MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

BRIEFING

Fair Pay Agreements: Differential terms

Date:	17 March 2021	**Priority:**	Urgent
Security classification:	In Confidence	**Tracking number:**	2021-1915

Action sought		
	Action sought	**Deadline**
Hon Michael Wood **Minister for Workplace Relations and Safety**	**Agree** to the recommendations in this briefing	22 March 2021

Contact for telephone discussion (if required)				
Name	**Position**	**Telephone**		**1st contact**
Beth Goodwin	Principal Advisor, Employment Relations Policy	04 901 1611	027 921 5012	✓
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The following departments/agencies have been consulted

Minister's office to complete:

☐ Approved ☐ Declined
☐ Noted ☐ Needs change
☐ Seen ☐ Overtaken by Events
☐ See Minister's Notes ☐ Withdrawn

Comments

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Fair Pay Agreements: Differential terms

Date:	18 March 2021	**Priority:**	Urgent
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Purpose

This briefing is about whether parties can agree to different terms for different workers or employers within a single FPA and whether differential terms for those considered minimum employment entitlements would be enforceable by the Labour Inspectorate.

Executive summary

In employment agreements under the Employment Relations Act (ER Act), parties can agree to any terms and conditions but they must:

- comply with minimum employment standards – the Minimum Wage Act prescribes a minimum wage for all workers but allows for youth, training and disability wage rates. The Holidays Act sets a single standard for sick leave and annual leave.
- not contain terms that breach the Human Rights Act (HR Act) – the HR Act specifies the prohibited grounds of discrimination, and makes it unlawful (with limited exceptions) for employers to offer less favourable terms of employment by reason of a prohibited ground of discrimination, however, the Employment Relations Act does allow preferential terms for union members but only in collective agreements.

We recommend that, consistent with the current employment relations system, parties should be free to negotiate differences in terms of the FPA based on any characteristic that would not amount to a breach of the HR Act, eg skills, qualifications, experience, length of service, occupational group or role, location or employer characteristics.

We recommend, to be consistent with the current system for minimum standards, that the base wage rate in an FPA for young people and those in training can be set below the base wage rate for adult workers. However, we set out the potential implications of an option where the FPA base wage rate must apply to all workers including young people and those who are in training.

We recommend that any minimum wage exemption permits for people with disabilities under the Minimum Wage Act will apply, and will override any new minimum wage rates agreed under the FPA system, recognising that the permit system is being phased out.

The ER Act prohibits preference on the basis of union membership, other than through collective agreements. We consider that the terms of an FPA should not be differentiated based on union status. Collective agreements and FPAs have different purposes. The purpose of collective agreements is to enable unions to bargain for terms on behalf of members for only their benefit (who have joined the union and pay fees for this purpose, among others). Under FPAs, unions will be negotiating for the benefit of all workers in an occupation or industry. Therefore we do not believe the exemption from the rule against preference should be extended to FPAs.

An alternative is to allow unions to negotiate preferential terms in FPAs for their members. This option could strengthen collectivisation by increasing the value that unions can provide for their members. However, we consider that unions will also be able to demonstrate their value by negotiating more generous terms for their members, on top of those in an FPA, during general collective bargaining.

You have agreed that particular categories of minimum employment entitlements will be enforceable by the Labour Inspectorate (LI). Those minimum employment entitlements may be differentiated by occupation or role, and we recommend each of those would be enforceable by the LI. During FPA bargaining, it is likely that variations in these categories of minimum employment entitlements will be negotiated in relation to factors such as skills and qualifications, length of service or potentially employer characteristic. Those higher terms would be treated as contractual entitlements, and not enforceable by the LI.

A previous design decision was that FPAs could include regional differences (but region-specific FPAs would not be allowed) [refer briefing 2021-0627]. The LI considers it unworkable to enforce regional differences on minimum employment entitlements. We recommend that parties should set a national rate for minimum employment entitlements, which would be enforceable by the LI, and that any regional variation must be above that national rate.

