Employment Relations Amendment Bill

Government Bill

As reported from the Transport and Industrial Relations Committee

Commentary

Recommendation

The Transport and Industrial Relations Committee has examined the Employment Relations Amendment Bill and recommends by majority that it be passed with the amendments shown.

Introduction

The bill seeks to amend the Employment Relations Act 2000. It would principally change the following aspects of employment law:

- the duty of good faith, by clarifying disclosure requirements
- collective bargaining, by removing the requirement to conclude a collective agreement; by allowing a party bargaining for a collective agreement to seek a determination from the Employment Relations Authority as to whether the bargaining has concluded; and by allowing an employer to opt out of collective bargaining involving multiple employers

- flexible working arrangements, by extending employees' existing right to request a variation of their working arrangements
- Part 6A of the Act, which relates to continuity of employment if an employee's work is affected by restructuring, by introducing an exemption from certain requirements for small to medium-sized enterprises
- rest and meal break provisions, by reducing prescription and allowing for flexibility, including provision for compensatory measures where there is a failure to provide a break
- strikes and lockouts, by requiring advance written notice for strikes and lockouts, and by allowing an employer to make specified pay deductions for partial strikes
- the Employment Relations Authority, by setting timeframes for the Authority to release determinations, and by extending aspects of its jurisdiction.

Proposed amendments

This commentary discusses the more significant amendments the majority of us recommend to the bill. It does not discuss minor or technical amendments.

Good faith in providing information

Clause 4 would amend the requirement in section 4 for an employer to provide an employee with relevant information if a decision were being made that might affect their continued employment. Clause 4 would limit this requirement by specifying certain confidential information that an employer could withhold.

We recommend a few amendments. First, we consider that the provision as introduced could be improved to strike a better balance between providing natural justice (for example, by allowing an employee in a disciplinary situation to know who was making a complaint against them), and recognising that some situations demand particular sensitivity (for example, to protect the safety of a person making a complaint). The amendment we recommend to proposed new section 4(1B)(a) in clause 4 draws on an approach used under the Privacy Act 1993, which is relatively well understood. An employer

would not be required to provide access to confidential information about an identifiable person other than the affected employee if it would involve an unwarranted disclosure of the affairs of that individual.

We recommend removing new sections 4(1B)(b) and (c), which would provide employers with grounds for withholding evaluative or opinion material, or information identifying the person who compiled it. In the type of situation that this provision would cover—where a person's continued employment is at risk—we believe the need for them to see and be able to respond to such material about themselves outweighs confidentiality regarding the person who supplied the material, and is consistent with the duty of good faith.

We believe further clarification is needed of the avoidance-of-doubt provision in clause 4, new section 4(1C), which relates to documents that may be released in summary form, or with deletions or alterations, to avoid disclosing confidential material. Our proposed formulation would make it clear that an employer could not refuse to provide information simply because it was contained in a document that included confidential information.

We also recommend inserting new section 4(1D) to make it clear that "confidential information" means information that is provided in circumstances where there is a mutual understanding (whether express or implied) of secrecy, as described in the judgment of the Employment Court in *Massey University v Wrigley*. We believe this would allay concern that an employer would have sole discretion as to what information could be withheld as confidential.

Collective bargaining

Duty to conclude

Clauses 7 to 9 would remove the current provisions to the effect that the duty of good faith requires parties bargaining for a collective agreement to conclude the agreement unless there is genuine reason, based on reasonable grounds, not to. Parties would still be required to deal with each other in good faith, but the change aims to avoid protracted fruitless bargaining that is costly for both sides. The bill would protect against stalemate if the bargaining parties hit an im-

passe on one issue, as a declaration could be sought from the Employment Relations Authority as to whether bargaining had concluded.

To address the possibility that an employer might walk away from bargaining on principle, we recommend amending clause 9 by inserting new section 33(2) to provide that an employer is not complying with the duty of good faith if they refuse to conclude a collective agreement simply because they object in principle to collective bargaining or collective agreements.

Notifying employees about initiation of bargaining

We recommend an amendment to improve the legislation's workability in situations where more than one employer is cited in the initiation of bargaining (that is, for a multi-employer collective agreement or MECA). As the bill (clause 11) proposes 10 days in which an employer could opt out of such bargaining, the Act's existing provision allowing 10 days for employers to notify employees that bargaining has been initiated would not always be sufficient. We recommend the insertion of new clause 10A, amending section 43, to allow employers a further five days in which to give notice to employees about the initiation of bargaining.

Opting out of bargaining

Clause 11 would allow an employer to opt out of bargaining for a multi-employer collective agreement. We recommend an amendment to make it clear that the ability to opt out of bargaining would also apply to bargaining initiated for the purpose of obtaining an employer's agreement to become party to an already-concluded collective agreement (as provided for in section 56A of the Act). We consider that an employer should have the same opt-out option in this situation as they would if they had been identified as an intended party to the initial bargaining for the collective agreement.

Determination that bargaining has concluded

Clause 12, inserting new section 50K, would allow a party bargaining for a collective agreement to apply to the Employment Relations Authority for a determination as to whether bargaining had concluded. The Authority would be required to consider whether the parties had tried mediation or facilitation to resolve their differences and, in cer-

tain circumstances, the Authority would be required to direct that mediation or facilitation be used.

We recommend some amendments to this clause to make it clear how it would align with existing sections of the Act. The Authority can direct parties to facilitation on the grounds set out in existing section 50C(1), unless certain countervailing factors are relevant. The factors specified in proposed new section 50K(2)(c) are the same as those in existing section 159(1)(b) of the Act.

We recommend amending clause 12, new section 50K(3)(a), to make clear the intention that the Authority must (rather than "may") make a declaration if it finds that bargaining has concluded.

Continuation of a collective agreement

We believe clarification is needed about the status of an existing collective agreement in relation to an employer who has opted out of bargaining for a multi-employer collective agreement. In line with existing provisions in the Act, we propose that the existing MECA would continue in force in relation to that employer until its expiry, or for up to 12 months if bargaining to replace the MECA was already under way. We recommend amending clause 13 to insert new section 53(2A) to this effect.

We also recommend a change in clause 13 to avoid uncertainty about the legal status of a collective agreement in the event of a decision that bargaining had concluded being overturned on appeal. Under our proposed new section 53(4), the period during which parties could not bargain under new section 50K(3)(b) would be disregarded when determining the period for which the collective agreement continued after expiry.

Flexible working arrangements

Clauses 20 to 27 would extend the right to request flexible working arrangements to all employees, not just those with caring responsibilities as is currently the case. The bill would remove the current limits on the number or timing of such requests, and would shorten the period in which an employer must respond to a request. We support the proposed changes as a means of promoting the benefits of flexible working arrangements, which we believe are of value for

both employers and employees, allowing productivity gains and a better work-life balance.

For consistency, since an employee's request must be given in writing, we recommend amending clause 24, new section 69AAE, to require an employer's response also to be given in writing. If the request was refused, the employer would also be required to state and explain the reason for the refusal.

