

**Employment Relations  
Amendment Bill**

Government Bill

As reported from the committee of the whole  
House



**Employment Relations Amendment Bill**

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**Key to symbols used in reprinted bill**

**As reported from the committee of the whole  
House**

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*Hon Michael Woodhouse*

## **Employment Relations Amendment Bill**

Government Bill

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**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. 5
- 3 Principal Act**  
This Act amends the Employment Relations Act 2000 (the **principal Act**).

	<b>Part 1</b>	10
	<b>Amendments to principal Act</b>	
	<i>Amendments to Part 1 (Key provisions)</i>	
<b>4</b>	<b>Section 4 amended (Parties to employment relationship to deal with each other in good faith)</b>	
	Replace section 4(1B) and (1C) with:	15
	“(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:
- “(d) that is subject to a statutory requirement to maintain confidentiality: 5
- “(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). 10
- “(1C) To avoid doubt,—
- “(a) **subsection (1B)** does not affect an employer’s obligations under—
- “(i) the Official Information Act 1982 (despite section 52(3) of that Act); or 15
- “(ii) the Privacy Act 1993 (despite section 7(2) of that Act):
- “(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. 20
- “(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.” 25
- 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: 30
- “(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)** 35
- 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)* 5
- 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). 10
- 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** 15
- “(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. 20
- “(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 25
- “(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: 30
- “(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: 5
- “(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) 10**
- (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)— 15
- “(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: 20
- “(ii) 15 days after initiating the 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 25**
- After section 44, insert:
- “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— 30
- “(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 35
- “(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. 5

“(2) An opt-out notice must—

“(a) be in writing and be signed by the employer or ~~the employer’s~~ its duly authorised representative; and 10

“(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). 15

**“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 agreement; and 20

“(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 25

“(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.” 30

**12 New section 50K and cross-heading inserted**

After section 50J, insert: 35

*“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. 5
- “(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— 10
- “(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 15
- “(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 20
- “(ii) will not, in all the circumstances, be in the public interest; or
- “(iii) will undermine the urgent nature of the process; or 25
- “(iv) will be otherwise impractical or inappropriate in the circumstances.
- “(3) If the Authority determines that bargaining has concluded,—
- “(a) the Authority 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. 30
- “(4) If the Authority determines that bargaining has not concluded,— 35
- “(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.
- “(6) This section applies subject to **section 50KA**.”

**12A New section 50KA inserted (Declaration or determination under section 50K not to be made if breach of duty of good faith by party seeking declaration)**

After **section 50K**, insert:

**50KA Declaration or determination under section 50K not to be made if breach of duty of good faith by party seeking declaration**

- “(1) The Authority must dismiss an application made under **section 50K(1)** and must refuse to make a declaration or determination under **section 50K(3) or (4)** if the Authority is satisfied that the party seeking the declaration has failed to observe good faith as described in **subsection (3)**.
- “(2) However, the Authority is not precluded from making a declaration or determination if the party seeking the declaration has failed to observe good faith, but the Authority is satisfied that the party has rectified the failure.
- “(3) The failures to observe good faith are as follows:
- “(a) a failure to comply with the duty of good faith in section 4, if the failure—
- “(i) relates to the collective bargaining in respect of which the declaration is sought; and
- “(ii) has undermined the collective bargaining;
- “(b) a failure to deal in good faith in any mediation or facilitation directed by the Authority under **section 50K(2)** (whether in relation to the Authority or the other party or parties to the collective bargaining).

“(4) To avoid doubt, for the purposes of **subsection (3)(a)**, a failure may relate to a matter before or after the application for the determination is made.

“(5) If the Authority is precluded by **subsection (1)** from making a declaration or a determination, the Authority may make orders or recommendations or issue directions about what steps the parties to the collective bargaining ought to or must take, including (but not limited to) how the party who has failed to observe good faith may rectify the failure.”

**13 Section 53 amended (Continuation of collective agreement after specified expiry date)** 10

(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— 15

“(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 20

“(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— 25

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

“(b) the determination has been successfully challenged or appealed against.” 30

**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)** 35

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). 5
- 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)** 10
- (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”. 15
- (2A) In section 63A(1)(g), replace “section 69M or section 69N” with “section 69OJ”.
- (2B) In section 63A(1)(h), replace “section 69I” with “section 69N”.
- (3) Repeal section 63A(6). 20
- 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”. 25
- (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: 30
- “(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” 5
- (2) In section 69AA(b), replace “3 months” with “1 month”.