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

a **Note** that employment minimum standards are applied consistently across all workers but allow for some differential terms for youth, trainee and disabled workers

Noted

b **Note** that, under the ER Act, apart from the need to comply with the HR Act, parties can agree to any terms and conditions in collective agreements which may vary by, for example, skills and qualifications, employer characteristic or length of service

Noted

c **Agree** that either:

a. the base wage rate in an FPA for young people and those in training can be set below the base wage rate for adult workers, consistent with the Minimum Wage Act (MBIE preferred)

Agree / Disagree

or

b. the FPA base wage rate must apply to all workers including young people and those who are in training

Agree / Disagree

d **Agree** that any minimum wage exemption permits for people with disabilities under the Minimum Wage Act will apply, and override any new minimum wage rates agreed under the FPA system, recognising that the permit system is being phased out

Agree / Disagree

e **Agree** to either:

a. Option one (MBIE preferred) – Do not allow different terms for union and non-union employees in FPAs

Agree / Disagree

or

b. Option two - Allow different terms for union and non-union employees in FPAs.

Agree / Disagree

f **Note** that FPAs will contain terms that are considered to be minimum employment entitlements (enforceable by the Labour Inspectorate or via the parties if they choose to do so), as well as

terms that are bargained above those minimums but which employers covered by the FPA still need to comply with (the parties will need to enforce these terms themselves)

Noted

g **Agree** that minimum employment entitlements may be differentiated by occupation or role covered by the FPA, rather than requiring a single minimum employment entitlement across the whole coverage of the FPA

Agree / Disagree

h **Note** that if parties want to negotiate more generous terms than the minimum employment entitlements specified for a particular occupation, based on particular factors such as skills or qualifications, length of service or employer characteristics, then they will be free to do so, but that any more generous terms would not be enforceable by the LI

Noted

i **Note** that it has been agreed that FPAs can include regional differences (but region-specific FPAs would not be allowed) [refer briefing 2021-0627]

Noted

j **Note** that the Labour Inspectorate does not consider it could enforce regional variations of minimum employment entitlements.

Noted

k **Agree** to either:

a. Option one (MBIE preferred) – Require parties to set a national rate for minimum employment entitlements, which would be enforceable by the LI, and that any regional variation must be above that national rate.

Agree / Disagree

or

b. Option two – Allow parties to set different regional rates for minimum employment entitlements, and enable the LI to enforce the lowest regional rate.

Agree / Disagree

Beth Goodwin
Principal Advisor, Employment Relations Policy
Workplace Relations & Safety Policy, MBIE

18 / 3 / 2021

Hon Michael Wood
Minister for Workplace Relations & Safety

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Background

1. This briefing is about whether parties can agree to different terms for different workers or employers within a single FPA. You have specifically asked for advice on whether unions should be able to negotiate an additional payment to union members, in recognition that unions will bear the costs of bargaining remaining after government financial support. This briefing also considers whether any differentiation in terms considered minimum employment entitlements for the purposes of an FPA would be enforceable by the Labour Inspectorate.

2. The FPA Working Group (FPAWG) recommended the Government consider whether parties should be able to agree variations in terms based on demographic characteristics (for example different terms for young people, or long-term beneficiaries in their first year back in employment). The Working Group was mindful that FPAs could potentially disadvantage such groups through setting higher wage rates.

3. The 2019 consultation *Designing a Fair Pay Agreements System* did not ask for views about differential terms (other than regional differences), and submitters did not volunteer views.

4. You have agreed that the scope of a FPA *must* include listed mandatory to agree topics, *may* include a listed mandatory to discuss topics, and *may* include anything else the parties agree [refer briefing 2021-1654]. We subsequently advised that the scope of FPAs should be limited to employment terms [refer briefing 2021-2190].