Part 6A: continuity of employment

Clauses 28 to 36 would amend subpart 1 of Part 6A of the Act to exempt employers (together with any associated person) who have 19 or fewer employees from the Act's requirement that employees who are covered by the provisions of that subpart be allowed to transfer to the new employer following a restructuring.

The intent of the provision is that small and medium-sized enterprises should not be constrained to take on staff from the previous employer; this responds to the review of Part 6A, which found that smaller businesses have difficulty absorbing the financial risks associated with such transfers. Employers who wished to claim exempt employer status would be required to provide a written warranty to each employer with staff who might be affected by the restructuring confirming that they (along with any associated person) employed 19 or fewer employees to qualify as an exempt employer.

We recommend several changes to these provisions. Those of a substantive nature are discussed below.

Vulnerable workers: object of subpart 1 of Part 6A

We recommend amending clause 28 to help with interpreting subpart 1 of Part 6A and to make clearer the type of employees to whom the subpart is intended to apply. The wording we propose is drawn from existing sections 69A and 237A(4), apart from new section 69A(4) which contains the proposed exception for exempt employers.

Subpart 1 of Part 6A relates to the types of employees generally known as "vulnerable workers": those listed in Schedule 1A of the Act, who provide such services as cleaning, catering, caretaking, laundry, and orderly services in specified sectors and workplaces. While we do not consider it necessary, or appropriate, to define vulnerable workers in legislation, our recommended amendment would

provide some guidance as to the kind of employees who would be covered by the protections afforded by Part 6A. The proposed amendment reflects the matters currently included in section 237A(4) of the Act as criteria for the Minister to consider when recommending the inclusion of an employee group in Schedule 1A: whether the employees work in sectors where restructuring of the employer's business is common, where terms and conditions of employment tend to be undermined by restructuring, and where employees have little bargaining power.

As the bill (clause 63) proposes to repeal section 237A (because it is considered more appropriate for changes to Schedule 1A to be made by Parliament than by Order in Council), we consider our proposed amendment a worthwhile means of retaining a useful reference to these matters. It could help to explain why these categories of employees are in Schedule 1A, and serve as a guide to interpreting subpart 1 of Part 6A.

Exempt employers

We considered the position of businesses that operate as franchises. In the bill as introduced, they would fall within the definition of associated person, so all of the franchisor's employees would be counted when calculating the number of employees. A franchisee might therefore not qualify as an "exempt employer", even if individually they had 19 or fewer employees. We consider this appropriate where the franchisor bids for and allocates work to the franchisee; however, we believe that franchisees who have relatively few staff and bid for and manage contracts independently are acting in effect as small businesses, and so should qualify as exempt employers if they have 19 or fewer employees and are not otherwise excluded by the associated person test of new section 69DA.

We recommend amending the definition of "associated person" accordingly, by amending clause 29 and inserting clause 30A, new section 69DA. New subsection 69DA(2) would give exempt status to franchisees with 19 or fewer employees who operated at arm's length from the franchisor; the rest of the section as amended would carry over provisions from clause 29 in the bill as introduced.

Warranty as exempt employer

Clause 30, new section 69CA would require an employer who wished to claim exempt employer status for the purposes of subpart 1 of Part 6A (and therefore not be required to take on the employees who performed the work before the restructuring) to provide a warranty to each employer with staff who might be affected by the restructuring confirming their exempt status. The importance of the warranty is that it would ensure that employees affected by the restructuring would be notified in good time if they did not have the right to transfer to the new employer.

We consider that substantial changes are needed to this provision to ensure it works as intended, especially where work has been subcontracted. The procedure provided for in the bill as introduced might not always allow an incoming employer to know, or even identify, the employers to whom they must provide the warranty.

Accordingly, we recommend amending clause 30 to insert new sections 69CA to 69CE, setting out procedures for providing information for the purposes of giving a warranty, and specifying to whom the warranty must be provided. The changes we propose are largely technical in nature, and of necessity quite detailed in order to cover each type of contracting and restructuring situation. Apart from the proposed addition of a penalty provision, which we discuss below, they would retain the intent and substance of the bill as introduced.

Penalty for non-compliance

We draw attention to our recommended insertion of subsections 69CD(16) and (17) in clause 30. The provisions we recommend would make it clear that parties should act promptly in requesting and providing the information required for warranty purposes, and that they would be liable to a penalty imposed by the Employment Relations Authority if they failed to do so without reasonable excuse. We believe these provisions would be of particular value if there was ill will between the new and old employers in a restructuring situation.

Employer's breach of obligations

We recommend inserting clause 31A, new section 69FA, to make it clear that failure of an outgoing employer to fulfil their obligations

under Part 6A does not affect an employee's entitlement to transfer to the new employer or obligations of the new employer.

Implied warranty by outgoing employer

Clause 35, new section 69LC, provides that an employer with staff who elect to transfer to the incoming employer would implicitly be giving a warranty to the new employer that it had not without good reason changed the work affected by the restructuring, or the terms and conditions of employment. To reflect the policy intent, we recommend inserting new section 69LC(2)(ab) to add an additional term to the implied warranty: that the employer would not without good reason change the employees who perform the work affected by the restructuring, for example by substituting less experienced or less efficient employees.

We also recommend clarifying the period covered by the implied warranty, by inserting new section 69LC(2A) in clause 35, and inserting new section 69LC(4) to make it clear that an objective test would be used in determining whether there was good reason for a change covered by the implied warranty.

Timing of the provision of information

We recommend an amendment in clause 41 to reduce the possibility of conflict between the timing requirements under clause 41 (new section 69OEA(3)) and those provided for under clause 32 (new section 69G). We can foresee a situation in which an outgoing employer might not have received notifications by the date of restructuring from all the employees who wished to transfer to the new employer, and so might not be able to comply with the requirement under new section 69OEA(3) to provide information about them to the new employer. The proposed amendment would allow the incoming and outgoing employer to agree on a later date for providing the required information.

Rest and meal breaks

Clauses 43 to 46 of the bill would change the existing rules for employees' entitlements to rest and meal breaks. The aim is to move from a prescriptive to a more flexible approach, encouraging employers and employees to negotiate in good faith about workable ar-

rangements as to how and when breaks should be taken. The changes proposed would require an employer to provide reasonable compensatory measures where an employee could not reasonably be provided with breaks.

We are aware of considerable concern about these provisions, particularly about the possible impact on employees' health and safety if breaks are restricted. We have considered these issues carefully.

The majority of us consider two points to be particularly relevant. First, the bill would not override any requirements under other legislation. For example, specific regulations governing hours of work for drivers of passenger transport services, and—importantly—the general duty imposed on employers under the Health and Safety in Employment Act 1992, would be unaffected by the provisions in question. Section 6 of that Act imposes a general duty on employers to take all practicable steps to ensure the safety of employees at work, including providing and maintaining a safe work environment. An employer's responsibility under that Act for controlling hazards extends to any person's behaviour resulting from physical or mental fatigue that might be an actual or potential source of harm to themselves or others. Providing breaks, or varying the nature or intensity of work, would remain obvious ways for an employer to address such hazards, regardless of the changes proposed in the bill.

