

**Employment Relations
Amendment Bill (No 2)**

Government Bill

As reported from the committee of the whole
House

**Employment Relations Amendment
Bill (No 2)**

Key to symbols used in reprinted bill

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

text inserted

~~text deleted~~

Hon Kate Wilkinson

Employment Relations Amendment Bill (No 2)

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Contents

	Page
1 Title	3
2 Commencement	3
3 Principal Act amended	3
Part 1	
Amendments to principal Act	
4 Interpretation	4
5 Access to workplaces	4
6 New section 20A inserted	4
20A Representative of union must obtain consent to enter workplace	4
7 Conditions relating to access to workplaces	5
8 Penalty for certain acts in relation to entering workplace	5
9 Good faith in bargaining for collective agreement	5
9A Bargaining for individual employment agreement or individual terms and conditions in employment agreement	6
10 New section 64 inserted	6
64 Employer must retain copy of individual employment agreement or individual terms and conditions of employment	6
11 Terms and conditions of employment where no collective agreement applies	7
12 When employment agreement may contain provision for trial period for 90 days or less	7
13 Object of this Part	7

**Employment Relations Amendment
Bill (No 2)**

14	New section 103A substituted	7
	103A Test of justification	7
15	New section 125 substituted	8
	125 Remedy of reinstatement	8
16	New section 134A inserted	9
	134A Penalty for obstructing or delaying Authority investigation	9
17	Recovery of penalties	9
18	Power of Authority to order compliance	9
19	Further provisions relating to compliance order by Authority	10
20	Procedure in relation to mediation services	10
21	New section 148A inserted	10
	148A Minimum entitlements	10
22	Settlements	10
23	New section 149A inserted	10
	149A Recommendation to parties	11
24	New section 151 substituted	11
	151 Enforcement of terms of settlement agreed or authorised	12
25	Role of Authority	12
26	Duty of Authority to consider mediation	12
27	New section 159A inserted	13
	159A Duty of Authority to prioritise previously mediated matters	13
28	Powers of Authority	13
29	Membership of Authority	13
30	New section 166A inserted	13
	166A Role of Chief of Authority	13
31	Term of office	14
32	New sections 173 and 173A substituted	14
	173 Procedure	14
	173A Recommendation to parties	15
33	Removal to court	16
34	New section 178A inserted	16
	178A Challenge in respect of dismissal of frivolous or vexatious proceedings	16
35	Application of other provisions	17
36	New sections 223A to 223G inserted	17
	223A Functions of Labour Inspector	17

	<i>Enforceable undertakings</i>	
223B	Enforceable undertakings	17
223C	Enforcement of undertakings	18
	<i>Improvement notices</i>	
223D	Labour Inspector may issue improvement notice	18
223E	Objection to improvement notice	19
223F	Penalty	19
223G	Withdrawal of improvement notice	20
37	Actions by Labour Inspectors	20
38	Amendments to Schedules 2 and 3	20
	Part 2	
	Consequential amendments and transitional provision	
39	Consequential amendments to other enactments	20
40	Transitional provision	20
	Schedule 1	22
	Amendments to Schedules 2 and 3 of principal Act	
	Schedule 2	25
	Consequential amendments to other enactments	

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Employment Relations Amendment Act (No 2)
2010.
- 2 Commencement**
 - (1) **Section 10** comes into force on **1 July 2011.**
 - (2) The rest of this Act comes into force on **1 April 2011.**
- 3 Principal Act amended**
This Act amends the Employment Relations Act 2000.

