



Employment Law Update

What is in the Pipeline for 2026



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Overview

- Employment Relations Amendment Act
 - Contractor or Employee?
 - Dismissing high income earners
 - Removal of the 30 day rule
 - Change to remedies
- Without Prejudice Conversations
- Holidays Act Reform
- Health and Safety Reforms
- Other notable changes



Employment Relations Amendment Act



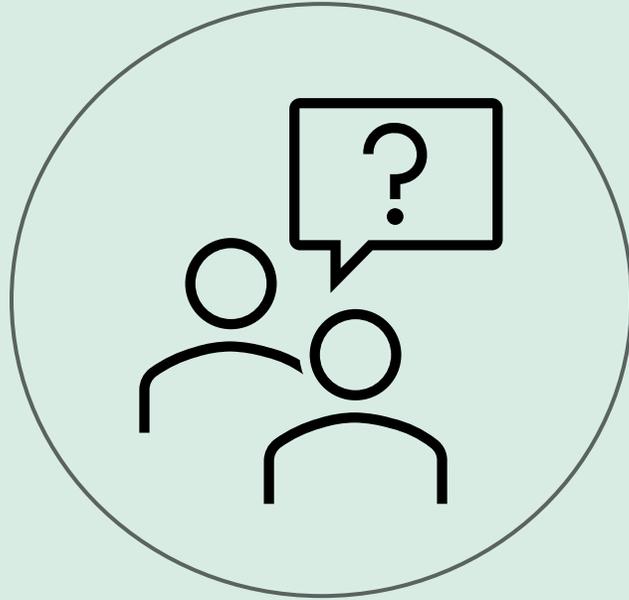
Employment Relations Amendment Act 2025

- Introduced in June 2025, the Employment Relations Amendment came into force on 21 February 2026.

Overview

The Bill is intended to increase labour market flexibility and make four key changes:

- More certainty around whether a worker is classified as an employee or a contractor.
- Stronger consideration of employee behaviour and accountability within the personal grievance process.
- Salary threshold for unjustified dismissal personal grievances.
- Removal of the 30-day rule requiring new employees to be employed on collective agreement terms.



Contractor or Employee?

Employment Relations Amendment Act



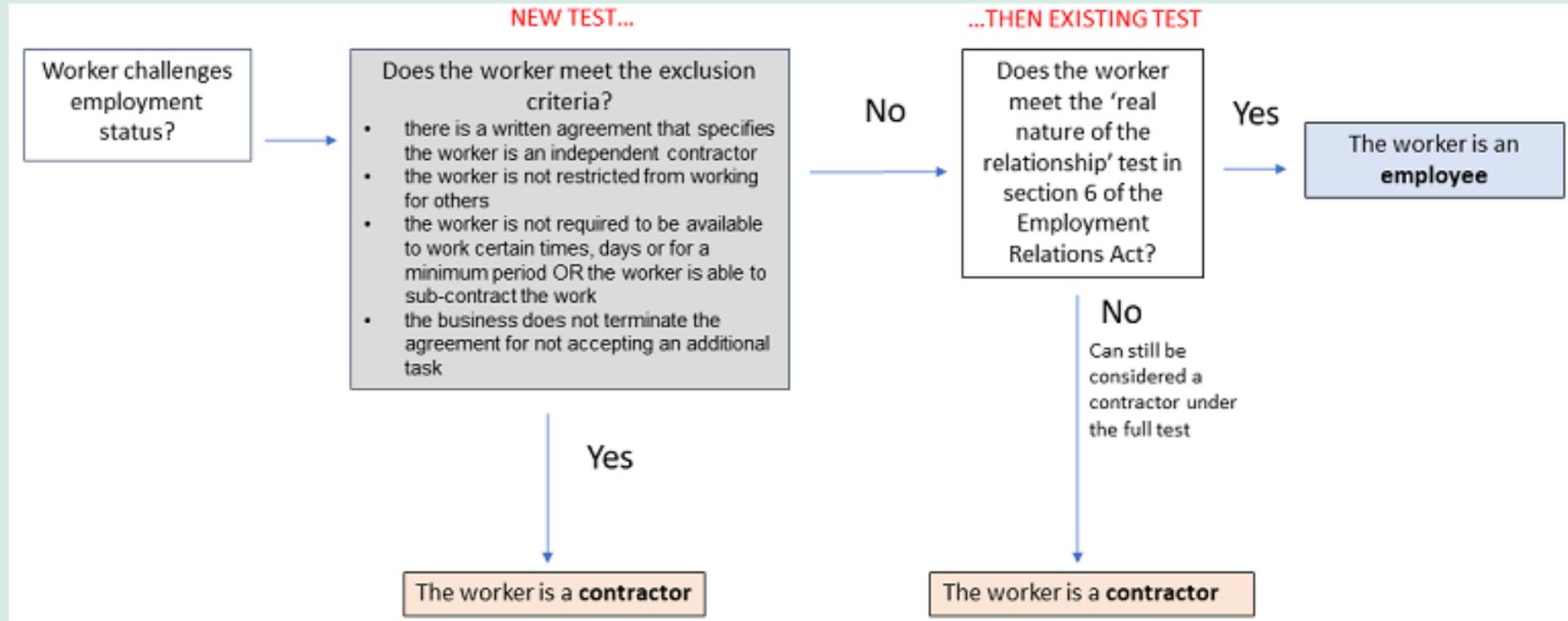
Determining Contractor Status (Gateway Test)