A second important consideration is the reasonableness test in these clauses. Clause 44, new section 69ZD(2), specifies that any restriction of rest or meal breaks must be reasonable and necessary, having regard to the nature of the employee's work. If breaks were not provided, a reasonable compensatory measure must be provided (new section 69ZEB).

The majority of us consider that these factors would ensure that the bill met the policy intent of improving workplace flexibility, while continuing to protect the rights of employees. Accordingly, we are not recommending any amendment of these provisions.

Strikes and lockouts

Clauses 47 to 55 would introduce requirements for written notice of all strikes and lockouts. Clause 56 would give employers the option of making specified pay deductions in response to partial strike action.

Notice of strikes and lockouts

We recommend amending clauses 49 to 53 so that all notices for a strike or lockout must include both a start and end date and time, or specify an event (such as the reaching of agreement) which would mark the end of the strike or lockout. Specifying the date and time would provide certainty for the parties, and would help ensure that any pay deductions were made accurately; while allowing the end to be triggered by an event would provide useful flexibility. It would be open to the parties to issue another notice of industrial action should they decide that the action should continue beyond the end date and time originally specified.

We recommend amending clause 49 by inserting new section 86A(3)(b)(iii) so that a notice for strike action could specify workers by reference to a particular worksite. This would parallel existing notice provisions for strikes in essential services in section 90 of the Act.

We recommend amending clause 55, new section 95AA, to allow the union to withdraw a notice of a strike or lockout on behalf of all union members covered by the bargaining; under the bill as introduced, withdrawal of notice would be done by "the employee".

We note that Schedule 1 of the Act requires three days' notice of strike action for premises that slaughter and process specified animals, to protect the welfare of animals awaiting slaughter. We recommend inserting clause 63A to ensure that Schedule 1 covers the range of animals (mammals and birds) that may be commercially slaughtered for the domestic or export market.

Partial strikes

Clause 56 would insert new sections 95A to 95H, allowing an employer to make specified pay deductions from an employee who participated in a partial strike.

We consider that clarification is needed about what constitutes a partial strike. A strike is already defined in section 81 of the Act. The bill as introduced (clause 56, new section 95A) would define a partial strike as any strike in which an employee did not wholly discontinue their employment. It would not count a refusal to work overtime or to perform call-out work as a partial strike, because in such situations

the employee would have discontinued their employment fully; that is, such refusals would count as a full strike.

We consider that the definition could be made clearer by focusing on what we consider to be the distinguishing characteristic of a partial strike: that the employees who are a party to the strike are continuing to perform some work. In our view, this would include the following actions by such employees:

- refusing, or failing to accept, particular tasks that would normally form part of their duties, such as answering phone calls, but otherwise performing their work
- reducing their normal performance ("working to rule")
- reducing their normal output or normal rate of work (a "go-slow")
- breaking some aspect of their employment agreement, for example by refusing to wear the uniform.

We recommend amending the proposed definition in clause 56, new section 95A, accordingly. We agree with part (b) of the definition as introduced that a refusal to work overtime or to perform call-out work should be considered a full rather than partial strike as the employee would not be performing any other work for the employer during those times. An employer would therefore not be allowed to make a specified pay deduction in such instances. We recommend retaining these provisions, but moving them to new section 95B(2)(c).

Specified pay deduction for partial strike

Schedule 2 of the bill would make consequential amendments to the Wages Protection Act 1983 to allow an employer to recover an overpayment if a partial strike occurred without the opportunity to arrange a specified pay deduction. It would require the employer to notify employees about the intention to recover the overpayment. We consider that the period of notice proposed in the bill could be impractical, and recommend that it be amended from 1 working day to 5 working days after the relevant pay day.

Employment Relations Authority

Clause 61 would replace section 174 of the Act to introduce requirements on the nature and timing of determinations by the Authority when investigating employment relationship problems.

The bill as introduced would require the Authority to give an oral determination, or an oral indication of its preliminary findings at the conclusion of an investigation meeting. It would then be required to record such determinations in writing within 3 months unless there were exceptional circumstances that warranted an extension of time.

We recommend replacing proposed clause 61 with more detailed provisions which we believe would achieve the purpose of making determinations more timely, while recognising that requiring an oral determination, or an oral indication of preliminary findings would be inappropriate for some complex matters, and could lessen the quality of the decision. Our recommended amendments would also help to clarify various aspects of the proposed rules.

We propose requiring the Authority to provide an oral determination or an oral indication of its preliminary findings at the conclusion of an investigation meeting wherever practicable (new section 174), but allowing it to reserve its determination if satisfied there were good reasons why it was not practicable to do so (new section 174C).

We recommend the insertion of new section 174D to make it clear that, as at present, the Authority should be able to determine matters on the basis of written material, without holding a hearing or investigation meeting.

Timing of determinations

As for the timing of determinations, we believe the policy intent is that the Authority should deliver determinations as soon as practicable, and not later than 3 months after the date on which the investigation meeting concluded, unless in exceptional circumstances. The amendments we propose aim to make this clearer. They would retain 3 months as the outer limit (unless the Chief of the Authority decided there were exceptional circumstances), with one exception. To encourage prompt determinations of the more straightforward disputes, we propose that, if the Authority had given an oral determination at the conclusion of an investigation meeting, it would be required to

record the determination in writing within 1 month, rather than the 3 months allowed in the bill as introduced (new section 174A(2)).

Challenges to determinations

We recommend the insertion of clauses 61A and 61B to make the rules clear about challenges to Authority determinations.

Section 179 of the Act allows 28 days within which a party who is dissatisfied with a determination by the Authority may elect to have the matter heard by the Employment Court. We propose that the 28 days commence from the date of a written determination, or, if there had been an oral determination or an oral indication of preliminary findings, from the date of the written record of the oral determination or oral indication.

With our proposed amendments, an oral determination or an oral indication of preliminary findings would not be open to challenge or judicial review. We consider this appropriate as there should be certainty about determinations before they can be challenged or reviewed by the court. We are satisfied that such an approach would not diminish the rights of parties to challenge determinations; they would simply have to wait for the written determination before doing so.

Content of determinations

Our recommended insertions of sections 174A(1), 174B(1) and 174E aim to make clear what the Authority would need to cover in each type of determination, and in oral indications of preliminary findings. In particular, we note that an oral determination would need to cover only the primary or substantive matters at issue, and any order that the Authority was making. The required content of written determinations, and what need not be covered in them, would remain as provided for in section 174 of the Act at present.

Ability to correct oral determinations

We consider it appropriate to allow the Authority to correct an oral determination if it becomes obvious when preparing the written record that this is necessary to correct a mistake caused by an error or omission in the determination. This would allow changes to be made only if there was a manifest error in the reasoning, or if an im-

portant matter of law or precedent had been overlooked in reaching the determination. Courts and tribunals have a similar ability. Our recommended amendment is in clause 61, section 174A(4).

Transition to new rules

We recommend the insertion of a transitional provision as clause 2(8A) of Schedule 1, new Schedule 1AA so that the bill's provisions relating to the Authority would apply only to proceedings commenced in the Authority after the bill came into force.

