Employment Relations Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill amends the Employment Relations Act 2000 to make changes in the following areas:

- collective bargaining, including removing the requirement to conclude a collective agreement and introducing an ability for employers to reduce employees' pay in response to partial strikes:
- flexible working arrangements, to extend the right to make a request to all employees:
- Part 6A of the Act, in particular, introducing an exemption from certain requirements for small to medium enterprises:
- good faith, to clarify the requirements for disclosure of information:
- rest break and meal break provisions, to reduce prescription and allow for flexibility, including compensatory measures where there is a failure to provide a break:
- the Employment Relations Authority, to set time frames for release of determinations.

The Bill implements Government policy that is aimed at creating an employment relations framework that increases flexibility and

choice, ensures a balance of fairness for employers and employees, and reduces compliance costs, particularly for genuine small to medium-sized enterprises. It also reduces unnecessary regulation. The Bill will help create an environment where employers can grow their business while ensuring the rights of employees are well protected.

Collective bargaining

The policy framework for collective bargaining is designed to require good-faith behaviour in collective bargaining and promote orderly collective bargaining. The Bill aims to increase choice and flexibility in the collective bargaining framework, to reduce ineffective bargaining, and to improve the fairness and balance of bargaining requirements.

The Bill recognises that there are sometimes instances where agreement between parties is clearly not going to be reached, and requiring parties to conclude a collective agreement has led to protracted negotiations. The Bill will re-enact the previous position whereby the duty of good faith does not require a concluded collective agreement. The Bill recognises that there is a need for parties to have certainty as to when bargaining has concluded, so it provides for a clear process that allows parties to apply for a declaration from the Employment Relations Authority on whether collective bargaining has concluded. If the Authority determines that bargaining has concluded, there will be a 60-day grace period before bargaining can be re-initiated, unless the parties agree otherwise. If the Authority determines that bargaining has not concluded and does not make any recommendation about the process the parties should follow, it will be 60 days before parties can return to the Authority for another determination on whether bargaining has concluded.

The Bill aims to increase the fairness and balance in the bargaining environment by removing or amending other unnecessary and burdensome requirements. These changes include—

- acknowledging that employers should not be required to enter negotiations with other employers who may be their competitors, and so the Bill allows employers cited in an initiation notice for multi-employer collective bargaining to opt out of being a party to that bargaining:

- where an employee's work is covered by a collective agreement and the employee is not a member of the relevant union, enabling employers to offer the terms and conditions they want to new employees who are not union members, instead of the terms and conditions in the relevant collective agreement:
- allowing both unions and employers to initiate collective bargaining within the same time frames:
- providing that, where any party (whether an employer or a union) has initiated bargaining to replace a collective agreement before the collective agreement has expired, the collective agreement will remain in force for up to 12 months after it expires, provided that bargaining is still under way (previously this only occurred where the union initiated bargaining).

The Bill aims to increase the fairness and balance in the bargaining environment by introducing changes in relation to strikes and lockouts. The Bill recognises the need for more balanced and appropriate responses to partial strike action to incentivise parties to reach agreement sooner by allowing employers to undertake specified pay deductions. The Bill provides employers with 2 options for reducing the pay of employees who are party to a partial strike: a proportionate pay deduction made by using the calculation method set out in the Bill or a fixed deduction of 10%. If the employer decides to make pay deductions in response to a partial strike, the Bill requires the employer to provide written notification about the deduction to employees before the deduction is made.

The Bill will provide more certainty about the nature of intended industrial action by requiring advanced written notice of any proposed strikes and lockouts, and for any withdrawal of that notice to also be in writing. Failure to provide the required notice of a strike or lockout will mean that the strike or lockout will be unlawful. Should an employer make a partial pay deduction, the strike notice will enable the employer to know when to resume normal pay.

Flexible working arrangements

The Bill acknowledges the importance of flexible working arrangements to optimise the labour market participation of groups that would otherwise be unable to participate by extending the right to request flexible working arrangements to all employees (not

just those with caring responsibilities) from the beginning of their employment. It will make it easier for employees to request a variation of conditions by removing the limit on the number of requests an employee may make for flexible working arrangements over a 12-month period, and by reducing the time for an employer to consider requests for a flexible working arrangement to 1 month (from 3 months).

Continuity of employment (Part 6A)

The Bill proposes changes to Part 6A to address issues of a lack of clarity and certainty for employers, while maintaining key benefits for employees. The main changes are as follows:

- to provide greater certainty for employers, the Bill requires that employees who will be affected by restructuring notify their current employer, in writing (signed by the employee), of their decision to transfer within 5 working days (or whatever longer time frame is agreed between the 2 employers) of being advised that they have the right to elect to transfer to the new employer and of being provided with the required information:
- to assist the new employer in providing continuity of employment for transferring employees, the Bill requires the outgoing employer to provide the incoming employer with detailed information on the transferring employees as soon as practicable but before the restructuring takes effect. This information includes employment agreements, wages and time records, holiday and leave records, gross earnings, and personnel files (where they exist):
- to provide greater certainty for employers in relation to liability for employees' entitlements, the Bill enables employers to negotiate an agreement regarding the apportionment of liabilities for transferring employees' service-related entitlements, and provides a default apportionment formula for cases where agreement is not reached:
- the Bill removes the ability to change Schedule 1A by Order in Council so that only Parliament can change the classes of employees who have a right to elect to transfer to a new employer:

- to protect the incoming employer from unfair increases in employee costs, the Bill provides an implied warranty from the outgoing employer to the incoming employer that the outgoing employer has not changed the arrangements of work or the employee's employment conditions to adversely affect the incoming employer. Breaches of this implied warranty may lead to damages being awarded in the District Court or the High Court:
- the Bill provides an exemption from certain parts of Part 6A for small to medium-sized enterprises, where they are the incoming employer. This includes removing the ability for employees to elect to transfer to the incoming employer if that employer is a small to medium-sized enterprise. This responds to the review of Part 6A, which found that, while larger businesses had been able to adapt better to the requirements of Part 6A, small to medium-sized businesses faced greater proportional costs. To prevent large employers from exploiting this exemption, the number of employees employed by associated persons such as subsidiaries, parent companies, subcontractors, and franchises, will be taken into account when determining the size of a business.

Disclosure of information and duty of good faith

A recent Employment Court judgment[1] has highlighted differences between the disclosure of information under the good-faith requirements of the Employment Relations Act 2000 and the disclosure of personal information under the Privacy Act 1993 in situations where an employer is proposing to make a decision that could have an adverse effect on the continuation of an employee's employment. Conflicting obligations about the disclosure of personal information under different Acts create uncertainty for employers. The disclosure of private information, such as interview notes, may introduce a chilling effect, whereby skilled and qualified individuals choose not to take part or not to provide their free and frank opinions in activities such as interviews or participation in selection panels, because of concerns about their comments becoming public.

[1] *Vice-Chancellor of Massey University v Wrigley* [2010] NZEmpC 37.

This hinders an employer's ability to make good decisions in employing staff and to manage its business in the most efficient way.

The Bill clarifies which types of information an employer is required to provide in order to comply with the duty of good faith in these circumstances. The main change the Bill makes to the current law in regards to disclosure of information and the duty of good faith is to amend the duty of good faith so that in the situation described above the employer is not required to provide an affected employee with access to confidential information if that information is—

- about an identifiable individual other than the affected employee:
- evaluative or opinion material compiled for the purpose of making a decision that may affect an employee's continued employment:
- about the identity of the person who supplied the evaluative or opinion material.

This change is intended to align the good-faith requirements in the Employment Relations Act 2000 more closely with the privacy principles and withholding reasons in the Privacy Act 1993 and the Official Information Act 1982. The change provides a balance between employees having access to relevant information to allow informed comment on a situation affecting their continued employment and an individual's right to have his or her personal information kept private.

Overall, these changes ensure quality, consistency, and integrity of decision-making and provide certainty and confidence for employers that their human resource processes have been carried out to the highest standard.

Rest break and meal break provisions

The Bill acknowledges the importance of rest and meal break provisions for employees to ensure they have a genuine break from their tasks and the opportunity to rest, eat, and drink and to attend to personal matters, but it also recognises that these provisions need to be practical in a workplace. The Bill encourages employers and employees to negotiate, in good faith, rest and meal breaks that comply with the legislation without compromising business continuity and flexibility. Employers are required to give employees meal breaks and paid rest breaks or provide compensatory measures. Workplaces

will be able to time rest breaks and meal breaks to suit service or production continuity, as far as is reasonable (including allowing for those circumstances in which it is necessary to restrict breaks because of the nature of the work being undertaken), with an employer being able to determine the arrangement where agreement cannot be reached. The changes also clarify that rest breaks must be paid.

Time frames for Employment Relations Authority determinations

The Bill acknowledges that there can be delays in the provision of some Employment Relations Authority determinations (**Authority determinations**) and that this can be stressful and can disadvantage both parties in an employment dispute. In order to support the Authority's objective of delivering speedy, informal, and practical justice, the Bill introduces requirements about the timeliness and mode of delivery of Authority determinations. At the conclusion of an investigation meeting, the Authority will be required to provide either an oral determination, which must be followed (within 3 months) by a written record of that determination, or an oral indication of the Authority's findings to the parties, subject to any additional evidence, which must be followed by a written determination within 3 months.

Regulatory impact statements

The Ministry of Business, Innovation, and Employment produced regulatory impact statements to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of these regulatory impact statements can be found at http://www.dol.govt.nz/publications/general/gen-ris.asp.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill comes into force 4 months after the date on which it receives the Royal assent.

Clause 3 provides that the Bill amends the Employment Relations Act 2000 (the **Act**).

Part 1
Amendments to principal Act

Clause 4 amends section 4, which deals with the good-faith requirements between the parties to an employment relationship. The amendment provides clarity in relation to the requirements on an employer under section 4(1A)(c)(i) to provide access to information where the employer is proposing to make a decision that will, or is likely to, have an adverse effect on the continuation of employment of 1 or more of the employer's employees. The amendments limit the requirements on an employer to provide access to confidential information of the kinds described in *new subsection (1B)(a) to (e)*. *New subsection (1C)(a)* makes clear that subsection (1A)(c) does not affect an employer's obligations to comply with either the Official Information Act 1982 or the Privacy Act 1993, and *new subsection (1C)(b)* provides that an employer may provide access to information that is contained in a document that also includes the kind of information described in *new subsection (1B)* by either providing that document with any deletions or alterations that are necessary to avoid disclosing the confidential information or by providing a summary of the contents of the document.

Clause 5 amends section 5 by replacing the definition of relevant Acts with a new definition of relevant Acts. The effect of this amendment is to exclude, from the functions of Labour Inspectors, the matters dealt with in *new section 69LA* (*see clause 34*).

Clause 6 inserts a *new section 5A*, which refers to *new Schedule 1AA* (*see clauses 64 and 65*). *New Schedule 1AA* contains application, savings, and transitional provisions relating to amendments made to the Act after 1 January 2013.

Clause 7 repeals section 31(aa). Section 31(aa) provides that one of the objects of Part 5 of the Act is to require parties bargaining for a collective agreement to conclude the agreement unless there are genuine and reasonable grounds not to do so. That provision is no longer required because the relevant provision (section 33) is to be replaced with a *new section 33* (*see clause 9*).