5. You have agreed, by not departing from the previous Minister's decision, that bargaining parties should be able to negotiate to allow exemptions for employers facing severe financial hardship and that FPAs could include regional differences (but region-specific FPAs would not be allowed) [refer briefing 2021-0627].

6. You have also confirmed that you prefer to treat settled FPAs more as new employment standards rather than collective agreements, although a bargaining mechanism is used to achieve them [refer aide memoire 2021-2448, discussed at our meeting with you on 22 February 2021]. You have agreed that some terms of an FPA should be treated as minimum entitlements (ie the FPA base wage(s), incremental adjustments to the FPA base wage(s), minimum leave entitlements that build on existing leave entitlements under the Holidays Act 2003, and overtime and penalty rates), meaning that the Labour Inspectorate will have a role in enforcing them [refer briefing 2021-2155].

Minimum standards are largely applied consistently across all workers, while collective agreements can provide for different terms (with some limits)

Human rights law prohibits discrimination on listed grounds

7. The Bill of Rights Act states that everyone has the right to freedom from discrimination on the grounds stated in the Human Rights Act 1993 (HR Act)[1]. The HR Act specifies the prohibited grounds of discrimination, and makes it unlawful (with limited exceptions) for employers to offer less favourable terms of employment by reason of a prohibited ground of discrimination. The relevant section is replicated in Annex One. In relation to the ground of age, the HR Act clarifies that it means any age "commencing with the age of 16 years"[2] - that is, discrimination is not allowed in relation to a person who is 16 years or older. One relevant

[1] Section 19
[2] Section 21(1)(i)

exception is that the HR Act does not prevent paying an employee aged 20 years or under at a lower rate.[3]

8. All the rights and freedoms in the Bill of Rights may be subject only to reasonable limits which are demonstrably justified in a free and democratic society.[4] Employment minimum standards are applied consistently across all workers but allow for differential terms for youth, trainee and disabled workers.

The Minimum Wage Act prescribes a minimum wage for all workers but allows for youth, training and disability wage rates

9. The Minimum Wage Act (MW Act) allows[5] for regulations to prescribe minimum 'starting-out rates' for workers aged between 16 and 19 years, and 'training rates' for workers whose contracts require them to undergo training for the purpose of gaining their relevant qualification. Both such rates cannot be less than 80% of the adult minimum wage, and are currently set at that rate.[6]

10. The MW Act also allows[7] a labour inspector to issue a minimum wage exemption permit to a worker, stating the wage rate for that worker (which will be less than the current minimum wage), if the labour inspector is satisfied the worker is significantly limited by a disability in relation to his or her work, the employer and worker have considered all reasonable accommodations and it is reasonable and appropriate to issue such a permit.

The Holidays Act sets a single standard for sick leave and annual leave

11. The Holidays Act, and the amendments proposed in the Holidays (Increasing Sick Leave) Amendment Bill, set a standard number of days for sick leave, with no differences between different types of workers. Similarly, annual leave is set in law at 4 weeks, although in practice that results in a different number of holidays each year depending on the length of an employee's working week.

Apart from the need to comply with the Human Rights Act and minimum entitlement provisions, parties can agree to any terms and conditions in collective agreements

12. Apart from the need to comply with the Human Rights Act and minimum entitlements, parties can agree to any terms and conditions during collective bargaining. In collective bargaining, the ER Act allows collective agreements to contain "such provisions as the parties… mutually agree on", other than terms contrary to law or inconsistent with the ER Act.[8] In specifying how a collective agreement must contain wage rates, it allows that rates can be set for "certain work or types of work" or "types of employees". It does not specify or limit the ways in which employees can be segmented into 'types'.