Minority view of the New Zealand Labour Party

Labour Party members of the committee are opposed to the Employment Relations Amendment Bill. Most of the changes in the bill have been undertaken against the advice of officials, are contrary to New Zealand's international obligations, and are a backwards leap in employment relationships towards the failed paradigm of the 1990s.

The bill continues the flawed logic that employers, who at common law not only control the workplace but have the benefit of the implied duty of every employee to obey the employer's instructions, somehow need more statutory tools to defeat the right of those who freely choose to join a union and exercise the legitimate benefits of belonging to a union, such as collective bargaining.

The effects of this bill will be to impact negatively on wages in general through a deliberate weakening of the already diminished bargaining strength of employees and the removal of protections for workers when they are most vulnerable. It will do nothing to improve the quest for high-skill, high-wage, and highly productive workplaces built on good-quality and mutually respectful employment relationships.

The Labour Party is particularly concerned about the following:

The removal of the requirement to conclude a collective agreement

The present law prevents surface bargaining and gives life to the overarching good faith duty. Changes in the bill risk the return of perfunctory conduct on the part of employers hostile to collective bar-

gaining, and will see fewer collective agreements successfully concluded.

The process that allows an employer to apply for an Employment Relations Authority declaration that bargaining for a collective agreement is concluded

Such a facility is wrong in principle. The statutory consequence of a declaration that bargaining is concluded means workers will have no collective rights for 60 days, including the right to strike, and could be forced on to inferior individual contracts. This provision, along with the removal of a requirement to conclude, will encourage early industrial action and do nothing to facilitate harmonious settlements.

The right of peremptory opt-out by the employer from multi-employer collective bargaining when that has been validly chosen by the employer's workforce

This defeats the good faith rights of workers, and privileges the employers' choice about the form of employment agreements in the workplace. These changes will all but destroy multi-employer bargaining, which has been effective in setting standards across industry and sectors.

The removal of the "30-day rule" where new employees must be offered the terms and conditions of a collective agreement

This provision will seriously undermine collective bargaining. Employers will be able to offer inferior or different terms and conditions to new employees, despite agreements reached with unions in collective agreements for that enterprise or industry. It will remove the protection new employees have had from being taken on at lower pay rates or on inferior terms and conditions and, over time, weaken hard-won collective agreements.

Amendments to Part 6A—exclusion of smaller employers

Labour Party members of the committee believe that no case has been made for the exclusion of employers with fewer than 20 employees from the important protections under Part 6A for vulnerable workers in situations where their employer changes hands. Both em-

ployer and union submitters opposed this change on the grounds that it will create an unlevel playing field where wages and conditions are the meat in the sandwich, and introduce unnecessary legal complications. It will disadvantage already marginalised employees and help further drive down their wages and conditions.

The added complexity to the strike and lockout provisions

Under the present legislation, written notification of a strike or lockout is only required in the defined essential industries. The changes in this bill will require all industrial action, no matter how slight and no matter the industry, to be notified in writing, including start and finish dates and times.

The wide and arbitrary power to deduct a worker's pay for so-called partial strike action even when such a strike action results in no loss of productivity or revenue for the employer

This provision can only be seen as one intended to punish those who would use their industrial right to press their claim to their employer through low-level industrial action. It is more reflective of 19th-century industrial relations ideals than 21st-century ones.

The requirement for members of the Employment Relations Authority to give an oral determination or an oral indication of preliminary findings "**wherever practicable**"

A small proportion of employment relationship problems are heard by the Authority. Those subject to a written determination are typically the difficult and complex cases that do not lend themselves to instant resolution. If it was that easy, the cases would have been resolved long before. This provision in the bill is an incentive to put undue pressure on Authority members to make hasty and ill-considered decisions.

Changes to meal and rest break provisions

Labour re-established minimum standards for rest and meal breaks to protect the health and safety of wage and salary earners, to reduce the risk of accidents, and to improve the quality of work and productivity in all workplaces. A minimum standard for rest and meal

breaks is fundamental to decent work and a basic requirement, especially as New Zealand has few other working hours protections. This proposal was well canvassed in a 2010 bill, which was discharged by the Government. We heard no new evidence to change our view that these provisions are neither necessary nor workable.

Conclusion

New Zealand's longstanding woeful productivity performance and low wages require management capable of engaging with the New Zealand workforce in an intelligent and respectful way directed at harnessing the best in people.

To achieve this, we need employment legislation that is balanced, fair, and encourages good-quality relationships. This bill is a continuation of the suite of employment legislation over the last five years that would take New Zealand workplace relations in the opposite direction, down the path of continued command and control by management with no assurance of quality.

Minority view of the Green Party of Aotearoa/New Zealand

The Greens maintain that this bill undermines the original intention of the Employment Relations Act, which is to promote collective bargaining, and we oppose it in its entirety.

This bill removes the duty to conclude bargaining in the Act, and also removes the requirements for employers to bargain for multi-employer collective agreements. Both of these provisions will make it less likely that some employers will want to negotiate collectively. It also removes the requirement in the Act that collective employment agreements be offered to new employees, which is effectively a return to individually-based bargaining.

None of these changes to the Act will promote collective bargaining. Rather, they will make it harder for workers to negotiate collectively.

The Greens will also be opposing this bill on the basis that changes to the duty of good faith interfere in the process of natural justice and fairness, and we believe workers should maintain their right to information regarding an employer's decisions around restructuring and dismissals. Under the provisions in the bill employers will not

be able to be held accountable for the decisions they may make that impact on their affected employees.

We also oppose the changes to the right to meal and rest breaks as we believe this right needs to be enshrined in legislation to help facilitate good health and safety in the workplace. And we strongly object to the provisions in the bill that will change the continuity of work protections for some employees as outlined in Part 6A of the Act. The argument that this provision should not apply to contractors employing 19 or fewer staff introduces more complexity while discriminating against employers with 20 or more staff who will still be bound by the provisions.

Minority view of the New Zealand First Party

New Zealand First does not support this bill. We believe it will perversely undermine wage fixing principles under New Zealand law and create conflict between employers and employees. There is currently no call by employers or employees for this bill.

The bill proposes, among other things, to allow employers to walk away from collective bargaining; ensuring people have challenges determining changes to their employment contract, withdrawal of the right to a scheduled tea or lunch break; paying new workers less than others who have been doing the same work; deducting 10 percent of workers' pay for partial industrial action, and allowing pay to fall below the minimum wage. The net effect of these proposals will make it harder to settle collective agreements and will increase the potential for industrial disputes.

New Zealand First is of the view that employers need flexible, dedicated staff, and employees need appropriate conditions and remuneration. Safety of employees is paramount and scheduled tea and lunch breaks assist with this.

The employment relationship is not a level playing field. Employment relations must be collaborative. There is a fine balance between assuring and affirming the rights of workers and allowing sufficient flexibility so as not to hinder production or productivity.

We believe that the Employment Relations Amendment Bill is an unnecessary piece of legislation that has the potential to create a hostile industrial relations environment and adversely affect both workers and business.