5

Part 1

Amendments to principal Act

- 4 Interpretation** 5
- Section 5 is amended by inserting the following definitions in their appropriate alphabetical order:
- “**intended agreement** includes part of an intended agreement
- “**minimum entitlements** means wages or holiday pay or other money payable by the employer to the employee under the Minimum Wage Act 1983 or the Holidays Act 2003
- “**relevant Acts**— 10
- “(a) in **sections 223A and 223B**, means the Acts specified in section 223(1):
- “(b) in **sections 223D to 223F**, means the Acts specified in section 223(1), except Part 5 of this Act”.
- 5 Access to workplaces** 15
- Section 20 is amended by omitting “section 21” in each place where it appears and substituting in each case “**sections 20A and 21**”.
- 6 New section 20A inserted** 20
- The following section is inserted after section 20:
- “20A Representative of union must obtain consent to enter workplace**
- “(1) Before entering a workplace under section 21, a representative of a union must request and obtain the consent of the employer or a representative of the employer. 25
- “(2) If a representative of a union makes a request under **subsection (1)**,—
- “(a) the employer or representative of the employer must not unreasonably withhold consent; and
- “(b) the employer or representative of the employer must 30
advise the representative of the union of the employer’s or representative of the employer’s decision as soon as is reasonably practicable but no later than the working day after the date on which the request was received; and 35

- “(c) the consent of the employer or representative of the employer (as the case may be) must be treated as having been obtained if the employer or representative of the employer does not respond to the request within 2 working days after the date on which the request was received. 5
- “(3) If an employer or a representative of an employer withholds consent under **subsection (2)**, the employer or representative of the employer must, as soon as is reasonably practicable but no later than the working day after the date of the decision, give reasons in writing for that decision to the representative of the union who made the request. 10
- “(4) This section is subject to sections 22 and 23 (which specify when access to workplaces may be denied).”
- 7 Conditions relating to access to workplaces** 15
Section 21(5) is repealed.
- 8 Penalty for certain acts in relation to entering workplace**
Section 25 is amended by repealing paragraph (a) and substituting the following paragraphs:
- “(a) contravenes **section 20A(2)(a)** by unreasonably withholding consent in relation to a request by a representative of a union under **section 20A(1)** to enter a workplace; or 20
- “(ab) fails to give reasons in writing for withholding consent to access to a workplace in accordance with **section 20A(3)**; or”. 25
- 9 Good faith in bargaining for collective agreement**
Section 32 is amended by adding the following subsection:
- “(6) To avoid doubt, this section does not prevent an employer from communicating with the employer’s employees during collective bargaining (including, without limitation, the employer’s proposals for the collective agreement) as long as the communication is consistent with subsection (1)(d) of this section and the duty of good faith in section 4.” 30

9A Bargaining for individual employment agreement or individual terms and conditions in employment agreement

- (1) Section 63A(2)(a) is amended by omitting “, or the part of the intended agreement,”.
- (2) Section ~~63(2)(b)~~ 63A(2)(b) is amended by omitting “or any part of the intended agreement”.

10 New section 64 inserted

The following section is inserted after section 63A:

“64 Employer must retain copy of individual employment agreement or individual terms and conditions of employment

- “**(1)** When section 63A applies, the employer must retain a signed copy of the employee’s individual employment agreement or the current terms and conditions of employment that make up the employee’s individual terms and conditions of the employment (as the case may be). 15
- “**(2)** If an employer has provided an employee with an intended agreement under section 63A(2)(a), the employer must retain a copy of that intended agreement even if the employee has not— 20
- “**(a)** signed the intended agreement; or
- “**(b)** agreed to any of the terms and conditions specified in the intended agreement.
- “**(2A)** If requested by the employee, the employer must, as soon as is reasonably practicable, provide the employee with a copy of the employee’s— 25
- “**(a)** individual employment agreement or current terms and conditions of employment retained under **subsection (1)**; or
- “**(b)** intended agreement retained under **subsection (2)**. 30
- “**(3)** An employer who fails to comply with **subsection (1), (2), or (2A)** is liable, in an action brought by a Labour Inspector, to a penalty imposed by the Authority.
- “**(4)** Before bringing an action under **subsection (3)**, the Labour Inspector must— 35
- “**(a)** give the employer written notice of the breach of this section; and