13. The ER Act repeats the prohibited grounds of discrimination from the HR Act.[9] It also states that it is discrimination if the employer does not offer the employee the same terms and

[3] HR Act, section 30
[4] Section 5, BORA
[5] Minimum Wage Act, sections 4A and 4B.
[6] Minimum Wage Order 2020, clause 5 and 6.
[7] MW Act, section 8. Labour Inspectors may issue minimum wage exemption permits to employees who have a disability that limits them carrying out the requirements of their work. A minimum wage exemption permit means that the person named in the permit has a lower minimum wage rate for the specific job and only for the period stated in the permit. Around 95 percent of the 900 exemption permits in existence are in 'business enterprises' which are a form of sheltered employment. A very small number of permits are in open employment situations (eg supermarkets).
[8] ER Act, section 54
[9] ER Act, section 105

conditions as other substantially similar employees, or dismisses or retires the employee, by reason of the employee's union membership status.[10]

14. In practice, collective agreements, including multi-employer collective agreements (MECA), provide for a range of terms and conditions for the different types of workers included in the coverage of the agreement.

15. The Screen Industry Workers Bill specifies a list of terms that a collective contract must contain, but is silent on whether the terms can be different for different groups of workers within the coverage. This is because the policy intent was to allow for such differences. The pay equity provisions in the Equal Pay Act are also silent on whether different terms are allowed.

16. The Support Workers (Pay Equity) Settlement Act 2017 (Support Workers Act) provides for different minimum wage rates depending on length of service and qualifications. It does not provide for any union member benefits.

The ER Act does not allow different terms for union members except for in collective agreements

17. The ER Act clarifies that an action is not discrimination simply if the terms and conditions of an employee's employment agreement are different to another employee by reason of the other employee being a member of a union.[11]

18. The ER Act also contains a prohibition on preference[12]– that is, prohibiting contracts from granting a preference in obtaining or retaining employment or in the terms or conditions of employment because the person is or is not a union member, other than benefits conferred by a collective agreement. The ER Act contains an exception from this prohibition on preference for collective agreements. It seems clear from case law and common practice that the provision of one-off or regular benefits for union members in collective agreements is allowed under the ER Act.

The old Awards system allowed for lower rates based on 'capability' of the worker, but did not explicitly provide for other differential terms

19. The Labour Relations Act 1987 (LR Act), now repealed, provided[13] that an award could contain "provisions relating to any matter whatever", other than anything contrary to the LR Act or any other Act. The LR Act further provided[14] that awards could include a provision allowing an employer to pay a worker "who is incapable of earning the applicable minimum wage fixed by the award" a lower rate. Whether a worker was 'capable' was determined by the union. It also allowed[15] for separate awards for young workers, under 18 years of age.

20. We could find no other mention in the LR Act of whether other differential terms were allowed in awards. Due to the limited time available, we have not been able to examine any awards to see if they contained other differential terms.

Australian Modern Awards can also differentiate between work patterns

21. The Australian Fair Work Act 2009 specifies types of terms which must, may and must not be included in modern awards. The Fair Work Act does allow for differential terms,[16] specifying that a modern award may include terms about:

[10] ER Act, section 104
[11] ER Act, section 106(4)
[12] ER Act, section 9
[13] LR Act, section 170 (accessed at http://www.nzlii.org/nz/legis/hist_act/lra19871987n77215/)
[14] LR Act, section 177
[15] LR Act, section 157
[16] Section 139

a. minimum wages (including wage rates for junior employees, employees with a disability and employees to whom training arrangements apply), and:

   i. skill-based classifications and career structures; and

   ii. incentive-based payments, piece rates and bonuses;

b. type of employment, such as full-time employment, casual employment, regular part-time employment and shift work, and the facilitation of flexible working arrangements, particularly for employees with family responsibilities;

c. penalty rates, including for any of the following:

   i. employees working unsocial, irregular or unpredictable hours;

   ii. employees working on weekends or public holidays;

   iii. shift workers;

22. While words such as ‘full-time’ have a common meaning (usually 38 hours), the words ‘shift worker’, and ‘ordinary hours’ can be defined in each modern award.