**20A Section 69AAA amended (Interpretation)**

In section 69AAA, repeal the definition of non-compliance with section 69AAE.

**21 Section 69AAB replaced (When employee may make request) 10**

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) 15**

Repeal section 69AAC(d).

**23 Section 69AAD repealed (Limitation on frequency of requests) 20**

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. 25
- “(2) If the employer refuses an employee’s request, the notification given under **subsection (1)** must— 30
- “(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: 5

- “(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). 10

- (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. 15

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

**28 Section 69A replaced (Object of this subpart)**

Replace section 69A with: 20

**“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— 25

- “(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 30

- “(ii) whose terms and conditions of employment 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— 5
- “(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 10 15
- “(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.” 20

## 29 Section 69B amended (Interpretation)

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

“**associated person** means a person who (under **section 69DA**) is an associated person of a person providing a warranty under **section 69CA** 25

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

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

## 30 New sections 69CA to 69CE inserted 30

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 35

- “(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 5
- “(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: 10
  - “(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. 15
- “(3) An employer that does not provide a warranty that complies with **section 69CB** must comply in full with the requirements of this subpart. 20
- “(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 25
  - “(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. 30

**“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 35

“(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).** 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 10

“(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. 15

*“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~~ person B or employees (if any) of person B; or 20

“(b) a subcontractor to person A if the work concerned is to be performed by ~~employees of the subcontractor~~ the subcontractor or employees (if any) of the subcontractor; or 25

“(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~~ person B or employees (if any) of person B and partly by the subcontractor or employees (if any) of the subcontractor. 30

*“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— 35

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



- “(ii) is to be performed by ~~employees of person C~~ -person C or employees (if any) 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 5
- “(ii) is to be performed by ~~employees of the subcontractor~~ the subcontractor or employees (if any) of the subcontractor:
- “(c) person C to a subcontractor if the work, or some of the work, concerned— 10
- “(i) is performed by employees of the subcontractor; and
- “(ii) is to be performed by ~~the employees of person C~~ -person C or the employees (if any) of person C:
- “(d) a subcontractor to another subcontractor if the work, or some of the work, concerned— 15
- “(i) is performed by employees of the other subcontractor; and
- “(ii) is to be performed by ~~employees of the subcontractor~~ the subcontractor or employees (if any) of the subcontractor: 20
- “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. 25
- “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. 30
- “(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. 35

*“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 5
  - “(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. 10
- “(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. 15
- “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— 20
- “(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. 25
- “(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. 30
- “(8) If the subcontractor provides information under **subsection (7)(b)**, person B must make the same request to the other subcontractor as made under **subsection (7)** and that subsection applies with the necessary modifications. 35

- “(8) If the subcontractor provides information under **subsection (7)(b)**, person B must provide the same information and make the same request to the other subcontractor as provided under **subsections (6) and (7)** and those subsections apply with all necessary modifications. 5
- “(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
- “(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— 15
- “(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. 20
- “(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. 25
- “(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. 30
- “(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. 35

“(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: 5

“(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— 10

“(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: 15

“(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: 20

“(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: 25

“(iv) person A must provide information to person C under **subsection (14)(b)** immediately after receiving a request to provide it: 30

“(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. 35

**“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: 5

“(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. 10

*“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 15

“(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— 20

“(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. 25

*“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 30

“(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: 5

“(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: 10

“(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. 15

“(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. 20

“(3) In **subsection (1)**, **holding company** and **subsidiary** have the same meaning as in section 5 of the Companies Act 1993.” 25

**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— 30

“(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: 35

**“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.” 5

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

Replace section 69G with:

**“69G Notice of right to make election** 10

“(1) As soon as practicable, but no later than 15 working days before 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 15

“(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 20

“(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 25

“(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— 30

“(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: 35

“(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. 5
- “(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 10 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 15
- “(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— 20
- “(i) ~~elected~~ had 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 25 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)** 30
- “**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 35 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~~ post or electronic means 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. 5
- “(6) If the employee’s employer sends an election to the new employer by ~~post, fax, or email~~ post or electronic means 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)**. 10
- “(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)**. 15
- “(7A) In **subsection (7)**, sufficient notice means—  
     “(a) as soon as practicable; but  
     “(b) no later than 20 working days before the date on which the restructuring takes effect.
- “(8) An employer or other person who fails to comply with this section is liable to a penalty imposed by the Authority.” 20
- 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”. 25
- 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**”. 30
- (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.” 35