Appendix

Committee process

The Employment Relations Amendment Bill was referred to the committee on 5 June 2013. The closing date for submissions was 25 July 2013. We received and considered 13,679 submissions from interested groups and individuals. Of the total number of submissions received, 11,909 were in the nature of form submissions, with replicated content. We heard oral evidence from 163 submitters, holding hearings in Auckland, Christchurch, and Palmerston North, as well as in Wellington.

We received advice from the Ministry of Business, Innovation and Employment.

Committee membership

David Bennett (Chairperson)

Chris Auchinvole

Carol Beaumont (from 25 September 2013)

Dr Cam Calder

Darien Fenton

Iain Lees-Galloway (until 25 September 2013)

Andrew Little (from 25 September 2013)

Sue Moroney (until 25 September 2013)

Simon O'Connor

Denise Roche

Mike Sabin

Barbara Stewart was a non-voting member of the committee for this item of business.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

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

Amendments to Part 1 (Key provisions)

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 if providing access to that information would involve the unwarranted disclosure of the affairs of that other individual:

~~"(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~~ **subsection (1B)** does not affect an employer's obligations under—

"(i) the Official Information Act 1982~~.~~ (despite section 52(3) of that Act); or

"(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.~~

"(b) an employer must not refuse to provide access to information under **subsection (1A)(c)** merely because the information is contained in a document that includes confidential information.

"(1D) For the purposes of **subsections (1B) and (1C)**, **confidential information** means information that is provided in circumstances where there is a mutual understanding (whether express or implied) of secrecy."

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**)."

Amendments to Part 5 (Collective bargaining)

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**

"(1) 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.

"(2) However, an employer does not comply with the duty of good faith in section 4 if—

"(a) the employer refuses to enter into a collective agreement; and

"(b) the employer does so because the employer is opposed, or objects in principle, to bargaining for or being a party to 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."

10A Section 43 amended (Employees' attention to be drawn to initiation of bargaining)

(1) In section 43, delete ", as soon as possible but not later than 10 days after initiating the bargaining or receiving the notice,".

(2) In section 43, insert as subsection (2):

"(2) An employer must comply with subsection (1)—
"(a) as soon as possible; but
"(b) not later than—
"(i) 10 days after initiating the bargaining or receiving the notice, if only 1 employer is identified as an intended party to the bargaining:
"(ii) 15 days after initiating bargaining or receiving the notice, if 2 or more employers are identified as intended parties to the bargaining."

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.~~

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

"(1) This section applies to an employer that—
"(a) is an intended party to bargaining—

"(i) for a single collective agreement involving 2 or more employers; or

"(ii) for an agreement for the employer to become a party to a concluded collective agreement involving 1 or more employers; and

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

"(2) The employer may, not later than 10 days after receiving the notice, opt out of bargaining for the 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 because of difficulties in concluding bargaining.

~~"(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.~~

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

"(a) must consider whether an attempt has been made to resolve the difficulties by the use of—

"(i) mediation or further mediation under section 159; or

"(ii) facilitation under sections 50B to 50I; and

"(b) may direct the parties to try to resolve the difficulties by mediation or further mediation; but

"(c) if any of the grounds in section 50C(1) exist, must direct that facilitation be used before the Authority investigates the matter, unless the Authority considers that use of facilitation—

"(i) will not contribute constructively to resolve the difficulties; or

"(ii) will not, in all the circumstances, be in the public interest; or

"(iii) will undermine the urgent nature of the process; or

"(iv) will be otherwise impractical or inappropriate in the circumstances.

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

"(a) the Authority ~~may~~ must 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)

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

(2) After section 53(2), insert:

"(2A) However, a collective agreement that binds 2 or more employers continues in force in relation to an employer that has opted out of bargaining under **section 44A**, but only—

"(a) if (after the employer's opt-out notice takes effect and before the collective agreement expires) the employer or the union initiated collective bargaining for the purpose of replacing the collective agreement; and

"(b) for the period (not exceeding 12 months) during which bargaining continues for a collective agreement to replace the collective agreement that has expired."

(3) After section 53(3), insert:

"(4) However, for the purposes of calculating the period referred to in subsection **(2A)(b)** or (3), the period referred to in **section 50K(3)(b)** is to be disregarded if—

"(a) the Authority or the court determines that the collective bargaining has concluded; and

"(b) the determination has been successfully challenged or appealed against."

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).

Amendments to Part 6 (Individual employees' terms and conditions of employment)

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)."

Amendments to Part 6AA (Flexible working)

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**

"(1) An employer must deal with a request as soon as possible, but not later than 1 month after receiving it, and must— notify the employee in writing of whether his or her request has been approved or refused.

~~"(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.~~

"(2) If the employer refuses an employee's request, the notification given under **subsection (1)** must—

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

"(b) state the ground for refusal; and

"(c) explain 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.

Amendments to Part 6A (Continuity of employment if employees' work affected by restructuring)

~~**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".~~

28 Section 69A replaced (Object of this subpart)

Replace section 69A with:

"**69A Object of this subpart**

"(1) The object of this subpart is to provide protection to specified categories of employees if, as a result of a proposed restructuring, their work is to be performed by another person.

"(2) The categories of employees—

"(a) are the categories of employees specified in Schedule 1A; and

"(b) are specified in Schedule 1A because they are employees—

"(i) who are employed in sectors in which restructuring of an employer's business occurs frequently; and

"(ii) whose terms and conditions tend to be undermined by the restructuring of an employer's business; and

"(iii) who have little bargaining power.

"(3) The protection conferred by this subpart gives—

"(a) the employees a right to elect to transfer to the other person as employees on the same terms and conditions of employment; and

"(b) the employees who have transferred a right,—

"(i) subject to their employment agreements, to bargain for redundancy entitlements from the other person if made redundant by the other person for reasons relating to the transfer of the employees or to the circumstances arising from the transfer of the employees; and

"(ii) if redundancy entitlements cannot be agreed with the other person, to have the redundancy entitlements determined by the Authority.

"(4) The protection provided by this subpart does not apply if the other person who is to perform the employees' work 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:~~ who (under **section 69DA**) is an associated person of a person providing a warranty under **section 69CA**

~~"(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."~~

30 New sections 69CA to 69CE inserted

After section 69C, insert:

"**69CA Exempt employer**

"(1) For the purposes of this subpart, an employer is an exempt employer if—

"(a) the employer is a person described in **subsection (2)**; and

"(b) the employer, together with any associated person of the employer (as at the date on which the employer provides a warranty under **section 69CB**),—

"(i) has no employees; or

"(ii) employs 19 or fewer employees; and

"(c) the employer provides a warranty that complies with **section 69CB**.

"(2) A person is an employer for the purposes of **subsection (1)(a)** if the person would, were the restructuring to proceed, be—

"(a) person A in a contracting in:

"(b) person B in a contracting out:

"(c) person C in a subsequent contracting:

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

"(e) a subcontractor if the work or part of the work would be performed not by employees of person B in a contracting out or of person C in a subsequent contracting but by employees of the subcontractor.

"(3) An employer that does not provide a warranty that complies with **section 69CB** must comply in full with the requirements of this subpart.