- **Confirmed contractor if:**

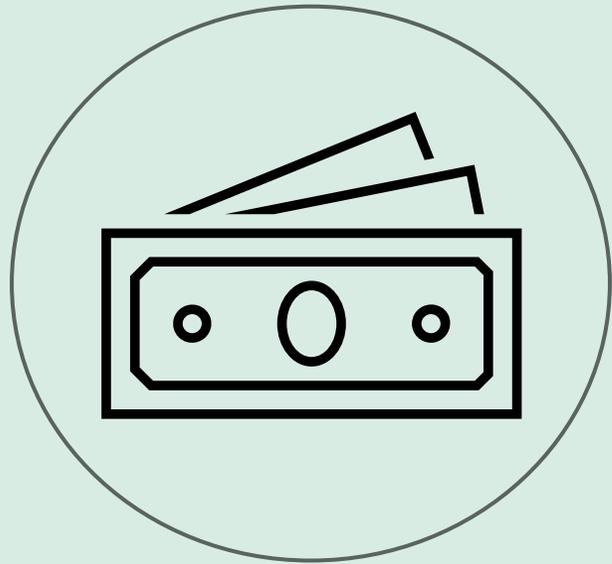
1. A written agreement specifies worker is independent contractor OR not an employee
2. Worker is not restricted from working for others
3. Worker is:
 - a. Not required to be available to work certain times/days/for a minimum period
 - b. Able to sub-contract the work; and
4. Business does not terminate the agreement for not accepting an additional task



Determining Contractor Status (Gateway Test)



The new amendments have clarified that unless proceedings have been brought under section 6 before 21 February 2026, if the worker fits the definition of a specified contractor at commencement they will be deemed a contractor.



Dismissing High Income Earners

Employment Relations Amendment Act



Dismissing High Income Earners

- An employee **cannot** bring an unjustified dismissal claim if their total remuneration exceeds \$200,000 (previously this was \$180,000)
- Excludes bonuses/incentives
- Will not be adjusted for part-time employment
- The threshold will be updated **annually** according to increases in average weekly earnings

Can bring other employment related claims:

- Unjustifiable actions causing disadvantage
- Breach of good faith
- Breach of contract
- Discrimination
- Wage arrears
- Tort claims



Dismissing High Income Earners

- As the Act has come into force on 21 February 2026, this change now automatically applies to new employees
- Employees on existing employment agreements will have until 21 February 2027 to negotiate with their employer
- May look to choose own dismissal procedure / longer notice / or opt out of threshold
- But if there is no agreed variation in writing by the 12 month mark, the new law will apply automatically



Dismissing High Income Earners

What does this mean in practice?

- Front loading base salaries to \$200,000 +
- '*Face does not fit*' clauses – any point?
- More complex claims for high-income earners
- Careful upfront negotiations

Before the 12 month transition period is up, employers should:

- Identify any employees that are earning over this threshold
- Assess whether employees wish to negotiate to opt-out- wait for employees to come to them?
- Engage in negotiations in good faith
- Update Employment Agreements?



Removal of the 30 Day Rule for Collective Agreements

Employment Relations Amendment Act



Removal of the 30 Day Rule for Collective Agreements

Previously:

If you are an employer with a Collective Agreement in place, you must offer them the same terms and conditions as the collective agreement for the first 30 days – this would be the Collective Agreement itself or an IEA that was similar.

