

The Employment Relations Amendment Bill

All parties appearing before the Employment Relations Authority are likely to welcome the proposed introduction of a three-month time limit for determinations. This is just one of a raft of changes included in the Employment Relations Amendment Bill which was introduced to Parliament on 26 April 2013.

However, the proposal that Authority members will provide at least an oral indication – if not an oral determination – at the end of an investigation meeting, may not be such a good idea.

Authority members sometimes have to make careful findings about the credibility of opposing witnesses. To do this well, an Authority member needs time to compare what witnesses have said at different times during and before the investigation, and look at the degree of consistency with relevant documents.

Authority members may also have to make determinations on complex legal issues. They should have time to review counsel's submissions rather than having to make a snap decision immediately after hearing those submissions.

Even in an employer's disciplinary investigation, a better decision is often made after taking hours or days to give full consideration to an employee's explanation, rather than deciding the outcome immediately after that explanation has been given. It does not make sense to take that opportunity for consideration away from the Authority.

All parties at an Authority hearing want to feel that they have been heard. Confidence in the decision is likely to be undermined if oral determinations or indications are required.

The proposal also carries the risk that the Authority member may change his or her mind when considering the matter in more detail for preparation of the written determination. The written determination may therefore not be consistent with the oral indication.

Other key areas of change proposed by the Bill include:

- Extending employee rights to flexible working arrangements
- New procedures to give effect to the transfer of vulnerable employees
- An exemption for SMEs from the requirement to accept transferring employees
- Introduction of partial pay deductions for partial strikes
- Changes to rules around collective bargaining
- Repeal of the first 30 day rule for new staff who are not union members

If you would like further information, or if we can help you make a submission to Parliament about the proposed changes, please contact us.

Contact Us



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