"(4) To avoid doubt,—

"(a) an employer who is an exempt employer is an exempt employer only in relation to the restructuring that the employer provides a warranty for; and

"(b) if the work concerned is performed by the employees of 2 or more employers and warranties are provided in

accordance with this subpart to some but not all of the employers, a failure to provide the other warranty or warranties does not invalidate the warranties provided.

"**69CB Warranty**

A warranty under **section 69CA** must—

"(a) be in writing; and

"(b) confirm that, on the date on which the warranty is provided, the employer (together with any associated person of the employer)—

"(i) has no employees; or

"(ii) has 19 or fewer employees; and

"(c) be provided in accordance with **sections 69CC to 69CE**.

"**69CC Persons warranty to be provided to**

"(1) The warranty must be provided to the persons as specified in **subsections (2) to (5)**.

"*Contracting in*

"(2) In a contracting in or proposed contracting in, the warranty must be provided by person A to—

"(a) person B if the work concerned is performed by person B's employees; or

"(b) a subcontractor if the work concerned is performed by employees of the subcontractor; or

"(c) person B and the subcontractor if the work concerned is performed partly by employees of person B and partly by employees of the subcontractor.

"*Contracting out*

"(3) In a contracting out or proposed contracting out, the warranty must be provided by—

"(a) person B to person A if the work concerned is to be performed by employees of person B; or

"(b) a subcontractor to person A if the work concerned is to be performed by employees of the subcontractor; or

"(c) person B and the subcontractor to person A if the work concerned is to be performed partly by employees of person B and partly by employees of the subcontractor.

"*Subsequent contracting*

"(4) In a subsequent contracting or proposed subsequent contracting, the warranty must be provided by—

"(a) person C to person B if the work, or some of the work, concerned—

"(i) is performed by employees of person B; and

"(ii) is to be performed by employees of person C:

"(b) a subcontractor to person B if the work, or some of the work, concerned—

"(i) is performed by employees of person B; and

"(ii) is to be performed by employees of the subcontractor:

"(c) person C to a subcontractor if the work, or some of the work, concerned—

"(i) is performed by employees of the subcontractor; and

"(ii) is to be performed by the employees of person C:

"(d) a subcontractor to another subcontractor if the work, or some of the work, concerned—

"(i) is performed by employees of the other subcontractor; and

"(ii) is to be performed by employees of the subcontractor:

"*Sale or transfer of business*

"(5) In the sale or transfer of a business (or part of it), the warranty must be provided by the purchaser or transferee to the seller or transferor.

"**69CD Provision of information for purposes of giving warranty**

"(1) The purpose of this section is to provide for the disclosure of information so that a person wishing to provide a warranty under **section 69CA** has sufficient information to identify and contact the employer of the employees who perform work that is to be performed by the employees of another person as a result of a proposed restructuring.

"(2) An obligation under this section to request or provide information does not apply if, or to the extent that, the person required

to make the request or the person to whom information is to be provided already has the information.

"*Contracting in*

"(3) In a contracting in or proposed contracting in, person A may request person B—

"(a) to confirm whether all the work concerned is performed by the employees of person B; and

"(b) if some or all of the work concerned has been subcontracted, to provide information that identifies the subcontractor and that contains the contact details of the subcontractor.

"(4) If person B provides information under **subsection (3)(b)**, person A may make the same request to the subcontractor as made under **subsection (3)** and that subsection applies with the necessary modifications.

"(5) The process under **subsections (3) and (4)** may be repeated (and those provisions apply accordingly with the necessary modifications) until person A has the information that identifies and contains the contact details of all the employers of the employees performing the work concerned.

"*Contracting out*

"(6) In a contracting out or proposed contracting out, if some or all of the work is to be subcontracted, person B must—

"(a) provide information to person A that identifies the subcontractor and contains the contact details of the subcontractor; and

"(b) provide information to the subcontractor that identifies person A and contains the contact details of person A.

"(7) Person B must ask the subcontractor—

"(a) to confirm whether all the work concerned is to be performed by the employees of the subcontractor; and

"(b) if some or all of the work concerned is to be further subcontracted, to provide information that identifies the subcontractor and that contains the contact details of the subcontractor.

"(8) If the subcontractor provides information under **subsection (7)(b)**, person B must make the same request to the other sub-

contractor as made under **subsection (7)** and that subsection applies with the necessary modifications.

"(9) The process under **subsections (7) and (8)** must be repeated (and those provisions apply accordingly with the necessary modifications) until person B has the information that identifies and contains the contact details of all the employers of the employees who are to perform the work concerned.

"(10) Person B must provide the information obtained under **subsections (7) to (9)** to person A.

"*Subsequent contracting*

"(11) In a subsequent contracting or proposed subsequent contracting, person A must ask person B—

"(a) to confirm whether all the work concerned is performed by employees of person B; and

"(b) if some or all of the work concerned has been subcontracted, to provide information that identifies the subcontractor and contains the contact details of the subcontractor.

"(12) If person B provides information under **subsection (11)(b)**, person A must make the same request to the subcontractor as made under **subsection (11)** and that subsection applies with the necessary modifications.

"(13) The process under **subsections (11) and (12)** must be repeated (and those provisions apply accordingly with the necessary modifications) until person A has the information that identifies and contains the contact details of all the employers of the employees performing the work concerned.

"(14) Person A must—

"(a) advise person C that the work concerned is not performed by employees of person A but by employees of another person; and

"(b) provide the information obtained under **subsections (11) to (13)** to person C if the information is requested by person C.

"(15) If some or all of the work is to be subcontracted, person C must provide to the subcontractor information person C obtains under **subsection (14)**.

"*Compliance*

"(16) Information must be sought and provided under this section as follows:

"(a) in a contracting in, a person who receives a request for information under **subsection (3) or (4)** must provide the information immediately:

"(b) in a contracting out—

"(i) person B must provide and ask for the information under **subsections (6) to (10)** in time for any warranty to be provided in accordance with this subpart; and

"(ii) a person receiving a request under **subsection (7) or (8)** must provide the information immediately:

"(c) in a subsequent contracting—

"(i) person A must make a request under **subsections (11) and (12)** in time for any warranty to be provided in accordance with this subpart:

"(ii) a person receiving a request under **subsection (11) or (12)** must provide the information immediately:

"(iii) person A must provide information under **subsection (14)(a)** in time for any warranty to be provided in accordance with this subpart:

"(iv) person A must provide information to person C under **subsection (14)(b)** immediately after receiving a request to provide it:

"(v) person C must provide information under **subsection (15)** in time for any warranty to be provided in accordance with this subpart.

"*Penalty*

"(17) A person who, without reasonable excuse, fails to comply with this section is liable to a penalty imposed by the Authority.

"**69CE When warranty must be provided or passed on**

"(1) A warranty must be provided on the date or dates specified in this section.

"*Contracting in*

"(2) If **section 69CC(2)** applies, the warranty must be provided on whichever of the following dates applies:

"(a) the date on which person A informs person B that the agreement relating to the work concerned is or will be terminated:

"(b) the date on which the agreement relating to the work concerned expires.