As of 21 February 2026:

No requirement to offer similar terms that are similar to the Collective Agreement. However, employers must inform new employees of any collective agreements and provide them with a copy and contact details for the union.

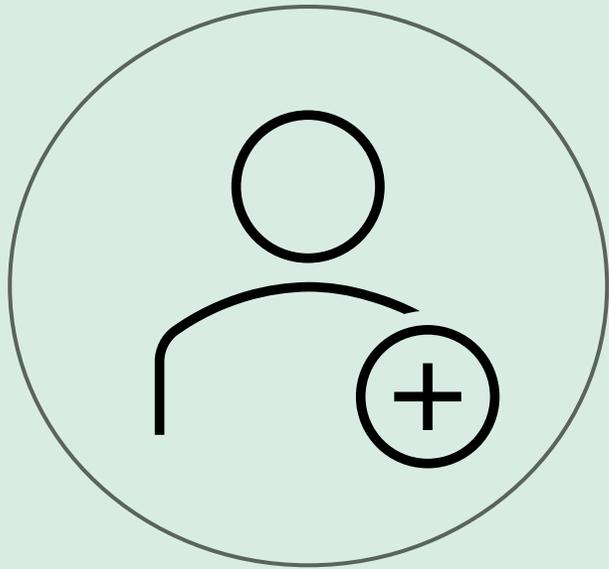


What this means in practice:

- Employers may have greater flexibility to introduce terms for new employees which were previously not possible due to the collective agreement i.e. trial period clauses

To cover themselves in response to the law change, employers should:

- Update processes for any new employees to account for these changes
- Double check Collective Agreements to assess whether they have contractually agreed to the 30 day rule and other union-related processes



Reducing Personal Grievance Remedies for at Fault Employees

Employment Relations Amendment Act



Reducing Personal Grievance Remedies for at Fault Employees:

- Law pre 21 February 2026: section 124 of the Employment Relations Act
- Authority or Court must not provide any remedy (i.e. compensation/reinstatement) for a personal grievance where employee's conduct that amounts to serious misconduct contributed to the situation that gave rise to the grievance
- Remedies may be reduced up to 100%
- Whether employee's behaviour obstructed the employer's ability to meet their fair and reasonable obligations is now a mandatory consideration with assessing whether an employer's dismissal or action was justifiable
- Threshold for procedural error "*were they treated fairly overall*"