- “(b) give the employer 7 working days to remedy the breach.
- “(5) To avoid doubt, an intended agreement must not be treated as the employee’s employment agreement if the employee has not—
- “(a) signed the intended agreement; or 5
 - “(b) agreed to any of the terms and conditions specified in the intended agreement.”
- 11 Terms and conditions of employment where no collective agreement applies**
- Section 65 is amended by adding the following subsection: 10
- “(4) An employer who fails to comply with this section is liable, in an action brought by a Labour Inspector, to a penalty imposed by the Authority.”
- 12 When employment agreement may contain provision for trial period for 90 days or less** 15
- (1) Section 67A(1) is amended by omitting “as defined in subsection (4)”.
 - (2) Section 67A(4) is repealed.
- 13 Object of this Part**
- Section 101(c) is repealed. 20
- 14 New section 103A substituted**
- Section 103A is repealed and the following section substituted:
- “103A Test of justification**
- “(1) For the purposes of section 103(1)(a) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by applying the test in **subsection (2)**. 25
 - “(2) The test is whether the employer’s actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred. 30
 - “(3) In applying the test in **subsection (2)**, the Authority or the court must consider—

- “(a) whether, having regard to the resources available to the employer, the employer sufficiently investigated the allegations against the employee before dismissing or taking action against the employee; and
- “(b) whether the employer raised the concerns that the employer had with the employee before dismissing or taking action against the employee; and 5
- “(c) whether the employer gave the employee a reasonable opportunity to respond to the employer’s concerns before dismissing or taking action against the employee; and 10
- “(d) whether the employer genuinely considered the employee’s explanation (if any) in relation to the allegations against the employee before dismissing or taking action against the employee. 15
- “(4) In addition to the factors described in **subsection (3)**, the Authority or the court may consider any other factors it thinks appropriate.
- “(5) The Authority or the court must not determine a dismissal or an action to be unjustifiable under this section solely because of defects in the process followed by the employer if the defects were— 20
- “(a) minor; and
- “(b) did not result in the employee being treated unfairly.”
- 15 New section 125 substituted 25**
Section 125 is repealed and the following section substituted:
- “125 Remedy of reinstatement**
- “(1) This section applies if—
- “(a) it is determined that the employee has a personal grievance; and 30
- “(b) the remedies sought by or on behalf of an employee in respect of a personal grievance include reinstatement (as described in section 123(1)(a)).
- “(2) The Authority may, whether or not it provides for any of the other remedies specified in section 123, provide for reinstatement if it is practicable and reasonable to do so.” 35

16 New section 134A inserted

The following section is inserted after section 134:

“134A Penalty for obstructing or delaying Authority investigation

“(1) Every person is liable to a penalty under this Act who, without sufficient cause, obstructs or delays an Authority investigation, including failing to attend as a party before an Authority investigation (if required). 5

“(2) The power to award a penalty under **subsection (1)** may be exercised by the Authority— 10

“(a) of its own motion; or

“(b) on the application of any party to the investigation.”

17 Recovery of penalties

(1) Section 135(2)(a) is amended by omitting “\$5,000” and substituting “\$10,000”. 15

(2) Section 135(2)(b) is amended by omitting “\$10,000” and substituting “\$20,000”.

(3) Section 135 is amended by inserting the following subsection after subsection (4A):

“(4B) In determining whether to give judgment for a penalty, and the amount of that penalty, the Authority or the court must consider whether the person against whom the penalty is sought has previously failed to comply with an improvement notice issued under **section 223D**.” 20

18 Power of Authority to order compliance 25

Section 137(1)(a) is amended by inserting the following subparagraphs after subparagraph (iii):

“(iiia) an enforceable undertaking that **section 223C(1)** provides may be enforced by compliance order; or 30

“(iiib) an improvement notice that **section 223D(5)** provides may be enforced by compliance order; or”.

19 Further provisions relating to compliance order by Authority

Section 138(1)(b) is amended by adding “; or” and also by adding the following subparagraph:

“(iii) in the case of **sections 223C, 223D(5)**, and 225(4)(c), a Labour Inspector.” 5

20 Procedure in relation to mediation services

Section 147(2) is amended by inserting the following paragraph after paragraph (ab):

“(ac) may assist the parties to resolve a problem at an early stage, including, at the request of a party, discussing the problem with that party without any representative of that party being present; and” 10

21 New section 148A inserted

The following section is inserted after section 148: 15

“148A Minimum entitlements

“(1) Minimum entitlements may be the subject of—

“(a) mediation under this Part; and

“(b) agreed terms of settlement under section 149(1).