"*Contracting out*

"(3) If **section 69CC(3)** applies, the warranty must be provided on—

"(a) the date on which a tender (if any) relating to the work concerned is provided by person B to person A; and

"(b) the date on which the agreement relating to the work concerned is signed.

"*Subsequent contracting*

"(4) If **section 69CC(4)** applies, the warranty must be provided on—

"(a) the date on which a tender (if any) relating to the work concerned is provided by person C to person A; and

"(b) the date on which the agreement relating to the work is signed.

"*Sale or transfer of business*

"(5) If **section 69CC(5)** applies, the warranty must be provided on—

"(a) the date on which a tender (if any) is submitted to the seller or transferor of the business; and

"(b) the date on which the agreement for sale and purchase is entered into or the agreement to transfer is entered into."

30A New section 69DA inserted (Associated person)

After section 69D, insert:

"**69DA Associated person**

"(1) For the purposes of this subpart, a person is an associated person of a person providing a warranty under **section 69CA** if—

"(a) the person is a holding company or subsidiary of the person providing the warranty:

"(b) the person and the person providing the warranty are both subsidiaries of the same body corporate:

"(c) the person providing the warranty—

"(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 the work concerned:

"(d) the person (not being a person to which **paragraph (a), (b), or (c)** applies) has, either before the restructuring or on the date on which the restructuring takes effect, granted a franchise to the person providing the warranty to perform work that is, or will be, the same type of work as the work concerned.

"(2) However, **subsection (1)(d)** does not apply if the person granting the franchise will not be, or has not been, involved in negotiating, tendering, or entering into an agreement under which the person providing the warranty is to perform the work concerned.

"(3) In **subsection (1)**, **holding company** and **subsidiary** have the same meaning as in section 5 of the Companies Act 1993."

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."

31A New section 69FA inserted (Employer's breach of obligations not to affect employee's rights and new employer's obligations)

After section 69F, insert:

"**69FA Employer's breach of obligations not to affect employee's rights and new employer's obligations**

To avoid doubt, any failure by an employee's employer to comply with the obligations imposed on employers by this subpart does not limit or affect the rights of an employee under

this subpart or the obligations of a new employer under this subpart."

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.

"(2A) A notice under **subsection (1)** must specify that an election may be delivered, sent by post, or sent by electronic means (for example, by fax or email) to the employee's employer.

"(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.

"(3A) In **subsection (3)**—

"**exempt employer** means an employer who is an exempt employer within the meaning of **section 69CA(1)(a) and (b)**

"**new employer** means a person who is a new employer within the meaning of section 69D(1).

"(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, under **section 69CA(1)**, 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~~ employee's employer 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

"(ab) the employees who perform the work affected by the restructuring (for example, replacing employees with employees who are less experienced or less efficient); or

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

"(2A) The warranty implied by this section applies in relation to changes occurring in the period—

"(a) beginning on the day on which the employees' employer is informed about the proposed restructuring; and

"(b) ending on the day before the specified date.

"(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.

"(4) For the purposes of **subsection (2)**, whether a reason is a good reason is to be determined on an objective basis."

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)~~ 69CC** 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~~ provided, 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~~ provided, 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 conditions 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~~ a contracting in ~~in section 69C(1)~~:

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

"(iii) person C in ~~the definition of~~ a 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~~ a contracting out ~~in section 69C(2)~~:

"(ii) a subcontractor engaged to perform the work for person C in ~~the definition of~~ a 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 ef-

fect 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).

(4) After section 69OC(6), insert:

"(7) In **subsections (2A) and (3A)**, **exempt employer** means an employer who is an exempt employer within the meaning of **section 69CA(1)(a) and (b)**."

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.~~

"(3) The employee's employer must provide the individualised employee information—

"(a) as soon as practicable; but

"(b) no later than—

"(i) the date on which the restructuring takes effect; or

"(ii) any later date agreed to by the employee's employer and the new employer.

"(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.~~

42 Subpart 4 of Part 6A repealed

Repeal subpart 4 of Part 6A.

Amendments to Part 6D (Rest breaks and meal breaks)

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 employee'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."

Amendments to Part 8 (Strikes and lockouts)

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~~ employees may strike—

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

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

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

"(v) the ~~time and~~ date and time on which, or an event on the occurrence of which, the strike will end.

"(3) The notice—

"(a) must be signed by a representative of the ~~employee's~~ employees' union on the ~~employee's~~ employees' 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-; and

"(iii) are employed in the relevant part of the workplace or at any particular place or places where the work is carried on.

"(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 and time specified in the notice as the date and time 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 and time on which the lockout will begin; and

"(v) the date and time on which, or an event on the occurrence of 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~~ on the employer's behalf.

"(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)

(1) Replace section 90(1)(b)(ii) with:

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

(2) Replace section 90(3)(d) with:

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

"(e) the date and time on which, or an event on the occurrence of which, the strike will end."

51 Section 91 amended (Lockouts in essential services)

(1) Replace section 91(1)(b)(ii) with:

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

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

"(da) the date and time on which, or an event on the occurrence of 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 and time on which the strike will begin; and

"(e) the date and time on which, or an event on the occurrence of which, the strike will end."

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

(1) Replace section 94(2)(d) with:

"(d) the date and time on which the lockout will begin; and".

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

"(da) the date and time on which, or an event on the occurrence of 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.~~

"(1) A strike notice given under **section 86A**, 90, or 93 may be withdrawn at any time by a representative of the employees' union giving written notice of the withdrawal to—

"(a) the employees' employer; and

"(b) the chief executive.

"(2) A lockout notice given under **section 86B**, 91, or 94 may be withdrawn at any time by the employer or a representative of the employer giving written notice of the withdrawal to—

"(a) the employees' union or unions; and

"(b) 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~~ **sections 95B to 95E**,—

~~"**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~~

"**partial strike**—

"(a) means an act of the employees who are a party to the strike in continuing to perform some work for their employer or employers during the strike instead of wholly discontinuing their employment during the strike, and includes without limitation—

"(i) a partial discontinuance of work through a refusal or failure to accept engagement for work that forms part of the employees' normal duties:

"(ii) a reduction in the employees' normal performance of work, normal output, or normal rate of work:

"(b) means an act of the employees who are a party to the strike in breaking their employment agreement, whether or not the act involves any reduction in the employees' normal duties, normal performance of work, normal output, or normal rate of 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; or

"(c) if the partial strike involves—

"(i) a refusal to work overtime; or

"(ii) a refusal to perform call-out work if the employee would otherwise receive a special payment for performing that work.

"(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."

Amendment to Part 9 (Personal grievances, disputes, and enforcement)

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:".

Amendments to Part 10 (Institutions)

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."~~

61 Section 174 replaced (Determinations)

Replace section 174 with:

"**174 Authority must give oral determination or oral indication of preliminary findings wherever practicable**

At the conclusion of an investigation meeting, the Authority must, wherever practicable,—

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

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

"**174A Oral determinations**

"(1) If the Authority gives an oral determination under **section 174(a)**, it must—

"(a) express its conclusions on the matters or issues it considers require determination in order to dispose of the matter; and

"(b) state any relevant findings of fact or law to the extent that it considers it necessary to do so in order to explain its conclusions; and

"(c) specify what orders (if any) it is making.