Clause 8 repeals section 32(1)(ca). Section 32(1)(ca) deals with standstills and deadlocks reached during bargaining for a collective agreement and requires the parties to continue to bargain about the outstanding matters on which they have not reached agreement. The

repeal of section 32(1)(ca) relates to the replacement of section 33 (*see clause 9*).

Clause 9 replaces section 33 with a *new section 33*. *New section 33* provides that the duty of good faith (*see* section 4) does not require a union and an employer that are bargaining for a collective agreement either to enter into an agreement or to agree on any matters to be included in an agreement.

Clause 10 replaces section 41(3) and (4) with *new section 41(3) and (4)*. The existing section 41 deals with the timing for initiating bargaining for a collective agreement. Subsections (3) and (4) of that section enable the union to have the first opportunity to initiate bargaining, with the employer's right to do so following 20 days later. *New subsections (3) and (4)* replace that timing mechanism with a regime where either party to the proposed bargaining is able to initiate the bargaining within the specified time limits, which are the same for both parties.

Clause 11 inserts *new sections 44A to 44C*, which provide for employers to opt out of collective bargaining for a single collective agreement involving 2 or more employers as follows:

- *new section 44A* applies to an employer that is an intended party to such an agreement and that has received a notice initiating bargaining for that agreement. If *new section 44A* applies, the employer may, not later than 10 days after receiving the notice, opt out of bargaining for the agreement:
- *new section 44B* provides that an employer that wishes to opt out of bargaining under *new section 44A* must, within the time permitted by that section, give an opt-out notice to all other intended parties identified in the notice that initiates bargaining. The notice must be in writing and be signed by the employer (or its duly authorised representative) and must state that the employer has opted out of bargaining. The notice takes effect on and from the date that it is given to all other intended parties to the bargaining:
- *new section 44C* deals with the effect of opting out under *new sections 44A and 44B*, namely, that when the notice under *new section 44B* takes effect, the employer is no longer a party to bargaining for the collective agreement and ceases to have any further obligations under the Act in relation to that bargaining.

Clause 12 inserts *new section 50K*, which enables a party bargaining for a collective agreement to apply to the Employment Relations Authority (the **Authority**) for a determination as to whether the bargaining has concluded. The Authority must not make a determination under *new section 50K* unless satisfied that the parties have attempted to resolve the difficulties in concluding a collective agreement by way of mediation and, if applicable, facilitation under the Act, that those attempts have failed, and that further attempts are unlikely to be successful. *New section 50K(3) to (5)* enable the Authority to determine that—

- bargaining has concluded, in which case the Authority may make a declaration to that effect; or
- bargaining has not concluded, in which case the Authority may either make a recommendation to the parties as to the process they should follow to resolve the difficulties or decide not to make a recommendation.

In cases where the Authority determines that the bargaining has concluded, none of the parties to the bargaining may initiate further bargaining earlier than 60 days after the date of the declaration, unless the other parties agree. In cases where the Authority determines that bargaining has not concluded, none of the parties may make another application under *new section 50K(1)* until the recommended process has been followed or (if no recommendation has been made) until 60 days after the Authority's determination, unless the other parties agree.

Clause 13 amends section 53 (which provides for a collective agreement to continue after its expiry date if the union initiated bargaining for the purpose of replacing the expired collective agreement before it expired) to also apply if the employer initiated the bargaining. This amendment is consistent with the amendments to section 41 (*see clause 10*).

Clause 14 amends section 59B (which deals with passing on terms and conditions of a collective agreement to an employee who is not bound by the agreement) by repealing subsection (6)(e). Subsection (6)(e) refers to section 63, which is to be repealed (*see clause 16*).

Clause 15 amends section 62 (which deals with an employer's obligations in respect of a new employee who is not a member of a union) by repealing subsection (2)(a)(v). Subsection (2)(a)(v) imposes an

obligation on the employer to inform the new employee about his or her terms and conditions of employment for the first 30 days of employment with that employer. This obligation relates to the provisions of section 63, which is to be repealed (*see clause 16*).

Clause 16 repeals section 63, which makes provision for the terms and conditions of employment for a new employee who is not a member of a union. The current regime is that the terms and conditions of such an employee are, for the first 30 days of employment, the same as those in the collective agreement that would apply to the employee if he or she were a union member together with any additional terms and conditions that have been agreed to and that are not inconsistent with the collective agreement. That regime will no longer apply.

Clause 17 amends section 63A, which deals with bargaining for individual employment agreements and individual terms and conditions of such agreements. Subsection (1)(c) and (d) are repealed because they refer to the 30day period in section 63, and subsection (1)(e) is amended to remove the reference to a collective agreement. Subsection (1)(e) is also amended to clarify that it covers variations to individual employment agreements. These repeals and the amendment are consequences of the repeal of section 63 (*see clause 16*). Section 63A(6) is repealed because it deals with the collective agreement in subsection (1)(e) and is therefore no longer relevant.

Clause 18 amends section 65 to make it applicable to all individual employment agreements, rather than only to those of employees whose work is not covered by a collective agreement. This amendment is a consequence of the repeal of section 63 (*see clause 16*).

Clause 19 amends section 67A by replacing subsection (5). *New subsection (5)* omits the previous reference to section 63(2)(b), which is to be repealed (*see clause 16*).

Clause 20 replaces section 69AA(a) with a *new section 69AA(a)*. Section 69AA(a) currently provides that one of the objects of Part 6AA is to provide employees with a statutory right to request a variation of their working arrangements if they have the care of another person. That condition is to be removed, so *new section 69AA(a)* will provide that the statutory right is available to all employees. The period within which an employer must deal with a request for a variation under section 69AA(b) is reduced from 3 months to 1 month. These amendments relate to the amendments to sections 69AAC (*see clause 22*) and 69AAE (*see clause 24*).

Clause 21 replaces section 69AAB with a *new section 69AAB*. The current section 69AAB imposes limits on when an employee is entitled to make a request for a variation of their working arrangements, particularly that the employee must satisfy the criterion that he or she has the care of another person. *New section 69AAB* provides that an employee may make a request at any time.

Clause 22 repeals section 69AAC(d), which requires an employee who requests a variation of his or her working arrangements to explain how the variation will enable the employee to better care for the person whom he or she is to care for. The condition that the variation must be to enable the employee to care for another person is to be removed (*see clause 21*), so section 69AAC(d) is no longer required.

Clause 23 repeals section 69AAD, which limits an employee's entitlement to apply for another variation of his or her working arrangements to at least 12 months after the previous request was made. No limitations on the number or timing of requests will apply when section 69AAD is repealed (*see also clause 21*, which removes the existing restrictions on applications for variations).

Clause 24 replaces section 69AAE with a *new section 69AAE*. The current section 69AAE requires an employer to deal with a request for a variation to an employee's working arrangements as soon as possible but not later than 3 months after receiving the request, and imposes obligations on an employer in relation to the employer's response, including a reference to the eligibility criteria in the current section 69AAB (which is to be replaced: *see clause 21*). *New section 69AAE* reduces to 1 month the period within which the employer must deal with the request and omits the reference to section 69AAB.

Clause 25 replaces section 69AAF(1) with a *new section 69AAF(1)*. The current section 69AAF(1) refers to section 69AAB, which is to be replaced (*see clause 21*). *New section 69AAF(1)* repeats the current 69AAF(1), but omits the reference to section 69AAB.

Clause 26 repeals section 69AAI(4), which deals with the eligibility of an employee to request a variation to his or her working conditions, as provided for in the current section 69AAB. Because section 69AAB is to be replaced (*see clause 21*), section 69AAI(4) is no longer required. *Clause 26* also amends section 69AAI(5), which contains the definition of relevant date for the purposes of an application to the Authority in relation to an employer's decision under section 69AAE (*see* section 69AAI(3)). The current section 69AAI(5)

refers to periods of 3 months, so as to align with the period in section 69AAE. However, because the period in section 69AAE is to be reduced to 1 month (*see clause 24*), corresponding changes are necessary to section 69AAI(5).

Clause 27 repeals section 69AAL, which is no longer required because the review of Part 6AA (which that section requires) has now been completed.

Clause 28 amends section 69A(a) to update the objects of subpart 1 of Part 6A. The amendment reflects the introduction of a class of employers that are exempt from the application of certain provisions of Part 6A. The rights of employees to transfer to a new employer in the event of restructuring will not now include transfers to a new employer that is an exempt employer, as defined in *new section 69CA* (*see clause 30*).

Clause 29 amends section 69B, which is the interpretation section for the purposes of subpart 1 of Part 6A. The amendment is to insert definitions of associated person, exempt employer, and specified date. The definition of associated person is used in conjunction with the definition of exempt employer, which is defined in full in *new section 69CA* (*see clause 30*).

Clause 30 inserts *new section 69CA*, which includes the definition of exempt employer and sets out the requirements that a new employer or other person must meet to benefit from being an exempt employer. The basic requirement is that the employer or other person, together with any associated person or persons (as defined in section 69B: *see clause 29*), must employ 19 or fewer employees and must provide a warranty to that effect (*see new section 69CA(3)*). If a new employer does not provide a warranty under this section, that employer must comply with Part 6A in the usual way (even if the new employer could have qualified as an exempt employer). *New sections 69LA, 69LB, and 69LC* (which deal with the liability for service-related entitlements of employees transferring to a new employer: *see clause 35*) apply to all new employers, including exempt employers.

Clause 31 amends section 69E(2) by including a reference to new employers that are exempt employers. The effect of this amendment is that, for the purposes of the examples given in that section, an employee's right to elect to transfer to a new employer will now depend not only on whether section 69F (which sets out in what circum-

stances subpart 1 of Part 6A applies to a particular employee) applies but also on whether the new employer is an exempt employer.

Clause 32 replaces section 69G with a *new section 69G*. *New section 69G* updates (in light of the other amendments made by this Bill to Part 6A) the information that an employer must provide to employees affected by restructuring, specifying when that information must be provided and the time period during which the employee must make an election under section 69I (which deals with transfers of employees to the new employer). *New section 69G(4)* requires the employer to send an election made by an employee under section 69G to the new employer as soon as practicable and, in any event, not later than 5 working days after the employee's employer receives the election.

Clause 33 amends section 69H(1) to align the time period during which the employee may bargain with his or her employer with the amendments made to section 69G (*see clause 32*).

Clause 34 amends section 69I (which deals with employees electing to transfer to a new employer) by inserting a *new subsection (1A)*. The effect of this provision is to exclude an employee's ability to make an election under section 69I if the new employer is an exempt employer. The amendment in *clause 34(4)* updates the example in section 69I(3) to include a situation where a warranty (*see new section 69CA(3)*, as inserted by *clause 30*) is not provided.