“(2) Despite **subsection (1)**, a person who is employed or engaged by the chief executive to provide mediation services and who holds a general authority to sign agreed terms of settlement under section 149(1) must not sign agreed terms of settlement in which a party agrees to forgo all, or part, of the party’s minimum entitlements.” 20
25

22 Settlements

Section 149 is amended by inserting the following subsection after subsection (3):

“(3A) For the purposes of **subsection (3)**, a minor aged 16 years or over may be a party to agreed terms of settlement, and be bound by that settlement, as if the minor were a person of full age and capacity.” 30

23 New section 149A inserted

The following section is inserted after section 149:

“149A Recommendation to parties

- “(1) The parties to a problem may agree in writing—
- “(a) to confer the power to make a written recommendation in relation to the matters in issue on a person employed or engaged by the chief executive to provide mediation services; and 5
 - “(b) on the date on which that person’s recommendation will become final, unless the parties do not accept the recommendation.
- “(2) The person on whom the power is conferred must, before making and signing a recommendation under that power,—
- “(a) explain to the parties the effect of **subsections (4) and (5)**; and 10
 - “(b) be satisfied that, knowing the effect of those subsections, the parties affirm their agreement. 15
- “(3) Where, following the affirmation referred to in **subsection (2)** of an agreement made under **subsection (1)**, a recommendation is made and signed by the person empowered to do so, a party has until the date agreed under **subsection (1)(b)** to give written notice to the person who made the recommendation that the party does not accept the recommendation. 20
- “(4) If a party gives notice under **subsection (3)** that the party does not accept the recommendation,—
- “(a) further mediation services may be provided in order to attempt to resolve the problem; and 25
 - “(b) either party to the problem may request those services be provided by a person other than the person who made the recommendation.
- “(5) If a party does not give notice under **subsection (3)**,—
- “(a) the recommendation becomes final and binding on, and enforceable by, the parties; and 30
 - “(b) a party may not seek to bring that recommendation before the Authority or the court, whether by action, appeal, application for review, or otherwise, except for enforcement purposes.” 35

24 New section 151 substituted

Section 151 is repealed and the following section substituted:

“151 Enforcement of terms of settlement agreed or authorised**“(1) This section applies to—****“(a) any agreed terms of settlement that are enforceable by the parties under section 149(3):****“(b) any recommendation that is enforceable by the parties under **section 149A(5)**:****“(c) any decision that is enforceable by the parties under section 150(3).****“(2) A matter referred to in **subsection (1)** may be enforced—****“(a) by compliance order under section 137; or****“(b) in the case of a monetary settlement, in 1 of the following ways:****“(i) by compliance order under section 137:****“(ii) by using, as if the settlement, recommendation, or decision were an order enforceable under section 141, the procedure applicable under section 141.”****25 Role of Authority**

Section 157 is amended by repealing subsections (2A) and (3) and substituting the following subsection:

“(3) The Authority must act as it thinks fit in equity and good conscience, but may not do anything that is inconsistent with—**“(a) this Act; or****“(b) any regulations made under this Act; or****“(c) the relevant employment agreement.”****26 Duty of Authority to consider mediation****(1) Section 159(1)(b) is amended by omitting “; and” and substituting “; or” and also by adding the following subparagraph:****“(iv) will be otherwise impractical or inappropriate in the circumstances; and”.****(2) Section 159 is amended by inserting the following subsection after subsection (1):****“(1A) If the matter before the Authority was brought by a Labour Inspector and relates to an employee’s minimum entitlements, the Authority must, before giving a direction under subsection (1)(b) or (c), consider whether it is appropriate to direct that**

mediation or further mediation be used in order to prevent the matter being resolved in a manner that involves a reduction of those minimum entitlements.”