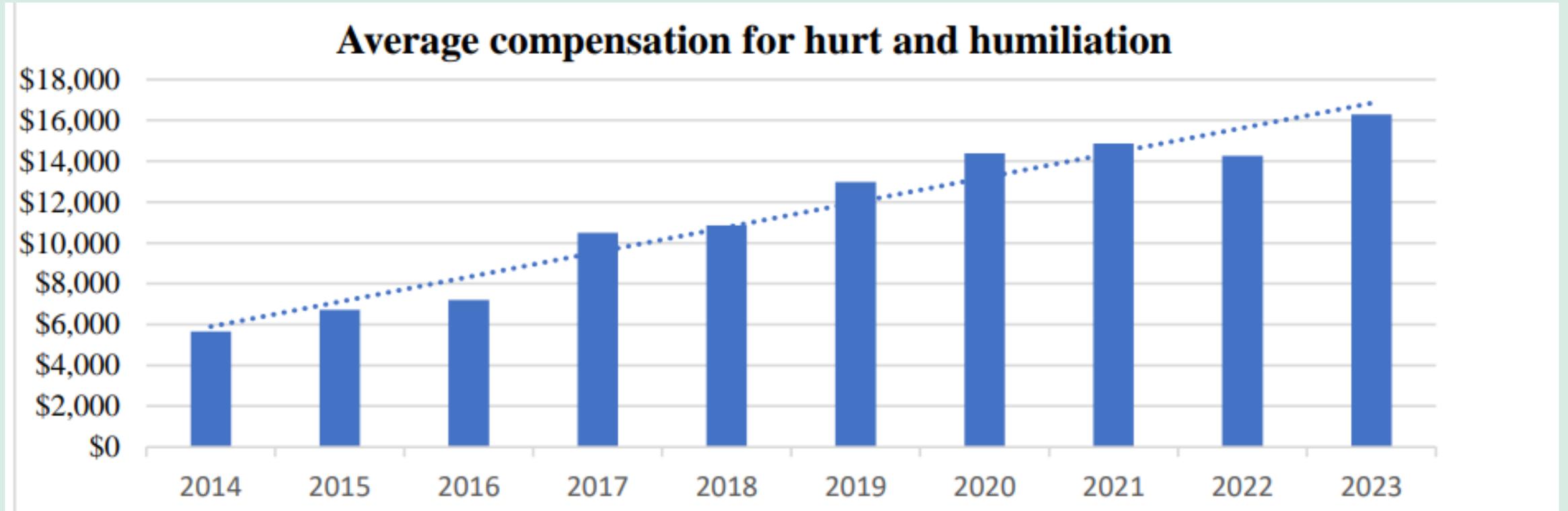


What this means in practice:

- What is serious misconduct?
- In general, legal changes that limit employee's rights are interpreted quite strictly
- Other claims may still be possible – disadvantage, breach of contract etc
- There will be a period of uncertainty while we await for case law guidance
- Employers can't rely on this – you may still end up bearing the cost of defending a claim

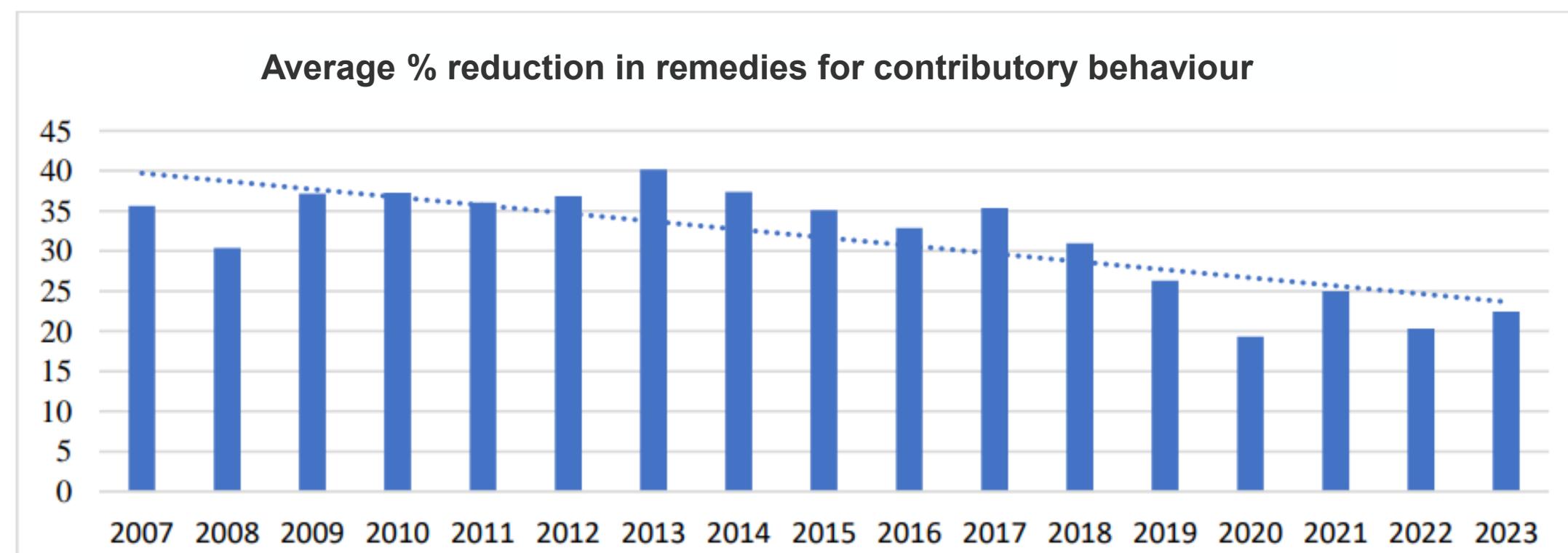


Reducing Remedies for at Fault Employees





Reducing Remedies for at Fault Employees





Without Prejudice Conversations

Employment Relations (Termination of Employment by Agreement)
Amendment Bill



Without Prejudice Conversations

What is the current position?



Without Prejudice Negotiations

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

- Similar to UK legislation
- Offer of an exit settlement would not create grounds for a personal grievance claim
- May happen whether or not there is an employment relationship problem in place
- Act Members' Bill, but has support of coalition Government
- The Select Committee presented their final report on 29 October 2025. Next step is the second reading.