FPAs must contain certain terms

23. FPAs will include terms that parties must agree:

- base wage rates
- wage rate adjustment
- whether superannuation contributions are included in base wage rates
- ordinary hours, overtime, penalty rates
- coverage
- duration of FPA
- governance arrangements.

24. They may also include terms that parties must discuss:

- redundancy
- leave entitlements
- objectives of the FPA
- skills and training
- health and safety
- flexible working.

25. Parties can also choose to include other employment terms not in the above lists. Similar to some collective agreements, FPAs are likely to include different terms for the different roles and occupations that are covered by the agreement.

Parties should be free to negotiate variations in terms of an FPA as long as they do not breach the Human Rights Act or minimum standards

26. The FPAWG suggested, that parties should be able to negotiate variations in employment entitlements so as to mitigate any potential negative impact of higher wages for particular occupations, [ie employer reluctance to hire workers that have characteristics they consider to be 'risky']. We do not recommend allowing parties to agree to such variation of terms if they amount to a breach of the HR Act.

27. Parties should, however, be free to negotiate differences in terms in the FPA based on any characteristic that would not amount to a breach of the HR Act, eg skills, qualifications, experience, length of service, occupational group or role, region / location or employer characteristics.

We recommend that the base wage rate for young people and those in training in an FPA can be set below the base wage rate for adult workers, consistent with the Minimum Wage Act

28. In order to be consistent with the current minimum employment entitlements system, we recommend that the base wage rate in an FPA for young people and those in training can be set below the base wage rate for adult workers, consistent with the Minimum Wage Act.

29. Another option would be for the FPA base wage rate to apply to all workers including young people and those who are in training. The rationale for allowing a lower wage rate than the adult minimum wage for young people and trainees is, however, to reduce labour market disadvantage for young people by providing an incentive for employers to hire them. In effect, it offers a "discount" on their cost to overcome the perceived increased riskiness of hiring them relative to other cohorts.

30. If parties were not able to offer lower wage rates to young people or trainees in an FPA, it could result in some employers deciding not to hire young people if they perceive them to be too "risky" or could disincentivise employers from hiring employees to undertake industry training. We are unable to be definitive about the extent of this potential impact.

31. If in the future the government changes the policy to remove the provision for youth or training rates in the Minimum Wage Act, that policy change could also remove the ability to set youth or training rates in FPAs.

We recommend that any minimum wage exemption permits for people with disabilities should apply under the FPA system, but we recognise this system is being phased out

32. There continue to be a relatively small number of minimum wage exemption permits in existence for people with disabilities. It would be possible for people with these permits to fall under occupations that are in coverage of an FPA.

33. For consistency, we consider that any existing permits should apply and therefore override any new pay rate agreed under any FPA negotiated. However, we understand the government intends to phase out the practice of issuing minimum wage exemption permits and replace it with a transfer system. When that occurs, the FPA rate would then apply to the affected workers.

We don't recommend allowing different terms for union members in FPAs

34. We considered your specific question about allowing parties to bargain different terms for union members.

35. Under the ER Act, there must be no preference given on the basis of union membership. An exception to this is in relation to collective agreements which can (and do) contain specific provisions for union members: the purpose of collective agreements is to bargain terms and conditions for the benefit of union members. We understand this practice is in part a reaction to the 'passing on' provisions in the ER Act, which are considered by unions to be ineffective.

Option one (MBIE preferred) – Do not allow different terms for union and non-union employees in FPAs

36. We do not consider that the 'collective agreement exception' to the prohibition on preference between union and non-union members should apply to FPAs. Collective agreements and FPAs have different purposes. The purpose of collective agreements is to enable unions to bargain for terms on behalf of members for only their benefit (who have joined the union and pay fees for this purpose, among others).

37. In contrast, the purpose of an FPA is for unions to bargain of behalf of all workers (regardless of union status) to set industry or occupation-wide minimum employment terms and conditions. An objective of setting minimum employment standards across an industry does not align with conferring particular benefits to union members (minimum standards apply across all workers under the current system).