- (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.” 5
- 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— 10
- “(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. 15
- “(2) Liability for the costs of service-related entitlements (whether ~~statutory~~ legislative 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: 20
- “(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 25
- “(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). 30 35
- “(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)**— 5
- “(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. 10
- “(7) To avoid doubt,— 15
- “(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 employee’s employer and each new employer on a pro rata basis: 20
  - “(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)**. 25
- “**69LB Resolving disputes about apportioning liability for costs of service-related entitlements** 30
- “(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)**. 35
- “(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. 5
- “(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. 10
- “(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** 15
- “(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— 20
- “(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); 25
- 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— 30
- “(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. 35
- “(3) If the employees’ employer breaches the implied warranty, and that breach adversely affects the new employer, the new em-

~~ployer may commence proceedings, in any court of competent jurisdiction, against that employer for damages—proceedings for damages, in any court of competent jurisdiction, against that employer.~~

“(4) For the purposes of **subsection (2)**, whether a reason is a good reason is to be determined on an objective basis.” 5

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

After section 69O, insert:

“**69OAA False warranty: exempt employer** 10

“(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— 15

“(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. 20

“(4) An employer to whom the false warranty was provided under **section 69CC** may commence proceedings for damages, in a court of competent jurisdiction, against the person who provided the warranty. 25

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

“(a) that confirms, on the date that the warranty is provided, the employer (together with any associated person or persons, if applicable) employs 19 or fewer employees; but 30

“(b) where, on the date that the warranty is provided, the employer (together with any associated person or persons, if applicable) employs more than 19 employees. 35

- “(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** 5  
 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** 10  
 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)** 15  
 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 20  
 “(b) includes— 25  
 “(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 30  
 “(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 35

- “(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 5

**“individualised employee information—**

- “(a) means information about an employee kept by the employee’s employer for employment-related purposes, including— 10
  - “(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 15
  - “(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 20 25
    - “(B) a copy of the ~~wage~~ wages 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 30
    - “(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 35
    - “(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.” 5

**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— 10
- “(a) where—
- “(i) disclosure is sought for the purpose of—
- “(A) deciding whether to terminate an agreement or let it expire; or 15
- “(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— 20
- “(A) terminated or to expire; or
- “(B) concluded; or
- “(C) entered into; or
- “(D) awarded; or 25
- “(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. 30
- “(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— 35
- “(i) person A in a contracting in:
- “(ii) person B in a contracting out:
- “(iii) person C in a subsequent contracting:



- “(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— 5
  - “(i) a subcontractor engaged to perform the work for person B in a contracting out:
  - “(ii) a subcontractor engaged to perform the work for person C in a subsequent contracting.
- “(2A) However, an employer or other person that would be an exempt employer if the proposed restructuring were to take effect cannot make a request for disclosure of employee transfer costs information.” 10
- (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. 15
- “(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. 20
- “(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.” 25
- (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)**.” 30

**40A Section 69OD amended (Provision of employee transfer costs information by other persons)**

In section 69OD(6)(a)(ii) and (b)(ii), replace “section 69OC(5)” with “**section 69OC(3C)**”.

35

**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. 5
- “(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— 10
- “ (a) as soon as practicable; but
- “ (b) no later than—
- “ (i) the date on which the restructuring takes effect; or 15
- “ (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 20
- “ (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— 25
- “ (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. 30
- “(7) To avoid doubt, the new employer may keep, use, or disclose individualised employee information only in accordance with the Privacy Act 1993.”

**42 Subpart 4 of Part 6A repealed**

Repeal subpart 4 of Part 6A.

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

**43 Section 69ZC replaced (Interpretation)**

Replace section 69ZC with:

**“69ZC Interpretation**

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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

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“(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

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**“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

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“(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)**.”

