

12 October 2022

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Employment Relations (Restraint of Trade) Amendment Bill

1. We have considered whether the Employment Relations (Restraint of Trade) Amendment Bill (the Bill), a Member's Bill in the name of Helen White MP, is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act).
2. The Bill amends the Employment Relations Act 2000 to limit the circumstances in which employment agreements can include restraint of trade provisions. A restraint of trade provision is defined in the Bill as a provision in an employee's employment agreement that operates after the employment ends and prohibits or restricts the former employee from:
 - a. performing work in a similar field to their former employer's business;
 - b. contacting or dealing with employees or clients of their former employer's business; or
 - c. offering employment to employees of their former employer's business.
3. The Bill prohibits the use of a restraint of trade provision in an employment agreement for employees earning less than three times the minimum wage. For employees earning above this threshold, the employer must have a proprietary interest that is protected through the use of the restraint of trade provision, the employer must pay reasonable compensation to the employee while a restraint of trade is in effect, and the restraint of trade provision can last no more than six months.
4. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.



Jeff Orr
Chief Legal Counsel
Office of Legal Counsel