Clause 35 inserts *new sections 69LA to 69LC*, which have the following effect:

- *new section 69LA* specifies how service-related entitlements of employees who elect to transfer to the new employer are to be apportioned between the employee's former and new employers. *New section 69LA(3)* sets out how, in the absence of agreement, the costs must be apportioned, and *new section 69LA(4) to (6)* make provision for payment and the recovery of any unpaid costs:
- *new section 69LB* provides that, if there is a dispute between the employers as to how the costs under *new section 69LA* should be apportioned, the employers may have the matter resolved either by way of mediation under the Act or by proceedings before the Authority:
- *new section 69LC* introduces implied warranties by an employer in respect of employees who elect to transfer to a new

employer. The warranties are to the effect that the employer has not changed either the working conditions of the employees or their terms and conditions of employment without good reason. A breach of warranty that adversely affects the new employer may be remedied by an award of damages, as provided for in *new section 69LC(3)*.

Clause 36 inserts *new section 69OAA*. *New section 69OAA* deals with exempt employers who provide warranties under *new section 69CA* (*see clause 30*) that are false. In that situation, the person who provides the false warranty is liable to a penalty imposed by the Authority. In addition, an employee affected by the restructuring may bring a personal grievance against the person, and the employer to whom the false warranty was provided may commence proceedings for damages. However, if an employee brings a personal grievance, neither the Authority nor the court may make an order for the employee's reinstatement. *New section 69OAA(5)* defines false warranty (where the number of employees is more than 19), and *new section 69OAA(6)* makes clear that the knowledge of the person giving the warranty (or any other person) is irrelevant as to whether the warranty is a false warranty.

Clause 37 amends the heading to subpart 2 of Part 6A to align it with the amendments made by *clauses 38 to 41*.

Clause 38 replaces section 69OA with a *new section 69OA*. *New section 69OA* provides that the object of subpart 2 of Part 6A is to provide for the disclosure of employee transfer costs information and individualised employee information. Both employee transfer costs information and individualised employee information are defined in *new section 69OB(1)* (*see clause 39*).

Clause 39 amends section 69OB by replacing section 69OB(1) with a *new section 69OB(1)*, which defines employee transfer costs information and individualised employee information for the purposes of subpart 2 of Part 6A.

Clause 40 amends section 69OC to update the circumstances in which a request for employee transfer costs information may be made, who may make the request, and when the information must be supplied.

Clause 41 inserts *new section 69OEA*, which requires individualised employee information to be provided by the employee's employer to

the new employer as soon as practicable and, in any event, not later than the date on which the restructuring takes effect. *New section 69OEA(4) and (5)* deal with the updating of the information that has been already been provided where there have been changes to the matters or circumstances to which the information relates and those changes mean that the previously supplied information is out of date.

Clause 42 repeals section 69OL, which is no longer required because the review of Part 6A (which that section requires) has now been completed.

Clause 43 replaces section 69ZC, which is an interpretation provision, by inserting definitions of compensatory measure and work period. A compensatory measure is defined as a measure that is designed to compensate an employee for an employer's failure to provide rest breaks and meal breaks. It includes (without limitation) a measure that provides the employee with time off work at an alternative time during the employee's work period, for example, by allowing a later start time, an earlier finish time, or an accumulation of time off work that may be taken on 1 or more occasions. The definition of work period repeats the definition of that term in the current section 69ZC.

Clause 44 replaces sections 69ZD and 69ZE with *new sections 69ZD to 69ZEB*, which relate to an employee's entitlement to rest breaks and meal breaks, the timing and duration of the breaks, and compensatory measures.

New section 69ZD(1) requires an employer to provide an employee with rest breaks and meal breaks that—

- provide the employee with a reasonable opportunity for rest and refreshment and to attend to personal matters during the employee's work period; and
- are appropriate for the duration of the employee's work period.

New section 69ZD(2) provides that the employee's entitlement to rest breaks or meal breaks may be subject to restrictions, but only if—

- the restrictions are reasonable and necessary, having regard to the nature of the employee's work; or
- if not reasonable and necessary, the restrictions are reasonable and agreed to by the employer and the employee (which may be in an employment agreement or otherwise).

New section 69ZD(3) clarifies that an employee's entitlement to rest breaks is to paid rest breaks.

New section 69ZE deals with the timing and duration of rest breaks and meal breaks. *New subsection (2)* provides that, for the purposes of *new subsection (1)(b)* (where an employer and employee cannot agree on when the employee is to take his or her breaks or on the duration of the breaks), the employer may specify reasonable times and durations that, having regard to the employer's operational environment or resources and the employee's interests, enable the employer to maintain continuity of service or production.

New sections 69ZEA and 69ZEB are new provisions that relate to compensatory measures (*see clause 43*). *New section 69ZEA* provides that an employer is exempt from the requirement to provide rest breaks and meal breaks in accordance with *new section 69ZD(1)*—

- to the extent that the employer and employee agree that the employee is to be provided with compensatory measures; or
- to the extent that, having regard to the nature of the work performed by the employee, the employer cannot reasonably provide the employee with rest breaks and meal breaks.

New section 69ZEA(2) requires an employer to provide the employee with compensatory measures if the employer is not required to provide the employee with rest breaks and meal breaks under *new section 69ZD(1)*. *New section 69ZEB* makes clear that compensatory measures must be reasonable (*new section 69ZEB(1)*), and includes specific clarification as to compensatory measures that involve the employee being provided with time off work (*new section 69ZEB(2)*).

Clause 45 consequentially amends section 69ZF, which is a penalty provision, to insert cross-references to *new sections 69ZD to 69ZEB*.

Clause 46 replaces sections 69ZG and 69ZH with *new sections 69ZG and 69ZH*, which deal with the relationship between Part 6D of the Act and employment agreements and other enactments. The amendments are necessary to align sections 69ZG and 69ZH with the other amendments made to Part 6D (*see clauses 43 to 45*).

Clause 47 amends section 80 by inserting *new paragraphs (ba) and (bb)*. Section 80 sets out the object of Part 8 of the Act, which deals with strikes and lockouts. *New paragraphs (ba) and (bb)* refer to the new provisions that are to be inserted in relation to notice require-

ments for strikes and lockouts, and to specified pay deductions (*see clauses 48 to 56*).

Clause 48 amends section 86 by inserting *new paragraph (ba)*, which will add to the categories that render participation in a strike or lockout unlawful. The categories to be introduced relate to failure to comply with notice requirements under *new section 86A* or section 93 (in the case of a strike) or *new section 86B* or section 94 (in the case of a lockout) (*see clause 49*).

Clause 49 inserts *new sections 86A and 86B*, which prohibit strikes and lockouts unless the specified requirements are satisfied. Those requirements are that the strike or lockout must be lawful under section 83 or 84, that written notice must have been given to the relevant employer or employee, and that the strike or lockout must not commence before the time and date specified in the notice as the time and date on which the strike or lockout will begin (*see new section 86A(1)* (strikes) and *new section 86B(1)* (lockouts)). *New sections 86A(2) and (3) and 86B(2) and (3)* set out the requirements for the respective notices. *New sections 86A(4) and 86B(4)* set out the circumstances in which the notice requirements do not apply, including in relation to strikes and lockouts in essential services (*see* section 90) and in relation to certain passenger transport services (*see* sections 93 and 94).

Clause 50 amends section 90 (which relates to limitations on strikes in essential services) by replacing subsection (3)(d) with *new subsection (3)(d) and (e)*. *New subsection (3)(e)* adds a requirement that the notice of intention to strike (*see* section 90(1)(b)(i)) must include the date on which the strike will end.

Clause 51 amends section 91 (which relates to limitations on lockouts in essential services) by inserting a *new subsection (3)(da)*. *New subsection (3)(da)* adds a requirement that the notice of intention to lock out (*see* section 91(1)(b)(i)) must include the date on which the lockout will end.

Clause 52 amends section 93 (which relates to limitations on strikes in certain passenger transport services) by replacing subsection (2)(d) with *new subsection (2)(d) and (e)*. *New subsection (2)(e)* adds a requirement that the notice of intention to strike (*see* section 93(1)(b)) must include the date on which the strike will end.

Clause 53 amends section 94 (which relates to limitations on lockouts in certain passenger transport services) by inserting *new subsection (2)(da)*. *New subsection (2)(da)* adds a requirement that the notice of intention to lock out (*see* section 94(1)(b)) must include the date on which the lockout will end.

Clause 54 replaces section 95 with a *new section 95*. *New section 95* repeats the penalty that can currently be imposed if an employer fails to comply with section 93(4) or 94(4), but removes the penalty that can currently be imposed if a union or an employer (as the case may be) fails to comply with section 93(1) or 94(1).

Clause 55 inserts *new section 95AA*. *New section 95AA* provides that a notice of strike or lockout under either *new section 86A or 86B* (*see clause 49*) or section 90, 91, 93, or 94 may be withdrawn at any time by giving notice to the other party and to the chief executive (as defined in section 5).

Clause 56 inserts *new sections 95A to 95H* and cross-headings relating to those provisions. *New sections 95A to 95H* deal with specified pay deductions as follows:

- *new section 95A* provides definitions of partial strike (any strike other than a strike that wholly discontinues the employment of the employees, but not including a refusal to work overtime or a ban on call-out work if the employees would otherwise receive a special payment for performing the call-out work) and specified pay deduction (a deduction made in accordance with *new section 95B* and calculated in accordance with *new section 95D*):
- *new section 95B* enables an employer to make specified pay deductions in relation to partial strikes, subject to the employer complying with the notice requirements in *new section 95C* and calculating the amount of the deduction in accordance with *new section 95D*:
- *new section 95C* sets out the notice requirements that an employer that intends to make a specified pay deduction must comply with. The notice must be given before the deduction is made, within the pay period in which the first deduction is to be made, and must specify the further pay periods during which the deductions will be made:

- *new section 95D* sets out the process to be followed by the employer in calculating the amount of the specified pay deduction:
- *new section 95E* deals with the relationship between specified pay deductions and the applicable minimum rate of wages under the Minimum Wage Act 1983. Section 6 of that Act provides that the minimum wage applies despite anything to the contrary in any other enactment, so *new section 95E* is intended to make clear that an employee may lawfully be paid less than the minimum rate of wages if that results from a specified pay deduction or from a reduction in output where the employee is paid by piecework and is party to a partial strike:
- *new section 95F* entitles a union representing an employee or employees to request information from the employer in relation to the specified pay deductions:
- *new section 95G* places an obligation on the employer to respond in writing to a request under *new section 95F*, setting out the required information and explanation, and the timing of the employer's response:
- *new section 95H* deals with the resolution of problems arising in relation to the specified pay deductions, including providing that they be dealt with as employment relationship problems and that the union may, if resolution between the parties (including by mediation) is not achieved, lodge an application with the Authority in accordance with section 158.

Clause 57 amends section 100 to include references to specified pay deductions. The effect of these amendments will be to extend the jurisdiction of the Employment Court to grant injunctions to stop specified pay deductions being made. The amendments also include the power to prevent proceedings for such injunctions from being commenced in the District Court or High Court.

Clause 58 amends section 140A (which enables the Authority to make compliance orders) to enable new employers and employees to apply for compliance orders in relation to individualised employee information (as defined in *new section 69OB(1)*: *see clause 39*).

Clause 59 amends section 159A by inserting *new subsection (3)*. *New subsection (3)* provides that section 159A does not apply in relation to proceedings referred to in *new section 161(1)(la)* (that is,

proceedings related to the calculation of a specified pay deduction: *see clause 56*). The effect of this amendment is to allow the Authority to prioritise proceedings relating to the calculation of specified pay deductions, even if no attempt has been made to resolve the matter by mediation.