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**44 Sections 69ZD and 69ZE replaced**

Replace sections 69ZD and 69ZE with:

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**“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

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- “(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— 5
- “(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 10
- “(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: 15
- “(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. 20
- “**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 25
- “(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. 30
- “(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 35

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. 5

“**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 10

“(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. 15

“(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. 20

“**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— 25

“(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 30

“(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: 5

**“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. 10

“(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 15

“(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)**— 20

“(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.” 25

*Amendments to Part 8 (Strikes and lockouts)***47 Section 80 amended (Object of this Part)** 30

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: 5

“(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”* 15

**“86A Notice of strike**

“(1) No employees may strike—

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

“(b) without having given to the employees’ employer and to the chief executive notice of the employees’ intention to strike; and 20

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

“(2) The notice required under **subsection (1)** must— 25

“(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 30

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

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

“(v) the date and time on which, or an event on the occurrence of which, the strike will end. 35

- “(3) The notice—
- “(a) must be signed by a representative of the employees’ union on the 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. 10
- “(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): 15
  - “(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** 20
- “(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 25
  - “(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 30
  - “(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 35
    - “(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 on the employer’s behalf. 5
- “(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).” 10
- 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.” 15
- (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) 20**
- (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.”
- (1A) Replace section 91(3)(d) with: 25
- “(d) the date and time on which the lockout will begin; and”.
- (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) 30**
- 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)** 5

(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. 15

“(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** 20

After section 95, insert:

*“Withdrawal of notice of strike or lockout*

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

“(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— 25

“(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— 30

“(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 **sections 95B to 95E** this Act,—

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**“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—

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**“(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:

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**“(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

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**“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

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**“(b)** either—

**“(i)** calculated in accordance with **section 95D(4)** **section 95D(1) and (2)**; or

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

*“Specified pay deductions in relation to partial strike*

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**“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.

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- “(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~~ which relates to lawful strikes on the grounds of safety or health); or 5
  - “(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— 10
    - “(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**. 15
- “(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: 20
  - “(b) an employer may make deductions under this section without having to suspend or lock out the employee. 25
- “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. 30
- “(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 35

- “(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— 5
  - “(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,— 10
  - “(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): 15
  - “(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. 20

**“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 25
  - “(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 30
  - “(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 35
  - “(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. 5
- “(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%. 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. 15
- “**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— 20
- “(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— 25
- “(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**. 30
- “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 35

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— 5
  - “(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. 10

**“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— 15
  - “(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**. 20
- “(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. 25

**“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. 30
- “(2) The notice under **subsection (1)** must be provided— 35
  - “(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.” 5

**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”. 10

(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”. 15

(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— 20

“(a) notice has been given in accordance with **section 95C**; and 25

“(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 30

“(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**”. 5
- (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: 10
- “(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)*

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**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.” 20

**60 Section 161 amended (Jurisdiction)**

- (1) After section 161(1)(cb), insert: 25
- “(cba) determining whether bargaining has concluded under **section 50K**.”.
- (2) After section 161(1)(g), insert: 30
- “(ga) determining the apportionment of liability for the costs of service-related entitlements under **section 69LB(4)**.”.
- (3) After section 161(1)(l), insert: 30
- “(la) any proceedings related to the application of **section 95D**.”.
- (4) In section 161(2), after “(cb),” insert “(cba),”.

**60A New section 166B inserted**

After section 166A, insert:

**“166B Delegation of Chief of Authority’s functions, duties, or powers**

- “(1) The Chief of the Authority must ensure that an appropriate delegation is at all times in place under this section to enable 1 member of the Authority to act in place of the Chief of the Authority during— 5
- “(a) any absence or incapacity of the Chief of the Authority; 10  
or  
“(b) any vacancy in the office of Chief of the Authority.
- “(2) A delegation under this section—
- “(a) must be in writing; and  
“(b) may be made subject to any restrictions and conditions that the Chief of the Authority thinks fit; and 15  
“(c) may include a power to subdelegate any function, duty, or power to any other member of the Authority; and  
“(d) is revocable at any time, by notice in writing.
- “(3) The person to whom any functions, duties, or powers are delegated under this section may perform or exercise them in the same manner and with the same effect as if they had been conferred on the person directly by this Act and not by delegation. 20
- “(4) A person purporting to act under any delegation under this section is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation. 25
- “(5) No delegation under this section affects or prevents the performance or exercise of any function, duty, or power by the Chief of the Authority, or affects the responsibility of the Chief of the Authority for the actions of any person acting under the delegation. 30
- “(6) A delegation, until it is revoked, continues to have effect according to its terms even if the Chief of the Authority by whom it was made has ceased to hold office.”

**60B Section 173A amended (Recommendation to parties)**

In section 173A(6), replace “section 174(a)” with “**section 174E(a)**”.