38. There is also a risk that agreeing to different terms for union members could be contrary to the union's obligations towards the non-members they're representing in the FPA process. Non-unionised workers can only be represented by unions in FPA bargaining, and will have no other avenue to object to differential terms for union members, which is a limit on their freedom of association.

39. We therefore consider that the terms of an FPA should not be differentiated based on union status. Unions will still have the opportunity to demonstrate their value by negotiating more generous terms, on top of FPA entitlements, for their members during general collective bargaining.

Option two – Allow different terms for union and non-union employees in FPAs

40. Allowing unions to negotiate preferential terms for union members in an FPA would strengthen collectivisation by increasing the value that unions can provide for their members. However, as mentioned above, we consider that the role that unions play in negotiating FPAs is different to their role in representing their members in general collective bargaining, due to the requirement to represent both union and non-union employees in negotiations.

We recommend that the LI should be able to enforce the minimum employment entitlements for each occupation or role in the FPA

LI should be able to enforce the lowest minimum employment entitlements for each occupation or role covered by the FPA

41. You have agreed in the briefing *FPAs: Advice on Enforcement* (tracker number 2021-2155) that the following subset of terms will form new minimum employment entitlements that the Labour Inspectorate can enforce:

    - the FPA base wage(s),

- incremental adjustments to the FPA base wage(s),
- minimum leave entitlements that build on existing leave entitlements under the Holidays Act 2003
- overtime and penalty rates.

42. During FPA bargaining, it is likely that variations in these categories of minimum employment entitlements will be negotiated in relation to factors such as skills and qualifications, length of service and employer characteristic. This raises the question as to what should the LI be able to enforce in relation to a particular category of minimum employment entitlement.

43. We consider that the LI should be enabled to enforce the lowest minimum employment entitlements for each occupation or role covered by the FPA. For example, in a health sector FPA that covered occupations such as nurse aides, nurses and doctors, among others, the minimum employment entitlements for each occupation or role would be enforceable by the LI. We consider that this proposal would be workable as long as the occupations or roles within an FPA were clearly described with a clear indication of the minimum terms that applied for that particular occupation or role. We consider this would be consistent with the LI's role under the current system.

44. This proposal would mean that any terms negotiated for a particular occupation above minimum employment entitlements, eg higher wage rates based on qualifications of length of service, would be enforceable by the parties, rather than the LI.

45. We also considered whether the LI should only enforce the lowest minimum employment entitlements included in the FPA, ie in a health sector FPAs where nurse aides had the lowest base wage rate of all the occupations included, the LI would only be able to enforce the base wage rate for nurse aides and no other occupations.

46. We consider this option to be unworkable as:

- parties in occupations or roles where more generous terms had been negotiated would need to enforce those terms themselves
- it may incentivise narrower and multiple 'single occupation' FPAs which would result in the LI having to enforce minimum employment entitlements for occupations across different FPAs that would otherwise be contained within one FPA.

LI should be able to enforce the lowest regional minimum employment entitlement

47. A previous design decision was that FPAs could include regional differences (but region-specific FPAs would not be allowed) [refer briefing 2021-0627]. Again, this raises the question as to whether the LI should be able to enforce regional differences in minimum employment entitlements.

48. We consider that it would be unworkable for the LI to enforce regional differences in minimum employment entitlements. It would be complex to determine which regional minimum employment entitlements applied to a particular employee, working in a particular occupation, as it would be difficult to be precise about regional boundaries or location in an FPA. For example, a plumber, sales agent or bus driver may regularly work across regional boundaries.

49. Therefore, we recommend that the LI enforce only the lowest regional rate for minimum employment entitlements. This could be achieved by either:

a. Requiring parties to set a national rate for minimum employment entitlements, which would be enforceable by the LI, and that any regional variation must be above that national rate. We recommend this option as it is more consistent with the concept of FPAs setting a new minimum floor applying right across an occupation or industry.

b. Allowing parties to set different regional rates for minimum employment entitlements, but enable the LI to enforce only the lowest regional rate.