Without Prejudice Negotiations

- Provides flexibility for employers
- Reduces risk around without prejudice conversations (constructive dismissals)
- Frees up mediation services/less ERA litigation
- Difficult if there is no resolution though
- Have to think about the wider cultural implications of “paying people to go”



Holiday Act Reform

Proposed Employment Leave Act



Holiday Act Reform

- In December 2024, officials were directed by the Minister for Workplace Relations and Safety to take a new approach to reforming the Holidays Act, with a focus on simplicity, improving workability and reducing compliance costs.
- In September 2025, Cabinet announced a repeal of the current Holidays Act 2004 and proposed the changes to come in a new Act – Employment Leave Act.



Holiday Act Reform – Proposed Changes

Annual leave

- Annual leave to accrue from first day of employment at a rate of 0.0769 hours per hour of work – equivalent to 4 weeks annually
- Employees able to cash-up 25% of their annual leave balance every 12 months

Sick leave

- Sick leave to be pro-rated, accruing from first day of employment
- At a rate of 0.0385 hours per hour
- Part-time employees no longer entitled to 10 days minimum entitlement



Holiday Act Reform

Other proposed changes:

- Leave compensation payments – 12.5% compensation for casual employees
- Family violence and bereavement leave – accrual from day one
- Annual leave after parental leave at full salary rate
- Mandatory pay statements



Holiday Act Reform

- Workplace Relations Minister's intention is to have the new legislation introduced in early 2026 and passed before the next election in November
- Transition period of two years



Health and Safety Reforms

Proposed Reforms to the Health and Safety Act 2015



Proposed Health and Safety Reforms

The Minister for Workplace Relations has identified the following main objectives of the reform:



focus the work health and safety system on critical risks



reduce unnecessary costs for businesses, especially small businesses



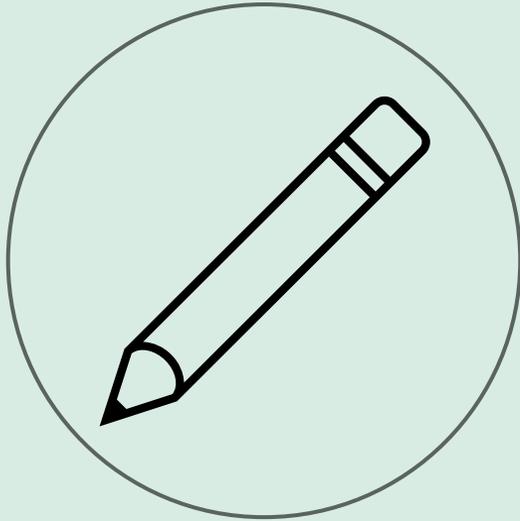
improve outcomes for businesses, workers and all New Zealanders



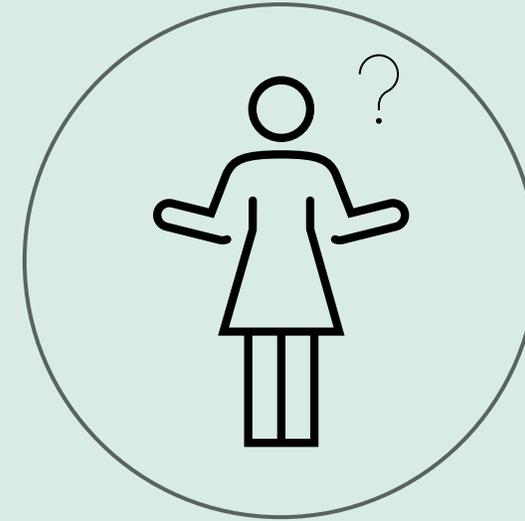
increase business certainty about what to do to comply



Proposed Health and Safety Reforms



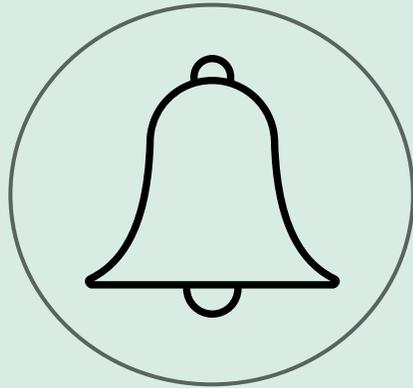
Sharpening the primary purpose of the HSWA to focus on **critical risk**