27 New section 159A inserted

The following section is inserted after section 159: 5

“159A Duty of Authority to prioritise previously mediated matters

“(1) This section applies if a matter comes before the Authority for investigation and determination and an attempt has been made to resolve the matter by mediation. 10

“(2) The Authority must give priority to investigating and determining the matter referred to in **subsection (1)** over any other matters in which mediation has not been used unless the Authority considers that providing mediation services would be inappropriate having regard to section 159(1) **or (1A)**.” 15

28 Powers of Authority

(1) Section 160 is amended by inserting the following subsection after subsection (2):

“(2A) The Authority must allow cross-examination of a party or a person to the extent that is consistent with subsection (2).” 20

(2) Section 160 is amended by adding the following subsection:

“(4) The Authority may not make a freezing order or search order as provided for in the High Court Rules.”

29 Membership of Authority

Section 166(3) is repealed. 25

30 New section 166A inserted

The following section is inserted after section 166:

“166A Role of Chief of Authority

“(1) In addition to deciding matters as a member of the Authority, the Chief of the Authority is responsible for— 30

“(a) making any arrangements that are practicable to ensure that the members of the Authority discharge their functions—

“(i) in an orderly and expeditious way; and

- “(ii) in a way that meets the objects of this Act; and
“(b) directing the education, training, and professional development of members of the Authority.
- “(2) Without limiting **subsection (1)**, the Chief of the Authority may— 5
“(a) issue instructions (not inconsistent with this Act or regulations made under it) that outline expectations in respect of the process, timeliness, or any other matter relating to the hearing and determination of matters before the Authority; and 10
“(b) require particular members of the Authority to investigate particular matters.
- “(3) For the purposes of **section 169(3)**, the Chief of the Authority may provide a report to the Minister in respect of any member of the Authority in regard to the member’s adherence to and compliance with any instructions issued under **subsection (2)(a)**.” 15
- 31 Term of office**
Section 169 is amended by adding the following subsection:
“(3) Before recommending the reappointment of a member of the Authority under section 167, the Minister must, if the Chief of the Authority has provided a report in respect of the member under **section 166A(3)**, consider that report.” 20
- 32 New sections 173 and 173A substituted**
Section 173 is repealed and the following sections are substituted: 25
- “**173 Procedure**
“(1) The Authority, in exercising its powers and performing its functions, must—
“(a) comply with the principles of natural justice; and 30
“(b) act in a manner that is reasonable, having regard to its investigative role.
- “(3) The Authority may exercise its powers under section 160 in the absence of 1 or more of the parties.
- “(4) However, if the Authority acts under **subsection (3)**, the Authority must provide an absent party with— 35

- “(a) any material it receives that is relevant to the case of the absent party; and
- “(b) an opportunity to comment on the material before the Authority takes it into account.
- “(5) To avoid doubt, **subsections (3) and (4)** do not limit the powers of the Authority to make *ex parte* orders (except a freezing order or search order as provided for in the High Court Rules). 5
- “(6) The Authority may meet with the parties at the times and places fixed by a member of the Authority or an officer of the Authority. 10
- “(7) Meetings of the Authority may be adjourned from time to time and from place to place by a member of the Authority or an officer of the Authority designated for the purpose by the chief executive, whether at any meeting or at any time before the time fixed for the meeting. 15
- “173A Recommendation to parties**
- “(1) The parties to an employment relationship problem may agree in writing—
- “(a) to confer the power to make a written recommendation in relation to the matters in issue on a member of the Authority; and 20
- “(b) on the date on which the member’s recommendation will become final, unless the parties do not accept the recommendation. 25
- “(2) The member must, before making and signing a recommendation under that power,—
- “(a) explain to the parties the effect of **subsections (4) and (5)**; and
- “(b) be satisfied that, knowing the effect of those subsections, the parties affirm their agreement. 30
- “(3) Where, following the affirmation referred to in **subsection (2)** of an agreement made under **subsection (1)**, a recommendation is made and signed by the member empowered to do so, a party has until the date agreed under **subsection (1)(b)** to give written notice to the member who made the recommendation that the party does not accept the recommendation. 35

- “(4) If a party gives notice under **subsection (3)** that the party does not accept the recommendation,—
- “(a) the Authority must continue to investigate and determine the matter; and
 - “(b) either party to the problem may request that the matter be further investigated and determined by a member other than the member who made the recommendation. 5
- “(5) If a party does not give notice under **subsection (3)**, the recommendation becomes final and must be treated as the Authority’s determination of the matter. 10
- “(6) However, a recommendation under **subsection (5)** need not comply with section 174(a) (which relates to the content of a determination made by the Authority).”