Clause 60 amends section 161 by inserting *new subsections (1)(cba), (ga), and (la)*, which extend the jurisdiction of the Authority. *New section 161(1)(cba)* enables the Authority to determine whether bargaining has been concluded under *new section 50K* (*see clause 12*), *new section 161(1)(ga)* enables the Authority to determine the apportionment of liability for the costs of service-related entitlements under *new section 69LB(4)* (*see clause 35*), and *new section 161(1)(la)* gives the Authority jurisdiction in relation to proceedings related to the calculation of specified pay deductions under *new section 95D* (*see clause 56*).

Clause 60 also amends section 161(2) (which limits the Authority's jurisdiction in relation to certain bargaining matters) to include a reference to *new section 161(1)(cba)*.

Clause 61 amends section 174 (which deals with determinations of the Authority) by inserting *new subsections (1) to (4)*. *New section 174(1) to (4)* places obligations on the Authority to give, at the conclusion of an investigation meeting, either an oral determination or an oral indication of its preliminary finding on the matter and to record its final determination no later than 3 months after the conclusion of the investigation meeting or (if further evidence or information is required) no later than 3 months after receipt of that evidence or information by the Authority. However, the time for recording a determination may be extended if the Chief of the Authority decides that exceptional circumstances exist.

Clause 62 inserts *new section 237AA*. *New section 237AA* authorises the chief executive to approve and issue any forms that he or she considers necessary for the purposes of the Act. However, this power does not extend to forms prescribed by regulations made under the Act.

Clause 63 repeals section 237A, which enables Schedule 1A (employees to whom subpart 1 of Part 6A applies) to be amended by Order in Council. The effect of this amendment will be that Schedule 1A will, in future, only be able to be amended by an amending Act.

Part 2
Application, savings, transitional, and consequential provisions

Clauses 64 and 65 and *Schedule 1* deal with application, savings, and transitional matters, setting out, in *new section 254* and *new Schedule 1AA*, how and when certain amendments apply in relation to circumstances that exist before the amendments made by this Act come into force.

Clause 66 and *Schedule 2* make consequential amendments to section 74AC of the State Sector Act 1988 and section 6 of the Wages Protection Act 1983. The amendment to section 74AC of the State Sector Act 1988 (strikes in schools to be notified) inserts a *new section 74AC(4A)*. *New section 74AC(4A)* will align the provisions relating to the withdrawal of a strike notice under the State Sector Act 1988 with those in *new section 95AA* of the Employment Relations Act 2000 (*see clause 55*). The amendments to section 6 of the Wages Protection Act 1983 (employer may recover overpayments in certain circumstances) will enable employers to make the specified pay deductions specified in *new sections 95A to 95H* (*see clause 56*).

Hon Simon Bridges

Employment Relations Amendment Bill

Government Bill

Contents

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Employment Relations Amendment Act **2013**.

2 Commencement

This Act comes into force 4 months after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Employment Relations Act 2000 (the **principal Act**).

Part 1
Amendments to principal Act

4 Section 4 amended (Parties to employment relationship to deal with each other in good faith)

Replace section 4(1B) and (1C) with:

"(1B) However, subsection (1A)(c) does not require an employer to provide access to confidential information—

"(a) that is about an identifiable individual other than the affected employee:

"(b) that is evaluative or opinion material compiled for the purpose of making a decision that will, or is likely to, have an adverse effect on the continuation of employment of 1 or more employees:

"(c) that is about the identity of the person who supplied the material described in **paragraph (b)**:

"(d) that is subject to a statutory requirement to maintain confidentiality:

"(e) where it is necessary, for any other good reason, to maintain the confidentiality of the information (for example, to avoid unreasonable prejudice to the employer's commercial position).

"(1C) To avoid doubt,—

"(a) the requirements of subsection (1A)(c) do not affect an employer's obligations under—

"(i) the Official Information Act 1982:

"(ii) the Privacy Act 1993 (despite section 7(2) of that Act):

"(b) an employer may provide access to information contained in the same document as the information described in **subsection (1B)** by providing access to—

"(i) that document, with any deletions or alterations that are necessary to avoid disclosing the information described in **subsection (1B)**; or

"(ii) a summary of the contents of that document."

5 Section 5 amended (Interpretation)

In section 5, replace the definition of **relevant Acts** with:

"**relevant Acts**,—

"(a) in sections 223A and 223B, means the Acts specified in section 223(1), except **section 69LA** of this Act:

"(b) in sections 223D to 223F, means the Acts specified in section 223(1), except Part 5 and **section 69LA** of this Act".

6 New section 5A inserted (Provisions affecting application of amendments to this Act)

After section 5, insert:

"**5A Provisions affecting application of amendments to this Act**

Schedule 1AA contains application, savings, and transitional provisions relating to amendments made to this Act after 1 January 2013 (*see* **section 254**)."

7 Section 31 amended (Object of this Part)

Repeal section 31(aa).

8 Section 32 amended (Good faith in bargaining for collective agreement)

Repeal section 32(1)(ca).

9 Section 33 replaced (Duty of good faith requires parties to conclude collective agreement unless genuine reason not to)

Replace section 33 with:

"**33 Duty of good faith does not require collective agreement to be concluded**

The duty of good faith in section 4 does not require a union and an employer bargaining for a collective agreement—

"(a) to enter into a collective agreement; or

"(b) to agree on any matter for inclusion in a collective agreement."

10 Section 41 amended (When bargaining may be initiated)

Replace section 41(3) and (4) with:

"(3) If there is an applicable collective agreement in force, neither a union nor an employer may initiate bargaining earlier than 60 days before the date on which the collective agreement expires.

"(4) However, if there is more than 1 applicable collective agreement in force that binds 1 or more unions or 1 or more employers, or both, that are intended to be parties to the bargaining, then neither a union nor an employer may initiate bargaining before the later of the following dates:

"(a) the date that is 120 days before the date on which the last applicable collective agreement expires; and

"(b) the date that is 60 days before the date on which the first applicable collective agreement expires."

11 New sections 44A to 44C inserted

After section 44, insert:

"**44A Employer may opt out of bargaining for collective agreement involving 2 or more employers**

"(1) This section applies to an employer that—

"(a) is an intended party to bargaining for a single collective agreement involving 2 or more employers; and

"(b) has received a notice initiating bargaining for that collective agreement.

"(2) The employer may, not later than 10 days after receiving the notice, opt out of bargaining for the collective agreement.

"**44B How to opt out**

"(1) An employer that wishes to opt out of bargaining under **section 44A** must, within the time limit specified in **section 44A(2)**, give notice (an **opt-out notice**) to all other intended parties identified in the notice initiating bargaining.

"(2) An opt-out notice must—

"(a) be in writing and be signed by the employer or the employer's duly authorised representative; and

"(b) state that the employer has opted out of the bargaining in accordance with **section 44A**.

"(3) An opt-out notice takes effect on and from the date on which it is given to all other intended parties identified in the notice initiating bargaining (*see* section 42).

"**44C Effect of opting out**

"(1) An employer that opts out of bargaining under **section 44A** ceases, on the date on which the opt-out notice takes effect under **section 44B(3)**,—

"(a) to be a party to bargaining for the collective agreement; and

"(b) to have any further obligations under this Act in relation to that bargaining.

"(2) To avoid doubt,—

"(a) an employer must opt out separately in relation to each notice given under section 42; and

"(b) an employer that gives an opt-out notice may be included as an intended party in any subsequent notice given under section 42; and

"(c) nothing in this section or **section 44A or 44B** prevents an employer from opting out of bargaining for a collective agreement involving 2 or more employers that is intended to replace a previous collective agreement that covered those employers."

12 New section 50K and cross-heading inserted

After section 50J, insert:

"*Authority may determine that bargaining has concluded*

"**50K Authority may determine that bargaining has concluded**

"(1) A party to bargaining for a collective agreement may apply to the Authority for a determination as to whether bargaining has concluded.

"(2) Where an application is made under **subsection (1)**, the Authority must—

"(a) consider whether the parties have attempted to resolve the difficulties in concluding a collective agreement by use of mediation and, if applicable, facilitation; and

"(b) direct that mediation, further mediation, or facilitation (as the case may require) be used before the Authority investigates the matter, unless the Authority considers that the use of mediation, further mediation, or facilitation would be unlikely to result in the parties resolving those difficulties.

"(3) If the Authority determines that bargaining has concluded,—

"(a) the Authority may make a declaration to that effect; and

"(b) none of the parties to that bargaining may initiate further bargaining earlier than 60 days after the date of the declaration without the agreement of the other party or parties concerned.

"(4) If the Authority determines that bargaining has not concluded,—

"(a) the Authority may make a recommendation as to the process that the parties should follow to resolve the difficulties; and

"(b) none of the parties to that bargaining may make another application under **subsection (1)** in respect of that bargaining until the process recommended by the Authority has been followed.

"(5) If the Authority determines that bargaining has not concluded, but does not make a recommendation under **subsection (4)(a)**, none of the parties to that bargaining may make another application under **subsection (1)** in respect of that bargaining earlier than 60 days after the date of the determination without the agreement of the other party or parties concerned."

13 Section 53 amended (Continuation of collective agreement after specified expiry date)

In section 53(2), after "the union", insert "or the employer".

14 Section 59B amended (Breach of duty of good faith to pass on, in certain circumstances, in individual employment agreement terms and conditions agreed in collective bargaining or in collective agreement)

Repeal section 59B(6)(e).

15 Section 62 amended (Employer's obligations in respect of new employee who is not member of union)

Repeal section 62(2)(a)(v).

16 Section 63 repealed (Terms and conditions of employment of new employee who is not member of union)

Repeal section 63.

17 Section 63A amended (Bargaining for individual employment agreement or individual terms and conditions in employment agreement)

(1) Repeal section 63A(1)(c) and (d).

(2) In section 63A(1)(e), replace "for an employee if no collective agreement covers the work done, or to be done, by the employee" with ", including any variations to that agreement".

(3) Repeal section 63A(6).

18 Section 65 amended (Terms and conditions of employment where no collective agreement applies)

(1) Replace the heading to section 65 with "**Form and content of individual employment agreement**".

(2) In section 65(1), delete "whose work is not covered by a collective agreement that binds his or her employer".

(3) Repeal section 65(3).

19 Section 67A amended (When employment agreement may contain provision for trial period for 90 days or less)

Replace section 67A(5) with:

"(5) To avoid doubt, a trial provision may be included in an employment agreement under section 61(1)(a), but subject to section 61(1)(b)."

20 Section 69AA amended (Object of this Part)

(1) Replace section 69AA(a) with:

"(a) provide employees with a statutory right to request a variation of their working arrangements; and".

(2) In section 69AA(b), replace "3 months" with "1 month".

21 Section 69AAB replaced (When employee may make request)

Replace section 69AAB with:

"**69AAB When employee may make request**

An employee may make a request at any time."

22 Section 69AAC amended (Requirements relating to request)

Repeal section 69AAC(d).

23 Section 69AAD repealed (Limitation on frequency of requests)

Repeal section 69AAD.