50. Under either option, only employees working in the region/s with the lowest minimum employment entitlements would be able to use the LI to enforce those terms. Employees in regions with higher terms for particular occupations would still be able to enforce these themselves, through the normal channels.

51. Parties would need to be careful that differentiation by region would not breach the HR Act because of indirect discrimination (eg there may be indirect discrimination if a lower rate is negotiated for a region which is predominately one type of ethnicity).

Next steps

52. We are undertaking agency consultation on the draft FPA Cabinet paper, in order to provide you with a final version for Ministerial consultation on 26 March. We would like to hear your decisions on this briefing at your WRS Officials meeting on 22 March, so we can incorporate them into that Cabinet paper.

Annexes

Annex One: Section 21 Human Rights Act – Prohibited grounds of discrimination

Annex One: Section 21 Human Rights Act – Prohibited grounds of discrimination

21 Prohibited grounds of discrimination

(1) For the purposes of this Act, the **prohibited grounds of discrimination** are—

(a) sex, which includes pregnancy and childbirth:

(b) marital status, which means being—

(i) single; or

(ii) married, in a civil union, or in a de facto relationship; or

(iii) the surviving spouse of a marriage or the surviving partner of a civil union or de facto relationship; or

(iv) separated from a spouse or civil union partner; or

(v) a party to a marriage or civil union that is now dissolved, or to a de facto relationship that is now ended:

(c) religious belief:

(d) ethical belief, which means the lack of a religious belief, whether in respect of a particular religion or religions or all religions:

(e) colour:

(f) race:

(g) ethnic or national origins, which includes nationality or citizenship:

(h) disability, which means—

(i) physical disability or impairment:

(ii) physical illness:

(iii) psychiatric illness:

(iv) intellectual or psychological disability or impairment:

(v) any other loss or abnormality of psychological, physiological, or anatomical structure or function:

(vi) reliance on a guide dog, wheelchair, or other remedial means:

(vii) the presence in the body of organisms capable of causing illness:

(i) age, which means,—

(i) for the purposes of sections 22 to 41 and section 70 and in relation to any different treatment based on age that occurs in the period beginning with 1 February 1994 and ending with the close of 31 January 1999, any age commencing with the age of 16 years and ending with the date on which persons of the age of the person whose age is in issue qualify for national superannuation under section 7 of the New Zealand Superannuation and Retirement Income Act 2001 (irrespective of whether or not the particular person qualifies for national superannuation at that age or any other age):

(ii) for the purposes of sections 22 to 41 and section 70 and in relation to any different treatment based on age that occurs on or after 1 February 1999, any age commencing with the age of 16 years:

(iii) for the purposes of any other provision of Part 2, any age commencing with the age of 16 years:

(j) political opinion, which includes the lack of a particular political opinion or any political opinion:

(k) employment status, which means—

(i) being unemployed; or

(ii) being a recipient of a benefit as defined in Schedule 2 of the Social Security Act 2018 or an entitlement under the Accident Compensation Act 2001:

(l) family status, which means—

(i) having the responsibility for part-time care or full-time care of children or other dependants; or

(ii) having no responsibility for the care of children or other dependants; or

(iii) being married to, or being in a civil union or de facto relationship with, a particular person; or

(iv) being a relative of a particular person:

(m) sexual orientation, which means a heterosexual, homosexual, lesbian, or bisexual orientation.

(2) Each of the grounds specified in subsection (1) is a prohibited ground of discrimination, for the purposes of this Act, if—

(a) it pertains to a person or to a relative or associate of a person; and

(b) it either—

(i) currently exists or has in the past existed; or

(ii) is suspected or assumed or believed to exist or to have existed by the person alleged to have discriminated.