

EMPLOYMENT RELATIONS ACT 2004

EXPLANATORY NOTES

COMMENTARY

Part One: Union Recognition

Application where agreement does not cover pay, hours and holidays

86. *Section 11* clarifies that a union may apply to the CAC when any one or more of the “core bargaining” topics are not included in the pre-existing agreement.
87. Where the CAC declares a union recognised, it is for collective bargaining on pay, hours and holidays (although the parties may vary this by agreement). These three items are regarded as the “core” issues for collective bargaining. Under paragraphs 35 and 44 of the Schedule, an application to the CAC for recognition is inadmissible or invalid if the applicant union is already recognised under a collective agreement covering any of the workers in the proposed bargaining unit and that agreement covers pay or hours or holidays. There has been some confusion over the meaning of these paragraphs in the 1992 Act. It has been contended that they imply that the CAC may only accept an application in these circumstances where the existing agreement covers none of pay, hours or holidays. An alternative view is that an application would be admissible if the collective agreement already in force covered one or more (but not all) of pay, hours and holidays. Section 11 provides that in such circumstances a union’s application to the CAC is admissible if the collective agreement already in force does not cover all of pay, hours and holidays. Accordingly the CAC will be able to proceed with an application if the existing collective agreement only covers one or two of the matters (or none) but not if it covers all three.