24 Section 69AAE replaced (Employer must notify decision as soon as possible)

Replace section 69AAE with:

"**69AAE Employer must notify decision as soon as possible**

An employer must deal with a request as soon as possible, but not later than 1 month after receiving it, and must—

"(a) notify the employee of whether his or her request has been approved or refused; and

"(b) if the request is refused,—

"(i) notify the employee that the request is refused because of a ground specified in section 69AAF(2) or (3); and

"(ii) notify the employee of the ground for refusal; and

"(iii) provide an explanation of the reasons for that ground."

25 Section 69AAF amended (Grounds for refusal of request by employer)

Replace section 69AAF(1) with:

"(1) An employer may refuse a request only if the employer determines that the request cannot be accommodated on 1 or more of the grounds specified in subsection (2)."

26 Section 69AAI amended (Application to Authority)

(1) Repeal section 69AAI(4).

(2) In section 69AAI(5), replace "3 months" with "1 month" in each place.

27 Section 69AAL and cross-heading repealed

Repeal section 69AAL and the cross-heading above section 69AAL.

28 Section 69A amended (Object of this subpart)

In section 69A(a), after "the same terms and conditions of employment", insert "unless that other person is an exempt employer".

29 Section 69B amended (Interpretation)

(1) In section 69B, insert in their appropriate alphabetical order:

"**associated person** means a person associated with an exempt employer in 1 or more of the following ways:

"(a) the person is a holding company or subsidiary of the exempt employer:

"(b) the person and the exempt employer are both subsidiaries of the same body corporate:

"(c) the exempt employer—

"(i) is a subcontractor of the person; and

"(ii) was engaged, either before the restructuring or on the date on which the restructuring takes effect, to perform work that is, or will be, subject to the restructuring:

"(d) the person has, either before the restructuring or on the date on which the restructuring takes effect, granted a

franchise to the new employer to perform work that is, or will be, subject to the restructuring

"**exempt employer** has the meaning given to it by **section 69CA**

"**specified date** has the meaning given to it by section 69I(4)".

(2) In section 69B, insert as subsection (2):

"(2) In subsection (1), **holding company** and **subsidiary** have the meanings given to them by section 5 of the Companies Act 1993."

30 New section 69CA inserted (Meaning of, and requirements applying to, exempt employer, etc)

After section 69C, insert:

"**69CA Meaning of, and requirements applying to, exempt employer, etc**

"(1) In this subpart, unless the context otherwise requires, **exempt employer** means an employer or other person that—

"(a) has provided a warranty in accordance with **subsection (3)**; and

"(b) on the date on which the warranty is provided, employs 19 or fewer employees.

"(2) For the purposes of **subsection (1)(b)**,—

"(a) a person may be an exempt employer even though, immediately before the specified date, that person has no employees:

"(b) if the employer or other person has an associated person or persons, the number of employees referred to in **subsection (1)(b)** includes the total number of employees employed by both the employee or other person and the associated person or persons.

"(3) The warranty must—

"(a) be in writing; and

"(b) confirm that, on the date that the warranty is given, the employer or other person (together with any associated person or persons, if applicable) employs 19 or fewer employees; and

"(c) be provided to—

"(i) every other employer of employees affected by the restructuring; and

"(ii) if the restructuring is subsequent contracting, person A in the definition of that term in section 69C(4); and

"(d) be provided on whichever of the following dates is applicable in the circumstances:

"(i) if the restructuring is a contracting in, the date on which person B in the definition of that term in section 69C(1) is informed that the agreement with person A in that definition will be terminated or expire:

"(ii) if the restructuring is a contracting out or a subsequent contracting, both the date on which—

"(A) a tender (if any) is submitted to person A in the definition of that term in section 69C(2) or (4), as the case may be; and

"(B) an agreement is entered into with person A:

"(iii) if the restructuring is the sale or transfer of a business, or of any part of that business, both the date on which—

"(A) a tender (if any) is submitted to the seller or transferor; and

"(B) the agreement for sale or transfer is entered into with the seller or transferor.

"(4) **Subsection (5)** applies if an employer or other person intends to provide a warranty under **subsection (3)** but does not have information sufficient to enable the employer or other person to identify the employer of the employees affected by the proposed restructuring.

"(5) The following persons must, on request, provide the employer or other person intending to provide a warranty with the name and contact details of the employer of the employees referred to in **subsection (3)**:

"(a) person B, if the restructuring is a contracting in, a contracting out, or a subsequent contracting and the work had been subcontracted; and

"(b) person A, if the restructuring is a subsequent contracting and the work had not been subcontracted.

"(6) An employer that does not provide a warranty that complies with **subsection (3)** must comply in full with the requirements of this Part.

"(7) To avoid doubt, **sections 69LA, 69LB, and 69LC** continue to apply in relation to an exempt employer if an employee of the exempt employer elects to transfer to a new employer under section 69I."

31 Section 69E amended (Examples of contracting in, contracting out, and subsequent contracting)

Replace section 69E(2) with:

"(2) Whether, in the following examples, an employee has the right to elect to transfer to a new employer depends on whether—

"(a) section 69F applies to the employee; and

"(b) the new employer is an exempt employer."

32 Section 69G replaced (Notice of right to make election)

Replace section 69G with:

"**69G Notice of right to make election**

"(1) As soon as practicable, but no later than the date on which a restructuring takes effect, the employer of the employees who will be affected by a restructuring must provide the affected employees with—

"(a) information about whether the employees have a right to make an election under section 69I; and

"(b) if the employees have a right to make an election under section 69I, an opportunity to exercise that right; and

"(c) information sufficient for the employees to make an informed decision about whether to exercise any right to make an election; and

"(d) the date by which any right to make an election must be exercised, which is—

"(i) the date that is 5 working days after the day on which the employees are provided with the information described in **paragraphs (a) to (c)**; or

"(ii) if the employees' employer and the new employer agree to a later date, that agreed date.

"(2) Without limiting the information to be provided under **subsection (1)(c)**, the information provided under that provision must include—

"(a) the name of the new employer:

"(b) the nature and scope of the restructuring:

"(c) the date on which the restructuring is to take effect:

"(d) a statement to the effect that an election must be made in writing, signed by the employee, and sent to the employee's employer:

"(e) the form in which the election is to be sent to the employee's employer (for example, by post, fax, or email):

"(f) notice that—

"(i) certain information will be provided to the new employer about employees who elect to transfer; and

"(ii) those employees are entitled to access the information, and to request correction of the information, in accordance with the Privacy Act 1993.

"(3) If the employees do not have any right to make an election under section 69I, the employees' employer must also provide the following information to the employees:

"(a) that the new employer has provided a written warranty that, on the date of giving the warranty, the new employer is an exempt employer; and

"(b) that the employees therefore do not have any right to transfer to the new employer; and

"(c) that, if the warranty is false, the employees may raise a personal grievance against the new employer as if the employees—

"(i) elected to transfer to the new employer under **subsection (1)**; and

"(ii) were unjustifiably dismissed (as provided for in section 103(1)(a)); but

"(d) that the remedies available in respect of a personal grievance referred to in **paragraph (c)** do not include an order for reinstatement.

"(4) The employees' employer must send an election that complies with **subsections (1)(d) and (2)(d)** to the new employer as soon as practicable, but no later than 5 working days after the day on which that election is received by the employees' employer.

"(5) If an employee sends an election that complies with **subsection (2)(d)** by post, fax, or email before the date described in **subsection (1)(d)**, the employee must be treated as having exercised his or her right to make an election by that date.

"(6) If the employee's employer sends an election to the new employer by post, fax, or email before the date that is 5 working days after the day on which the employee's employer received that election, the employee's employer must be treated as having met the deadline specified in **subsection (4)**.

"(7) If the restructuring is a contracting in or a subsequent contracting, person A in the definition that applies must give the employer sufficient notice of, and information about, the restructuring to enable the employer to comply with **subsection (1)**.

"(8) An employer or other person who fails to comply with this section is liable to a penalty imposed by the Authority."

33 Section 69H amended (Employee bargaining for alternative arrangements)

In section 69H(1), replace "with section 69G and before deciding whether" with "with **section 69G(1)** and before deciding whether to exercise any right".

34 Section 69I amended (Employee may elect to transfer to new employer)

(1) In the heading to section 69I, after "**new employer**", insert "**in certain circumstances**".

(2) In section 69I(1), replace "section 69G(1)(b)" with "**section 69G(1)(d)**".

(3) After section 69I(1), insert:

"(1A) However, subsection (1) does not apply if the new employer is an exempt employer."

(4) In section 69I(3), in the example, after the fourth paragraph, insert:

"The second independent contractor did not provide any warranty about exempt employer status to the retailer, as required by **section 69CA(3)**."

35 New sections 69LA to 69LC inserted

After section 69L, insert:

"**69LA Liability for costs of service-related entitlements of transferring employee**

"(1) This section applies if—

"(a) an employee elects to transfer to a new employer; and

"(b) on the specified date, the employee has not taken, or been paid for, service-related entitlements (whether legislative or otherwise) that relate to the employee's period of employment before the specified date.

"(2) Liability for the costs of service-related entitlements (whether statutory or otherwise) of the employee must be apportioned between the employee's employer and the new employer.

"(3) If the employee's employer and the new employer cannot agree before the specified date on how to apportion those costs, the costs must be apportioned as follows:

"(a) the employee's employer is liable for the costs that the employer would have been liable to pay to the employee if the employee had resigned and ceased employment with the employer on the day before the specified date (for example, costs related to annual holidays or alternative holidays not taken before the specified date); and

"(b) the new employer is liable for the costs of any service-related entitlements that accrued before the specified date but would not have been paid to the employee if the employee had resigned and ceased employment with his or her previous employer on the day before the specified date (for example, costs relating to sick leave not taken before the specified date).

"(4) The employee's employer must pay to the new employer—

"(a) the amount agreed before the specified date by the employee's employer and the new employer; or

"(b) if no amount is agreed, the costs described in **subsection (3)(a)**.

"(5) The employee's employer must comply with **subsection (4)**—

"(a) by the specified date; or

"(b) if the employee's employer and the new employer agree to a later date, by that agreed date.

"(6) If the new employer does not receive payment from the employee's employer by the specified date or the agreed date (if any), the new employer may recover the payment, in any court of competent jurisdiction, as a debt due from the employee's employer.

"(7) To avoid doubt,—

"(a) if only part of the employee's work is affected by the restructuring, the apportionment of costs described in **subsection (3)** must relate only to the work that is affected by the restructuring:

"(b) if the work performed by the employee will be performed for, or on behalf of, more than 1 new employer, the apportionment of costs described in **subsection (3)** must be adjusted between the employer's employee and each new employer on a pro rata basis:

"(c) on and from the specified date, the new employer is liable to pay the employee for all service-related entitlements (whether legislative or otherwise), including those referred to in **subsection (3)(a)**.

"**69LB Resolving disputes about apportioning liability for costs of service-related entitlements**

"(1) This section applies to a dispute between an employee's employer and the new employer (or, if more than 1 new employer is involved, all or any of the new employers) about apportioning liability for the costs of service-related entitlements under **section 69LA(3)**.

"(2) If the dispute cannot be resolved between the employee's employer and the new employer or employers,—

"(a) the parties may access mediation services as if the dispute were an employment relationship problem:

"(b) proceedings to resolve the dispute may be commenced before the Authority as if the dispute were an employment relationship problem.