**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. 5
- “(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: 10
- “(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)**. 15
- “(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. 20
- “**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. 25
- “(1A) If the Authority reserves its determination of a matter under **subsection (1)**, it may, before providing a written determination of its findings in accordance with **subsection (2)**, require the parties or any other person to provide any further evidence or information that the Authority thinks fit. 30
- “(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: 35
- “(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. 5

“**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. 10

“(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. 15

“(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. 20

“**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)**— 25

“(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 30

“(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 35

- “(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 5
- “(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: 10
- “(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.” 15
- (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” 20
- 61AB Section 181 amended (Report in relation to good faith)**
- In section 181(2), replace “section 174” with “**section 174A(2), 174B(2), 174C(2), or 174D(2)**”.
- 61B Section 184 amended (Restriction on review)** 25
- 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)** 30
- 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. 5

“(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)** 10  
 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— 15  
 “(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.” 20

**Part 2**

**Application, savings, transitional, and consequential provisions**

**64 New section 254 inserted (Application, savings, and transitional provisions relating to amendments to Act)** 25  
 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.” 30

**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 5  
schedule.

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<b>Schedule 1</b>		<b>s 64-65</b>
<b>New Schedule 1AA inserted</b>		
<b>Schedule 1AA</b>		<b>ss 5A, 254</b>
<b>Application, savings, and transitional provisions relating to amendments made to this Act after 1 January 2013</b>		<b>5</b>
<b>1</b>	<b>Interpretation</b> In this schedule, <b>2013 Act</b> means the Employment Relations Amendment Act <b>2013</b> .	
<b>2</b>	<b>Application, savings, and transitional provisions arising from 2013 Act</b> <i>Amendments to section 4 (Parties to employment relationship to deal with each other in good faith)</i>	<b>10</b>
(1)	Despite the amendments made to section 4 of this Act by <b>section 4</b> of the 2013 Act, section 4 of 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 this Act—	<b>15</b>
	(a) if the proposed decision was notified to the employee before the commencement of the 2013 Act; and	<b>20</b>
	(b) whether the final decision on that proposal was made before, on, or after the commencement of the 2013 Act.	
	<i>Amendments to Part 5 (Collective bargaining)</i>	
(2)	Section 33 of this Act (as replaced by <b>section 9</b> of the 2013 Act) applies to all bargaining, whether the bargaining commenced before, on, or after the commencement of the 2013 Act.	<b>25</b>
(3)	Section 53 of this Act (as amended by <b>section 13-section 13(1)</b> 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.	<b>30</b>
	<i>Amendments to Part 6AA (Flexible working)</i>	
(4)	Part 6AA of this Act (as amended by <b>sections 20 to 27</b> of the 2013 Act) applies in relation to a request made under that Part before the commencement of the 2013 Act as follows:	<b>35</b>

Schedule 1AA—*continued*

- (a) if the 3 months provided for in section 69AAE of 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 this Act (as it was immediately before it was amended by the 2013 Act) continues to apply in relation to that request: 5
- (b) 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 this Act (as amended by the 2013 Act) applies in relation to that request. 10

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

- (5) **Subclause (6)** applies to restructurings (within the meaning of Part 6A of 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. 15 20
- (6) Part 6A of 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 this Act (as amended by **sections 47, 48, and 50 to 53** of the 2013 Act) and sections **86A and 86B** of 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: 25 30
- (a) the union or the employer (as the case may be) must give notice in accordance with 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— 35

Schedule 1AA—*continued*

- (i) complies fully with the notice requirements of this Act (as amended by the 2013 Act), no further notice is required:
  - (ii) complies partly with the notice requirements of 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 this Act (as amended by the 2013 Act), and the provisions of 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 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 this Act lapses and, to avoid doubt, neither the Minister nor any other person is required to take any action, or any further action, in relation to such a request.

## Schedule 2

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## 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— 5
- “(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.” 10

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.” 15

## 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”. 20

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 5 working days after the pay day on which the overpayment was made; and 25
- “(ii) relates to an individual worker; and
- “(iii) specifies the amount of the overpayment made to that worker; and”. 30

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)**.” 35

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**Employment Relations Amendment Bill**

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**Legislative history**

26 April 2013	Introduction (Bill 105-1)
5 June 2013	First reading and referral to Transport and Industrial Relations Committee
11 December 2013	Reported from Transport and Industrial Relations Committee (Bill 105-2)
19 March 2014	Second reading
28 October 2014	Committee of the whole House

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