male applicant adopting a child unless there are special circumstances.

Surrogacy arrangements

Surrogacy agreements are not legally enforceable in New Zealand. This means that if a surrogate mother changes her mind and wishes to keep the child, the intended parents have no legal recourse to enforce the agreement.

We would strongly advise all parties to seek independent legal advice before entering any surrogacy arrangement. Intending parents of the child are required to obtain a report confirming they have received legal advice before they start the surrogacy process.

IVF and ECART approval

Where surrogacy involves in vitro fertilisation (IVF), the arrangement must be approved by the Ethics Committee on Assisted Reproductive Technology (ECART). This process includes medical, psychological and legal counselling for all parties, and an assessment and approval of the intended parents' suitability to adopt. The intended parents also require consent from Oranga Tamariki.

Adoption process

After the child is born, the baby can be in the care of the intended parents with the birth mother's consent and subject to placement consent by Oranga Tamariki.

The surrogate, and any partner, must register the birth promptly, and then at least 10 days after the date of the birth, receive legal advice and sign a consent to the adoption.

The intended parents must apply to the Family Court for an adoption order even if one or both of them are the genetic parents of the child. The court process involves a social worker's report and a judicial determination that the adoption is in the child's best interests. Only after the adoption order is granted do the intended parents become the child's legal parents, and a new birth certificate is issued.

International surrogacy

International surrogacy arrangements present significant legal and practical challenges, and there are international legal requirements to meet. Specialist legal advice is required for these.

Law reform on the horizon

The current legal framework is widely regarded as outdated and unfit for modern surrogacy arrangements. The Improving Arrangements for Surrogacy Bill, introduced in 2022, aims to simplify the process, provide for parentage orders (rather than requiring adoption), and ensure that all parties' rights and interests (including, importantly, those of the child) are better protected. This bill is currently at Select Committee stage.

If you want to know more about how surrogacy could work for your situation, please don't hesitate to contact us. We are here to help. +

Consumer Data Right

The age of open banking and beyond

Every day, banks and electricity providers collect vast amounts of data about us. Although this data serves these businesses exceptionally well, its utility extends far beyond their immediate uses. Yet, our ability to share and integrate this data with third parties has been limited – until now.

The Consumer Data Right (CDR) was established on 31 March 2025 under the Consumer and Product Data Act 2025. It is a framework for consumers to securely and efficiently access and share their data with trusted third parties. The CDR aims to bolster an individual's control over their data as well as to increase competition and innovation across various industries.

Sector-by-sector approach

Not all sectors will be subject to the CDR. Instead, sectors will be designated individually. Banking is scheduled to become the first designated sector, with regulations for the four largest banks (ANZ, Westpac, BNZ and ASB) expected to come into effect by the end of 2025. Discussions are also underway to expand the CDR to the electricity, telecommunications and insurance sectors.

How it works

Once sector-specific regulations are in place, individuals may request the transfer of their data to accredited third parties under this framework. It even allows these accredited third parties to make such requests on behalf of the customer (with their authorisation). Businesses that come under this scheme are obligated to fulfil these requests. This includes providing access to some of their own product-related data and performing certain requested actions, such as closing accounts.

Preparing for accreditation

Accredited third parties must meet strict security requirements set by the Ministry of Business, Innovation, and Employment (MBIE). MBIE's accreditation process is expected to include information security standards and data storage protocols. Businesses seeking accreditation as third parties within these sectors should begin assessing their security policies and data-handling practices while we wait for further direction.

Impact on businesses and consumers

Historically, access to this data has been in formats and mediums that are not portable. By ensuring that accredited third parties can directly obtain data that is readily integrated with their own services, it is hoped that the CDR will create a seamless experience for us – the customer.

With respect to the banking sector, the CDR could streamline moving banks, allow mortgage brokers to find better lending terms, and foster new and innovative services around budgeting or financial planning.

We will have to wait for the roll-out of these sector-specific regulations to get the full details as to how the CDR will work in practice. As regulations begin to roll out, businesses and consumers alike will need to stay informed about their rights and responsibilities under this transformative legislation. +

Postscript

Incorporated Societies must re-register by 5 April 2026

Time is getting tight for organisations to start the re-registration process to continue operating as an incorporated society.

Under the Incorporated Societies Act 2022, you must re-register by 5 April 2026, otherwise your organisation will automatically cease to exist. A winding up application to be dissolved or liquidation are the choices if you don't want your incorporated society to live longer than 5 April next year.

If you haven't started the re-registration process, time is of the essence. There is a very helpful website: **www.is-register.companiesoffice.govt.nz** If you would like some advice on the process, or anything else related to your organisation, please don't hesitate to contact us. +

eInvoicing

Many small to medium sized businesses are now using eInvoicing to bill their clients or customers. It's straightforward, easy to use, saves time and helps reduce the risk of fraud - invoices go straight from your office to your client's inbox.

If you're already using Xero Business or MYOB Business, then eInvoicing is part of the features you will already have on your desktop.

To know more about how eInvoicing can benefit your business, go here: **www.einvoicing.govt.nz +**

CRUICKSHANK PRYDE LAWYERS

www.cplaw.co.nz

PARTNERS
Rex Chapman
John Pringle
Keith Brown
Phil McDonald
Sarah Maguire
Hilary Copland
Nic Popham
Victoria Tremaine

CONSULTANT
Murray Little

GENERAL MANAGER
Lynley Price

Level 1, 20 Don Street
PO Box 857
Invercargill 9840
Phone: 03-214 4069

Level 1
311 Hawthorne Drive
PO Box 91168
Wakatipu, Queenstown 9349
Phone: 03-441 2424

BANNERMAN CRUICKSHANK PRYDE
5 Fairfield Street
PO Box 185
Gore 9740
Phone: 03-209 0183

Web: www.cplaw.co.nz
Email: office@cplaw.co.nz

Fineprint is printed on Advance Laser Offset, a paper produced using farmed eucalyptus trees and pulp from Well Managed Forests – manufactured in an ISO14001 and ISO9001 accredited mill.

 ISSN 1174-2658 (Print) ISSN 2744-3973 (Online)