"(3) For the purposes of **subsection (2)(a)**, the parties may agree to access mediation services that are—

"(a) provided under section 144 (in which case, sections 145 to 153 apply, with any necessary modifications); or

"(b) referred to in section 154.

"(4) If proceedings are commenced before the Authority, the Authority must determine the apportionment of the costs of the service-related entitlements in accordance with **section 69LA(3)**.

"**69LC Implied warranty by employer of transferring employees**

"(1) This section applies if 1 or more employees of an employer elect to transfer to a new employer, as provided for in section 69I.

"(2) There is an implied warranty by the employees' employer to the new employer that the employees' employer has not, without good reason, changed—

"(a) the work affected by the restructuring; or

"(b) the terms and conditions of employment of 1 or more of those employees.

"(3) If the employees' employer breaches the implied warranty, and that breach adversely affects the new employer, the new employer may commence proceedings, in any court of competent jurisdiction, against that employer for damages."

36 New section 69OAA inserted (False warranty: exempt employer)

After section 69O, insert:

"**69OAA False warranty: exempt employer**

"(1) A person who provides a false warranty is liable to a penalty imposed by the Authority.

"(2) An employee affected by the restructuring may raise a personal grievance against the person who provided the false warranty as if the employee had—

"(a) elected to transfer to the person under section 69I; and

"(b) been unjustifiably dismissed (within the meaning given in section 103(1)(a)).

"(3) However, where the Authority or the court determines that the employee has a personal grievance, neither the Authority nor the court may make an order for reinstatement under sections 123(1)(a) and 125 in relation to that employee.

"(4) An employer to whom the false warranty was provided under **section 69CA(3)(c)** may commence proceedings for damages, in a court of competent jurisdiction, against the person who provided the warranty.

"(5) In this section, **false warranty** means a warranty under **section 69CA**—

"(a) that confirms, on the date that the warranty is given, the employer or other person (together with any associated person or persons, if applicable) employs 19 or fewer employees; but

"(b) where, on the date that the warranty is given, the employer or other person (together with any associated person or persons, if applicable) employs more than 19 employees.

"(6) To avoid doubt, whether or not the person giving the warranty, or any other person, knew, or ought reasonably to have known, that the warranty was a false warranty is irrelevant."

37 Subpart 2 heading in Part 6A replaced

In Part 6A, replace the subpart 2 heading with:

"Subpart 2—Disclosure of information relating to transfer of employees".

38 Section 69OA replaced (Object of this subpart)

Replace section 69OA with:

"**69OA Object of this subpart**

The object of this subpart is to make provision for the disclosure of employee transfer costs information and individualised employee information relating to employees who have elected to transfer to a new employer under section 69I."

39 Section 69OB amended (Interpretation)

Replace section 69OB(1) with:

"(1) In this subpart,—

"**employee transfer costs information**, in relation to a proposed restructuring,—

"(a) means information about employment-related entitlements of the employees who would be eligible to elect, under section 69I, to transfer to a new employer if the proposed restructuring were to proceed and the new employer were not an exempt employer; and

"(b) includes—

"(i) the number of employees who would be eligible to make an election; and

"(ii) the wages or salary payable in a stated period (for example, a week, fortnight, or month) to the employees for performing the work that would be subject to the proposed restructuring; and

"(iii) the total number of hours the employees spend in a stated period (for example, a week, fortnight, or month) performing the work that would be subject to the proposed restructuring; and

"(iv) the cost of service-related entitlements of the employees, whether legislative or otherwise; and

"(v) the cost of any other entitlements of the employees in their capacity as employees, including any entitlements already agreed but not due until a future date or time

"**individualised employee information—**

"(a) means information about an employee kept by the employee's employer for employment-related purposes, including—

"(i) any personnel records relating to the employee; and

"(ii) information about any disciplinary matters relating to the employee; and

"(iii) information about any personal grievances raised by the employee against the employer; and

"(iv) information about an employee that the employee's employer is required to keep under this Act or any other enactment, for example,—

"(A) the employee's individual employment agreement, the current terms and condi-

tions of employment that make up the employee's individual terms and conditions of employment, or the relevant collective agreement (as the case may be); and

"(B) a copy of the wage and time record; and

"(C) a copy of the holiday and leave record; and

"(D) a copy of the employee's tax code declaration; and

"(E) details of any employer contribution (as defined in section 4(1) of the KiwiSaver Act 2006) and any deductions of contributions from the employee's wages for the purposes of the KiwiSaver Act 2006; and

"(F) details of any deductions from the employee's wages made under section 36 of the Student Loan Scheme Act 2011; and

"(G) details of any deductions from the employee's wages made under Part 10 of the Child Support Act 1991; but

"(b) does not include any information about the employee that is subject to a statutory or contractual requirement to maintain confidentiality."

40 Section 69OC amended (Disclosure of employee transfer costs information)

(1) Replace section 69OC(1) and (2) with:

"(1) A request for the disclosure of employee transfer costs information may be made either—

"(a) where—

"(i) disclosure is sought for the purpose of—

"(A) deciding whether to terminate an agreement or let it expire; or

"(B) negotiating an agreement; or

"(C) deciding whether to enter into an agreement; or

"(D) tendering for an agreement; and

"(ii) a restructuring would result if the agreement were to be—

"(A) terminated or to expire; or
"(B) concluded; or
"(C) entered into; or
"(D) awarded; or

"(b) where—

"(i) the restructuring referred to in **paragraph (a)(ii)** is a contracting out or a subsequent contracting; and

"(ii) a subcontractor is engaged, before or at the same time as the restructuring, to perform the work, or some of the work, affected by the restructuring.

"(2) The persons who may make the request are—

"(a) the persons who would (if they were parties to the restructuring and the restructuring were to proceed) be—

"(i) person A in the definition of contracting in in section 69C(1):

"(ii) person B in the definition of contracting out in section 69C(2):

"(iii) person C in the definition of subsequent contracting in section 69C(4):

"(iv) the person to whom an employer's business (or part of it) is sold or transferred:

"(b) the persons who would (if the restructuring were to proceed and if the work were to be subcontracted before or at the same time as the restructuring) be—

"(i) a subcontractor engaged to perform the work for person B in the definition of contracting out in section 69C(2):

"(ii) a subcontractor engaged to perform the work for person C in the definition of subsequent contracting in section 69C(4).

"(2A) However, an employer or other person that would be an exempt employer if the proposed restructuring were to take effect cannot make a request for disclosure of employee transfer costs information."

(2) After section 69OC(3), insert:

"(3A) A request for disclosure of employee transfer costs information must be accompanied by a written warranty stating that,

on the date on which the warranty is provided, the person making the request is not an exempt employer.

"(3B) If a request is not accompanied by the warranty described in **subsection (3A)**, the person to whom the request is made must decline to provide employee transfer costs information to the person who made the request.

"(3C) A person to whom a request is made for a purpose described in **subsection (1)(a)** must provide the information in sufficient time for the person who made the request to take the information into account for that purpose."

(3) Repeal section 69OC(5).

41 New section 69OEA inserted (Disclosure of individualised employee information)

After section 69OE, insert:

"**69OEA Disclosure of individualised employee information**

"(1) This section applies if an employee elects to transfer under section 69I to a new employer.

"(2) The employee's employer must provide the new employer with individualised employee information about the employee.

"(3) The employee's employer must provide the individualised employee information as soon as practicable, but no later than the date on which the restructuring takes effect.

"(4) **Subsection (5)** applies if—

"(a) individualised employee information has been provided under **subsection (2)**; and

"(b) after the provision of the information, there is a change in the matters or circumstances that the information relates to; and

"(c) the change makes the information provided out of date.

"(5) The employee's employer must, immediately after the change in the matters or circumstances, provide the new employer with the information details, specifying—

"(a) the information that is out of date; and

"(b) what the up-to-date information is.

"(6) Every employer who fails to comply with **subsections (2) to (5)** is liable to a penalty imposed by the Authority.

"(7) To avoid doubt, the new employer may keep, use, or disclose individualised employee information only in accordance with the Privacy Act 1993."

42 Section 69OL repealed (Review of operation of Part after 3 years)

Repeal section 69OL.

43 Section 69ZC replaced (Interpretation)

Replace section 69ZC with:

"**69ZC Interpretation**

In this Part, unless the context otherwise requires,—

"**compensatory measure**—

"(a) means a measure that is designed to compensate an employee for a failure to provide rest breaks or meal breaks in accordance with **section 69ZD(1)**; and

"(b) includes (without limitation) a measure that provides the employee with time off work at an alternative time during the employee's work period, for example, by allowing a later start time, an earlier finish time, or an accumulation of time off work that may be taken on 1 or more occasions

"**work period—**

"(a) means the period—

"(i) beginning with the time when, in accordance with an employee's terms and conditions of employment, an employee starts work; and

"(ii) ending with the time when, in accordance with an employee's terms and conditions of employment, an employee finishes work; and

"(b) to avoid doubt, includes all authorised breaks (whether paid or not) provided to an employee or to which an employee is entitled during the period specified in **paragraph (a)**."

44 Sections 69ZD and 69ZE replaced

Replace sections 69ZD and 69ZE with:

"**69ZD Employee's entitlement to rest breaks and meal breaks**

"(1) An employee is entitled to, and an employer must provide the employee with, rest breaks and meal breaks that—

"(a) provide the employee with a reasonable opportunity, during the employee's work period, for rest, refreshment, and attention to personal matters; and

"(b) are appropriate for the duration of the employee's work period.

"(2) The employee's entitlement to rest breaks and meal breaks may be subject to restrictions, but only if the restrictions—

"(a) are—

"(i) reasonable and necessary, having regard to the nature of the employee's work; or

"(ii) if **subparagraph (i)** does not apply, reasonable and agreed to by the employer and employee (whether in an employment agreement or otherwise); and

"(b) relate to 1 or more of the following:

"(i) the employee continuing to be aware of his or her work duties or, if required, continuing to perform some of his or her work duties, during the break:

"(ii) the circumstances when an employee's break may be interrupted:

"(iii) the employee taking his or her break in the workplace or at a specified place within the workplace.

"(3) An employee's entitlement to rest breaks under this section is to paid rest breaks.

"**69ZE Timing and duration of rest breaks and meal breaks**

"(1) An employee must take his or her rest breaks and meal breaks—

"(a) at the times and for the duration agreed between the employee and his or her employer; but

"(b) in the absence of such agreement, at the reasonable times and for the reasonable duration specified by the employer.

"(2) For the purposes of **subsection (1)(b)**, an employer may specify reasonable times and durations that, having regard to the employer's operational environment or resources and the em-

ployee's interests, enable the employer to maintain continuity of service or production.

"(3) An employer must provide an employee with a reasonable opportunity to negotiate with the employer and reach agreement under **subsection (1)(a)** on the times when the employee's rest breaks and meal breaks are to be taken and on the duration of the breaks.

"(4) To avoid doubt, **subsection (3)** does not limit the requirement of the employer and employee to deal with each other in good faith as set out in section 4.