"(2) The Authority must record an oral determination in writing as soon as practicable and not later than 1 month after the date on which the investigation meeting concluded.

"(3) However, the Authority may record an oral determination later than the date specified in **subsection (2)** if the Chief of the Authority decides exceptional circumstances exist.

"(4) The Authority may amend an oral determination when it is recorded under **subsection (2)** if it is necessary to correct a mistake caused by an error or omission in the determination.

"**174B Oral indication of preliminary findings**

"(1) If the Authority gives an oral indication of its preliminary findings under **section 174(b)**, it—

"(a) must—

"(i) give an indication of its likely conclusions on the matters or issues it considers require determination in order to dispose of the matter; and

"(ii) state any likely relevant findings of fact or law to the extent that it considers it necessary to do so in order to explain its likely conclusions; and

"(b) may express the oral indication of its preliminary findings as being subject to any further evidence or information from the parties or any other person.

"(2) The Authority must provide a written determination in respect of a matter for which it has given an oral indication of its preliminary findings as soon as practicable and not later than the later of the following dates:

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

"(b) the day that is 3 months after the date on which the Authority received the last evidence or information from the parties or other person referred to in **subsection (1)(b)**.

"(3) However, the Authority may provide a written determination in respect of a matter for which it has given an oral indication of its preliminary findings later than the latest date specified in **subsection (2)** if the Chief of the Authority decides exceptional circumstances exist.

"**174C Authority may reserve determination**

"(1) Despite **section 174**, the Authority may reserve its determination of a matter if it is satisfied that there are good reasons as to why it is not practicable for it to provide an oral determination or an oral indication of its preliminary findings at the conclusion of the investigation meeting.

"(2) If the Authority reserves its determination of a matter under **subsection (1)**, it must provide a written determination of its findings as soon as practicable and not later than the later of the following dates:

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

"(b) the day that is 3 months after the date on which the Authority received the last evidence or information from the parties or any other person.

"(3) However, the Authority may provide a written determination of its findings later than the latest date specified in **subsection (2)** if the Chief of the Authority decides exceptional circumstances exist.

"**174D Authority may determine matter without holding investigation meeting**

"(1) Despite **sections 174 and 174C**, the Authority may determine a matter without holding an investigation meeting.

"(2) If the Authority determines a matter without holding an investigation meeting, it must provide a written determination of its findings as soon as practicable and not later than the day that is 3 months after the date on which the Authority received the last evidence or information from the parties or any other person.

"(3) However, the Authority may provide a written determination of its findings later than the latest date specified in **subsection (2)** if the Chief of the Authority decides exceptional circumstances exist.

"**174E Content of written determinations**

A written determination provided by the Authority in accordance with **section 174A(2), 174B(2), 174C(2), or 174D(2)**—

"(a) must—

"(i) state relevant findings of fact; and

"(ii) state and explain its findings on relevant issues of law; and

"(iii) express its conclusions on the matters or issues it considers require determination in order to dispose of the matter; and

"(iv) specify what orders (if any) it is making; but

"(b) need not—

"(i) set out a record of all or any of the evidence heard or received; or

"(ii) record or summarise any submissions made by the parties; or

"(iii) indicate why it made, or did not make, specific findings as to the credibility of any evidence or person; or

"(iv) record the process followed in investigating and determining the matter."

61A Section 179 amended (Challenges to determinations of Authority)

(1) Replace sections 179(1) and (2) with:

"(1) A party to a matter before the Authority who is dissatisfied with a written determination of the Authority under **section 174A(2), 174B(2), 174C(2), or 174D(2)** (or any part of that determination) may elect to have the matter heard by the court.

"(2) An election under **subsection (1)** must be made in the prescribed manner and within 28 days after the date of the determination."

(2) Before section 179(5)(a), insert:

"(aa) to an oral determination or an oral indication of preliminary findings given by the Authority under **section 174(a) or (b)**; and".

61B Section 184 amended (Restriction on review)

In section 184(1A)(a), replace "final determinations" with "a determination under **section 174A(2)**, **174B(2)**, **174C(2)**, or **174D(2)** (as the case may be)".

Amendments to Part 11 (General provisions)

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.

Schedule 1 amended (Essential services)

63A Schedule 1 amended

In Part B, replace clause 1 with:

"1 The holding and preparation of an animal that—

"(a) is a mammal or bird; and

"(b) is held and prepared for the purposes of commercial slaughter and subsequent processing of its meat and offal for human or animal consumption, whether in the domestic market or the export market."

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~~

In this schedule, **2013 Act** means the Employment Relations Amendment Act **2013**.

2 ~~Application of amendments to existing agreements~~ Application, savings, and transitional provisions arising from 2013 Act

Amendments to section 4 (Parties to employment relationship to deal with each other in good faith)

(1) Despite the amendments made to section 4 of ~~the principal~~ this Act by **section 4** of the 2013 Act, section 4 of ~~the principal~~ this 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~~ this 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~~ was made before, on, or after the commencement of the 2013 Act.

Amendments to Part 5 (Collective bargaining)

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

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

Schedule 1AA—*continued*

Amendments to Part 6AA (Flexible working)

(4) Part 6AA of ~~the principal~~ this 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~~ this 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~~ this 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);~~ if **paragraph (a)** does not apply, 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~~ this Act (as amended by the 2013 Act) applies in relation to that request.

Amendments to Part 6A (Continuity of employment if employees' work affected by restructuring)

(5) ~~**Subsection**~~ **Subclause (6)** applies to restructurings (within the meaning of Part 6A of ~~the principal~~ this 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~~ this 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.

Amendments to Part 8 (Strikes and lockouts)

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

Schedule 1AA—*continued*

(a) the union or the employer (as the case may be) must give notice in accordance with ~~the principal~~ this 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~~ this Act (as amended by the 2013 Act), no further notice is required:

(ii) complies partly with the notice requirements of ~~the principal~~ this 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~~ this Act (as amended by the 2013 Act), and the provisions of ~~the principal~~ this Act referred to in this subsection must be read accordingly.

(7A) **Section 95AA** of this Act (as inserted by **section 55** of the 2013 Act) applies to a notice—

(a) given under **subclause (7)(a)**; or

(b) referred to in **subclause (7)(b)**.

(8) Despite **section 95B** of ~~the principal~~ this 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.

Amendments to Part 10 (Institutions)

(8A) Section 174 of this Act (as it was immediately before the 2013 Act) continues to apply to matters commenced in the Authority before the commencement of the 2013 Act as if the 2013 Act had not been passed.

Repeal of section 237A

(9) On the commencement of the 2013 Act, any request made under section 237A(3)(a) of ~~the principal~~ this Act lapses and,

Schedule 1AA—*continued*

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)

Replace section 74AC(2)(c) with:

"(c) the period of the proposed strike, which is to be specified by giving—

"(i) the date and time on which the proposed strike is to commence; and

"(ii) the date and time on which, or an event on the occurrence of which, the proposed strike is to end."

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~~ 5 working days 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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