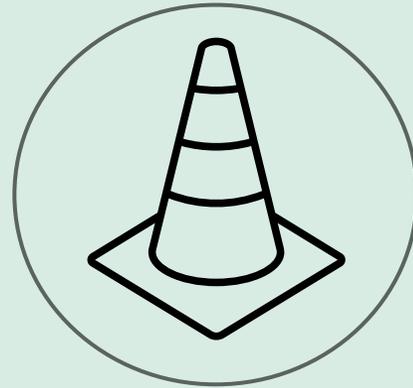
Addressing **overcompliance** due to overlapping H&S duties by clarifying the boundaries between the Act and regulatory systems that already manage the same risk



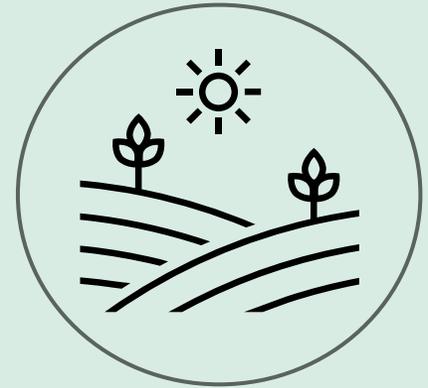
Proposed Health and Safety Reforms



Cutting compliance costs by reducing **notification requirements** to the regulator to only significant workplace events



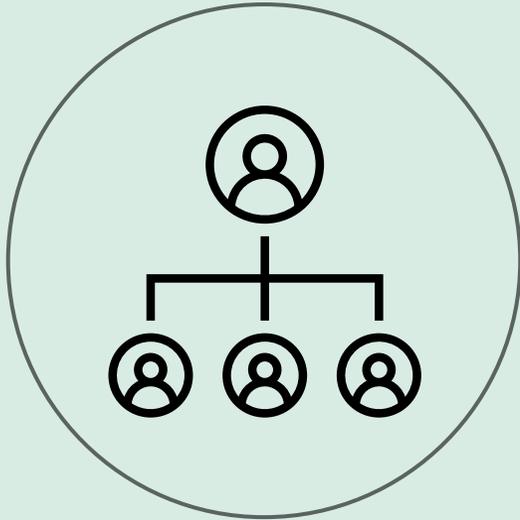
Providing a hotline for the public to report excessive **road cone** use. WorkSafe to confirm and provide guidance on instances of overcompliance



Freeing up private and public land for **recreational use** and ensuring H&S duties for landowners/managers are reasonable and proportionate



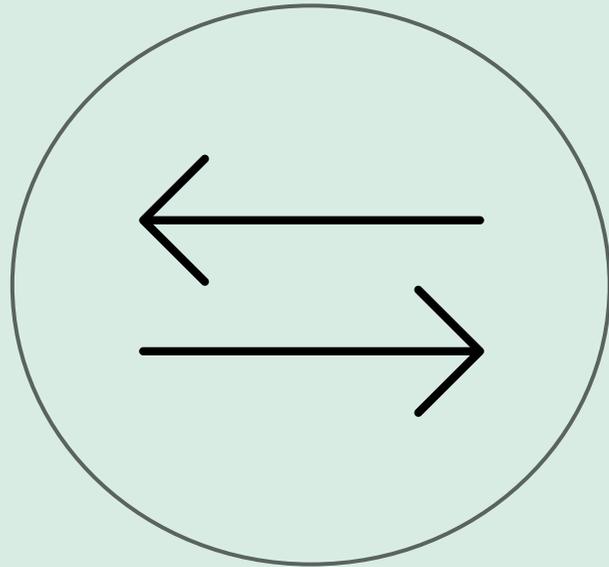
Proposed Health and Safety Reforms



Clarifying the distinction between **governance and operational management** H&S responsibilities to reduce directors' fear and risks of overcompliance



Changing the **approved codes of practice model** to increase business and worker certainty about what they need to do to comply with their H&S duties



Other Notable Changes



Changes that have already gone through

- Amendment to laws on pay secrecy
- Wage theft now criminalised



Other Notable Changes

- New **minimum wage** from April 2026 - \$23.95 per hour
- Higher default employer **KiwiSaver contribution rates** (3.5% 2026 / 4% 2028)



Questions?





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