"**69ZEA Compensatory measures**

"(1) An employer is exempt from the requirement to provide rest breaks and meal breaks in accordance with **section 69ZD(1)**—

"(a) to the extent that the employer and the employee agree that the employee is to be provided with compensatory measures; or

"(b) if **paragraph (a)** does not apply, only to the extent that, having regard to the nature of the work performed by the employee, the employer cannot reasonably provide the employee with rest breaks and meal breaks.

"(2) To the extent that an employer is not required to provide rest breaks and meal breaks under **subsection (1)**, an employee is entitled to, and the employee's employer must provide the employee with, compensatory measures.

"**69ZEB Compensatory measure must be reasonable**

"(1) A compensatory measure provided to an employee under **section 69ZEA** must be reasonable.

"(2) To avoid doubt, if an employer provides an employee with a compensatory measure that involves time off work at an alternative time during the employee's work period, that measure is to be treated as complying with **subsection (1)** if—

"(a) the employee is provided with an equivalent amount of time off work (that is, the same amount of time that the employee would otherwise have taken as a rest break or meal break); and

"(b) the time off work at an alternative time is provided on the same basis as the rest break or meal break that the employee would have otherwise taken."

45 Section 69ZF amended (Penalty)

In section 69ZF, replace "sections 69ZD and 69ZE" with "any of **sections 69ZD to 69ZEB**".

46 Sections 69ZG and 69ZH replaced

Replace sections 69ZG and 69ZH with:

"**69ZG Relationship between Part and employment agreements**

"(1) This Part does not prevent an employer from providing an employee with enhanced or additional entitlements to rest breaks and meal breaks (whether specified in an employment agreement or otherwise) on a basis agreed with the employee.

"(2) An employment agreement that excludes or reduces an employee's entitlement to rest breaks and meal breaks under **section 69ZD(1) or (3)** or **69ZE** or to compensatory measures under **section 69ZEA**—

"(a) has no effect to the extent that it does so; but

"(b) is not an illegal contract under the Illegal Contracts Act 1970.

"(3) An employment agreement that restricts an employee's rest breaks or meal breaks otherwise than in accordance with **section 69ZD(2)**—

"(a) has no effect to the extent that it does so; but

"(b) is not an illegal contract under the Illegal Contracts Act 1970.

"**69ZH Relationship between Part and other enactments**

Where an employee is a person who is required to take rest breaks or meal breaks by, or under, an enactment other than this Part, the requirement for rest breaks or meal breaks defined by, or under, the other enactment applies instead of this Part."

47 Section 80 amended (Object of this Part)

After section 80(b), insert:

"(ba) to provide notice requirements for all strikes and lockouts; and

"(bb) to provide for specified pay deductions, and to specify how the amount of such deductions must be calculated; and".

48 Section 86 amended (Unlawful strikes or lockouts)

After section 86(1)(b), insert:

"(ba) occurs in a situation where,—

"(i) in the case of a strike, the employee has failed to comply with the notice requirements in **section 86A** or 93, as the case may be:

"(ii) in the case of a lockout, the employer has failed to comply with the notice requirements in **section 86B** or 94, as the case may be; or".

49 New sections 86A and 86B and cross-heading inserted

After section 86, insert:

"*Notice of strike or lockout*

"**86A Notice of strike**

"(1) No employee may strike—

"(a) unless participation in the strike is lawful under section 83 or 84; and

"(b) without having given to his or her employer and to the chief executive notice of his or her intention to strike; and

"(c) before the time and date specified in the notice as the time and date on which the strike will begin.

"(2) The notice required under **subsection (1)** must—

"(a) be in writing; and

"(b) specify the following information:

"(i) the period of notice given; and

"(ii) the nature of the proposed strike, including whether or not it will be continuous; and

"(iii) the place or places where the proposed strike will occur; and

"(iv) the time and date on which the strike will begin; and

"(v) the time and date on which the strike will end.

"(3) The notice—

"(a) must be signed by a representative of the employee's union on the employee's behalf:

"(b) need not specify the names of the employees on whose behalf it is given if it is expressed to be given on behalf of all employees who—

"(i) are members of a union that is a party to the bargaining; and

"(ii) are covered by the bargaining.

"(4) To avoid doubt, this section does not apply if notice is required under any of the following provisions:

"(a) section 90 (strikes in essential services):

"(b) section 93 (procedure to provide public with notice before strike in certain passenger transport services):

"(c) section 74AC of the State Sector Act 1988 (strikes in schools to be notified).

"**86B Notice of lockout**

"(1) No employer may lock out any employees—

"(a) unless participation in the lockout is lawful under section 83 or 84; and

"(b) without having given to the employees' union or unions and to the chief executive notice of the employer's intention to lock out; and

"(c) before the date specified in the notice as the date on which the lockout will begin.

"(2) The notice required under **subsection (1)** must—

"(a) be in writing; and

"(b) specify the following information:

"(i) the period of notice given; and

"(ii) the nature of the proposed lockout, including whether or not it will be continuous; and

"(iii) the place or places where the proposed lockout will occur; and

"(iv) the date on which the lockout will begin; and

"(v) the date on which the lockout will end; and

"(vi) the names of the employees who will be locked out.

"(3) The lockout notice must be signed by the employer or the employer's duly authorised representative.

"(4) To avoid doubt, this section does not apply if notice is required under any of the following provisions:

"(a) section 91 (lockouts in essential services):

"(b) section 94 (procedure to provide public with notice before lockout in certain passenger transport services)."

50 Section 90 amended (Strikes in essential services)

Replace section 90(3)(d) with:

"(d) the date on which the strike will begin; and

"(e) the date on which the strike will end."

51 Section 91 amended (Lockouts in essential services)

After section 91(3)(d), insert:

"(da) the date on which the lockout will end; and".

52 Section 93 amended (Procedure to provide public with notice before strike in certain passenger transport services)

Replace section 93(2)(d) with:

"(d) the date on which the strike will begin; and

"(e) the date on which the strike will end."

53 Section 94 amended (Procedure to provide public with notice before lockout in certain passenger transport services)

After section 94(2)(d), insert:

"(da) the date on which the lockout will end; and".

54 Section 95 replaced (Penalty for breach of section 93 or section 94)

Replace section 95 with:

"**95 Penalty for breach of section 93(4) or 94(4)**

"(1) An employer who fails to comply with section 93(4) or 94(4) is liable to a penalty imposed by the court under this Act.

"(2) Except as provided in this section, an employer is under no liability (whether under this Act or the general law) for a failure to comply with section 93(4) or 94(4)."

55 New section 95AA and cross-heading inserted

After section 95, insert:

"*Withdrawal of notice of strike or lockout*

"**95AA Withdrawal of notice of strike or lockout**

A notice given under **section 86A, 86B, 90, 91, 93, or 94** may be withdrawn at any time by,—

"(a) in the case of a notice given under **section 86A, 90, or 93**, the employee giving written notice of the withdrawal to his or her employer and to the chief executive; and

"(b) in the case of a notice given under **section 86B, 91, or 94**, the employer giving written notice of the withdrawal to the employees' union or unions and to the chief executive."

56 New sections 95A to 95H and cross-headings inserted

After section 95, insert:

"*Interpretation*

"**95A Meaning of partial strike and specified pay deduction**

In this Act,—

"**partial strike**—

"(a) means any strike (as defined in section 81) other than a strike that wholly discontinues the employment of the employees; but

"(b) does not include—

"(i) a refusal to work overtime; or

"(ii) a ban on call-out work if the employees would otherwise receive a special payment for performing that work

"**specified pay deduction** means a deduction—

"(a) made, or to be made, from an employee's salary or wages in accordance with **section 95B**; and

"(b) either—

"(i) calculated in accordance with **section 95D(1)**; or

"(ii) imposed at a flat rate of 10% under **section 95D(3)**.

"*Specified pay deductions in relation to partial strike*

"**95B Employer may make specified pay deductions in relation to partial strike**

"(1) Where there is a partial strike, the employer may make specified pay deductions from the salary or wages of an employee who is a party to the strike.

"(2) However, the employer must not make a specified pay deduction—

"(a) if the partial strike is lawful on the grounds referred to in section 84 (safety or health); or

"(b) if—

"(i) the employee is paid by piecework; and

"(ii) the partial strike results in the employee reducing his or her normal output.

"(3) Before making any deduction, the employer must comply with the notice requirements in **section 95C**.

"(4) The amount of the deduction must be calculated in accordance with **section 95D**.

"(5) To avoid doubt,—

"(a) deductions under this section may only relate to the employee's salary or wages that would have been payable for the work performed by that employee had the partial strike not occurred:

"(b) an employer may make deductions under this section without having to suspend or lock out the employee.

"**95C Notice of specified pay deduction**

"(1) Where an employer has received notice of a partial strike, and the employer intends to make specified pay deductions in relation to that strike, the employer must give notice to each employee who is a party to the strike that the employer will make those deductions.

"(2) A notice under **subsection (1)** must be in writing and must—
"(a) be given—
"(i) before the deduction is made; and
"(ii) within the pay period during which the deduction or (if the deductions are to be ongoing) the first deduction is to be made; and
"(b) specify the pay period or periods during which deductions will be made.

"(3) Where 2 or more of the employer's employees are parties to a partial strike, the employer may, instead of giving notice to each of those employees, give notice under this section by—
"(a) providing a single notice to all those employees or their union; or
"(b) providing a notice, with the same wording, to each of those employees.

"(4) To avoid doubt,—
"(a) an employer may choose the method of giving notice under this section:
"(b) the validity of a notice is not affected merely because it is also given to employees who are not subject to the specified pay deduction (for example, non-striking employees):
"(c) where the partial strike continues over more than 1 pay period, the employer is not required to give notice more than once:
"(d) a notice under this section is not required to specify the amount or proportion of the pay deduction.

"**95D Calculation of specified pay deduction**

"(1) An employer must calculate the amount of a specified pay deduction by—
"(a) identifying, for the employee or group of employees, the usual hours of work for the day of the partial strike; and
"(b) identifying the work that the employee or employees will not be performing because of that strike (which must be by reference to the information contained in the relevant strike notice); and

"(c) estimating how much time the employee or employees would, but for the strike, have spent performing the work referred to in **paragraph (b)** on the day of the strike; and

"(d) calculating the time referred to in **paragraph (c)** as a percentage of the employee's or employees' usual hours of work (as identified for the purposes of **paragraph (a)**).

"(2) The percentage referred to in **subsection (1)(d)** is the percentage of the employee's or employees' wages that may be deducted.

"(3) However, despite **subsections (1) and (2)**, an employer may choose, instead of calculating and applying a deduction in accordance with those provisions, to impose a 10% deduction on the employee's or employees' wages, regardless of whether the amount of deduction calculated in accordance with **subsection (1)** would have been more or less than 10%.

"(4) An employer may make a specified pay deduction under **subsection (1) or (3)**, as the case may be, in respect of a group of employees only if each member of the group performs work of the same, or a similar, nature.

"**95E Relationship between specified pay deduction and minimum wage**

"(1) Section 6 of the Minimum Wage Act 1983 must be read as not applying to an employee who receives payment at less than the applicable minimum rate of wages prescribed under section 4, 4A, or 4B of that Act if the payment—

"(a) is the result of a specified wage deduction; or

"(b) is, in the case of an employee who is paid by piecework, the result of—

"(i) the employee being party to a partial strike; and

"(ii) the employee's normal output being reduced because of the employee being party to that partial strike.

"(2) **Subsection (1)(a)** applies only in relation to a period during which deductions may be made under **sections 95B to 95D**.

"Rights of union in relation to specified pay deductions

"95F Union may request information about specified pay deduction

"(1) Where an employee or a group of employees considers that the employer has incorrectly made a specified pay deduction in relation to that employee or those employees, the union representing that employee or those employees may request that the employer provide the union with information relied on to make the specified pay deduction under **section 95D**.

"(2) A request under **subsection (1)** must—

"(a) be in writing; and

"(b) be made as soon as is reasonably practicable after the pay day on which the deduction was first made.

"(3) To avoid doubt, this section does not permit an employee, or a group of employees, to request the information from the employee's, or employees', employer.

"95G Employer must respond to request for information about specified pay deduction

"(1) Where an employer has received a request under **section 95F**, the employer must provide the union with—

"(a) all information relied on by the employer to make the specified pay deduction under **section 95D**; and

"(b) an explanation of how the calculation under **section 95D(1) and (2)**, or the 10% deduction under **section 95D(3)**, was applied to make the deduction from the employee's or employees' wages under **section 95B**.

"(2) The information and explanation required under **subsection (1)** must be provided—

"(a) in writing; and

"(b) as soon as is reasonably practicable after the employer receives the request.

"95H Resolution of problem relating to specified pay deduction

"(1) Where, having considered the information and explanation provided under **section 95G**, the employee or group of employees is not satisfied that the specified pay deduction was

made correctly, the union, on behalf of that employee or those employees, must give the employer notice of that fact, and the matter must be dealt with as an employment relationship problem.

"(2) The notice under **subsection (1)** must be provided—

"(a) in writing; and

"(b) as soon as is reasonably practicable after the union receives the information and explanation.

"(3) Where the employer and the union are unable to resolve the problem (including by way of mediation), the union may lodge an application with the Authority in accordance with section 158."

57 Section 100 amended (Jurisdiction of court in relation to injunctions)

(1) In section 100(1)(b), after "threatened picketing related to a strike or lockout", insert "; or".

(2) After section 100(1)(b), insert:

"(c) to stop a specified pay deduction that is being, or is to be, made."

(3) In section 100(2)(b), after "threatened picketing related to a strike or lockout", insert "; or".

(4) After section 100(2)(b), insert:

"(c) to stop a specified pay deduction that is being, or is to be, made."

(5) After section 100(3), insert:

"(4) **Subsection (5)** applies where any action or proceedings seeking the grant of an injunction to stop a specified pay deduction that is being, or is to be, made are commenced in the court, and the court is satisfied that—

"(a) notice has been given in accordance with **section 95C**; and

"(b) the deduction has been correctly calculated in accordance with **section 95D**.

"(5) Where the court is satisfied of the matters specified in **subsection (4)(a) and (b)**,—

"(a) the court must dismiss that action or those proceedings; and

"(b) no proceedings seeking the grant of an injunction to stop that specified pay deduction being made may be commenced in the District Court or the High Court."

58 Section 140A amended (Compliance order in relation to disclosure of employee transfer costs information)

(1) In the heading to section 140A, after "**employee transfer costs information**", insert "**and individualised employee information**".

(2) In section 140A(1)(a) and (b), (2)(a) and (b), (5), and (8), replace "or 69OE" with "69OE, or **69OEA**".

(3) After section 140A(4)(b), insert:

"(ba) the new employer to whom individualised employee information must be provided under **section 69OEA**:

"(bb) the employee to whom the individualised employee information referred to in **section 69OEA** relates:".

59 Section 159A amended (Duty of Authority to prioritise previously mediated matters)

After section 159A(2), insert:

"(3) Despite subsection (2), the Authority may give priority to proceedings referred to in **section 161(1)(la)** over other matters, even if no attempt has been made to resolve the subject matter of those proceedings by mediation."

60 Section 161 amended (Jurisdiction)

(1) After section 161(1)(cb), insert:

"(cba) determining whether bargaining has concluded under **section 50K**:".

(2) After section 161(1)(g), insert:

"(ga) determining the apportionment of liability for the costs of service-related entitlements under **section 69LB(4)**:".

(3) After section 161(1)(l), insert:

"(la) any proceedings related to the application of **section 95D**:".

(4) In section 161(2), after "(cb)," insert "(**cba**),".

61 Section 174 amended (Determinations)

In section 174, after the heading, insert as subsections (1) to (4):

"(1) At the conclusion of an investigation meeting, the Authority must—

"(a) give its determination on the matter orally; or

"(b) give an oral indication of its preliminary findings on the matter.

"(2) Where the Authority gives its determination orally, the Authority must record that determination in writing no later than 3 months after the date of the investigation meeting.

"(3) Where the Authority gives an oral indication of its preliminary findings,—

"(a) the indication may be expressed as being subject to any further evidence or information from the parties or from any other person; and

"(b) the Authority must record its final determination in writing no later than the later of the following dates:

"(i) the day that is 3 months after the date on which the investigation meeting concluded; and

"(ii) the day that is 3 months after the date on which the Authority received the last evidence and information from the parties.

"(4) However, the Authority may record a determination later than the dates described in **subsection (2) or (3)(b)** if the Chief of the Authority decides exceptional circumstances exist."

62 New section 237AA inserted (Chief executive may approve forms)

After section 237, insert:

"**237AA Chief executive may approve forms**

"(1) The chief executive may approve and issue any forms that the chief executive considers necessary for the purposes of this Act, not being forms prescribed by regulations made under this Act.

"(2) Every document purporting to be in a form approved and issued by the chief executive under and for the purposes of this

Act is deemed to have been so approved and issued unless the chief executive certifies otherwise."

63 Section 237A repealed (Amendments to Schedule 1A)
Repeal section 237A.

Part 2
Application, savings, transitional, and consequential provisions

64 New section 254 inserted (Application, savings, and transitional provisions relating to amendments to Act)
After section 253, insert:

"**254 Application, savings, and transitional provisions relating to amendments to Act**
The application, savings, and transitional provisions set out in **Schedule 1AA**, which relate to amendments made to this Act after 1 January 2013, have effect for the purposes of this Act."

65 New Schedule 1AA inserted
Before Schedule 1, insert the **Schedule 1AA** set out in **Schedule 1** of this Act.

66 Consequential amendments to other Acts
Amend the Acts specified in **Schedule 2** as set out in that schedule.

Schedule 1
s 64

New Schedule 1AA inserted

Schedule 1AA
ss 5A, 254

Application, savings, and transitional provisions relating to amendments made to this Act after 1 January 2013

1 Interpretation

In this schedule,—

2013 Act means the Employment Relations Amendment Act **2013**

principal Act means the Employment Relations Act 2000

2 Application of amendments to existing agreements

(1) Despite the amendments made to section 4 of the principal Act by **section 4** of the 2013 Act, section 4 of the principal Act (as it was immediately before it was amended by the 2013 Act) continues to apply in relation to proposed decisions referred to in section 4 of the principal Act—

(a) if the proposed decision was notified to the employee before the commencement of the 2013 Act; and

(b) whether the final decision on that proposal is made before, on, or after the commencement of the 2013 Act.

(2) Section 33 of the principal Act (as replaced by **section 9** of the 2013 Act) applies to all bargaining, whether the bargaining commenced before or after the commencement of the 2013 Act.

(3) Section 53 of the principal Act (as amended by **section 13** of the 2013 Act) applies in relation to bargaining commenced by an employer, whether the bargaining commenced before or after the commencement of the 2013 Act.

(4) Part 6AA of the principal Act (as amended by **sections 20 to 27** of the 2013 Act) applies in relation to a request made under that Part before the commencement of the 2013 Act as follows:

(a) if the 3 months provided for in section 69AAE of the principal Act (as it was immediately before it was amended by the 2013 Act) expires within 1 month

of the commencement of **sections 20 to 27** of the 2013 Act, Part 6AA of the principal Act (as it was immediately before it was amended by the 2013 Act) continues to apply in relation to that request:

(b) in any case not referred to in **paragraph (a)**, the employer must treat the request as having been made on the commencement of **sections 20 to 27** of the 2013 Act, and Part 6AA of the principal Act (as amended by the 2013 Act) applies in relation to that request.

(5) **Subsection (6)** applies to restructurings (within the meaning of Part 6A of the principal Act as it was immediately before the commencement of the 2013 Act) for which the agreements are concluded before the commencement of the 2013 Act, even if the restructurings they relate to are to take effect after the commencement of the 2013 Act.

(6) Part 6A of the principal Act (as it was immediately before the commencement of the 2013 Act) continues to apply to the restructurings as if the 2013 Act had not been passed.

(7) Sections 80, 86, 90, 91, 93, and 94 of the principal Act (as amended by **sections 47, 48, and 50 to 53** of the 2013 Act) and sections **86A and 86B** of the principal Act (as inserted by **section 49** of the 2013 Act) apply in relation to strikes and lockouts that commenced before, and continue after, the commencement of the 2013 Act as follows:

(a) the union or the employer (as the case may be) must give notice in accordance with the principal Act (as amended by the 2013 Act) on the commencement of the 2013 Act:

(b) however, if a notice given by the union or the employer before the commencement of the 2013 Act—

(i) complies fully with the notice requirements of the principal Act (as amended by the 2013 Act), no further notice is required:

(ii) complies partly with the notice requirements of the principal Act (as amended by the 2013 Act), those notice requirements are satisfied by the union or employer providing notice of the additional matters required under the principal Act (as amended by the 2013 Act), and the pro-

visions of the principal Act referred to in this subsection must be read accordingly.

(8) Despite **section 95B** of the principal Act (as inserted by **section 56** of the 2013 Act), an employer must not make a specified deduction of pay in relation to—

(a) any partial strike that ended before the commencement of the 2013 Act; or

(b) any period of a partial strike that occurred before the commencement of the 2013 Act.

(9) On the commencement of the 2013 Act, any request made under section 237A(3)(a) of the principal Act lapses and, to avoid doubt, neither the Minister nor any other person is required to take any action, or any further action, in relation to such a request.

Schedule 2

s 66

Consequential amendments to other Acts

State Sector Act 1988 (1988 No 20)

After section 74AC(4), insert:

"(4A) A notice required under subsection (1) may be withdrawn at any time by a representative of the employees' union giving written or electronic notice of the withdrawal to the Commissioner and each Board of Trustees."

Wages Protection Act 1983 (1983 No 143)

In section 6(1), definition of **recoverable period**, after "pay any wages", insert "or (if the employer is entitled to make a specified pay deduction under **section 95B** of the Employment Relations Act 2000) any part of any wages".

After section 6(3)(b), insert:

"(ba) in the case of a notice that relates to a specified pay deduction, that notice—

"(i) is given not later than 1 working day after the pay day on which the overpayment was made; and

"(ii) relates to an individual worker; and

"(iii) specifies the amount of the overpayment made to that worker; and".

In section 6(3)(c), replace "that notice is given" with "in the case of any other overpayment, that notice is given".

After section 6(4), insert:

"(5) To avoid doubt, subsection (4) does not apply to a notice referred to in **subsection (3)(ba)**."

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