33 Removal to court

- (1) Section 178 is amended by repealing subsection (1) and substituting the following subsection: 15
- “(1) The Authority may, on its own motion or on the application of a party to a matter, order the removal of the matter, or any part of it, to the court to hear and determine the matter without the Authority investigating it.” 20
- (2) Section 178(3) is amended by omitting “any matter” and substituting “any matter on application under **subsection (1)**”.

34 New section 178A inserted

The following section is inserted after section 178:

- “178A Challenge in respect of dismissal of frivolous or vexatious proceedings” 25**
- “(1) A party to a matter before the Authority that was dismissed because the Authority determined it was frivolous or vexatious under **clause 12A of Schedule 2** may challenge that determination in the court. 30
- “(2) A challenge under this section must be made in the prescribed manner within 28 days after the date that the matter is dismissed by the Authority.
- “(3) The court must determine whether it considers the matter to be frivolous or vexatious. 35

“(4) If the court does not determine that the matter is frivolous or vexatious, it must order the Authority to investigate and determine the matter.”

35 Application of other provisions

Section 190 is amended by adding the following subsection: 5

“(3) In addition to the powers described in subsection (1), the court has the same powers of the High Court to make a freezing order and a search order as provided for in the High Court Rules.”

36 New sections 223A to 223G inserted 10

The following sections are inserted after section 223:

“223A Functions of Labour Inspector

The functions of a Labour Inspector include—

“(a) determining whether the provisions of the relevant Acts have been complied with; and 15

“(b) taking all reasonable steps to ensure that the relevant Acts are complied with; and

“(c) supporting employers, employees, and other persons in complying with the relevant Acts by providing information and education; and 20

“(d) preventing non-compliance with the relevant Acts by assisting employers to implement systems and practices that comply with the provisions of the relevant Acts; and

“(e) providing any other services that assist employers and employees to resolve, promptly and effectively, employment relationship problems arising under the relevant Acts. 25

“Enforceable undertakings

“223B Enforceable undertakings 30

“(1) A Labour Inspector and an employer may agree in writing that the employer will undertake by a specified date (an **enforceable undertaking**) to—

“(a) rectify the breach of any provision of the relevant Acts; or 35

- “(b) pay money owed to an employee under a provision of the relevant Acts; or
- “(c) take any other action that the Labour Inspector determines is appropriate having regard to the nature of the breach of the provision of the relevant Act. 5
- “(2) The employer may withdraw or vary an enforceable undertaking agreed under **subsection (1)** at any time, but only with the consent of the Labour Inspector.

“223C Enforcement of undertakings

- “(1) An enforceable undertaking may be enforced by the Authority making a compliance order under section 137. 10
- “(2) An employer who fails to comply with an enforceable undertaking that remains in force is liable, in an action brought by a Labour Inspector, to a penalty imposed by the Authority.
- “(3) If the enforceable undertaking relates to a monetary settlement, the enforceable undertaking may be enforced by using, as if the undertaking were an order enforceable under section 141, the procedure applicable under section 141. 15

“Improvement notices

“223D Labour Inspector may issue improvement notice 20

- “(1) A Labour Inspector who believes on reasonable grounds that any employer is failing, or has failed, to comply with any provision of the relevant Acts may issue the employer with an improvement notice that requires the employer to comply with the provision. 25
- “(2) An improvement notice issued under **subsection (1)** must state—
- “(a) the provision that the Labour Inspector reasonably believes that the employer is failing, or has failed, to comply with; and 30
- “(b) the Labour Inspector’s reasons for believing that the employer is failing, or has failed, to comply with the provision; and
- “(c) the nature and extent of the employer’s failure to comply with the provision; and 35

- “(d) the steps that the employer could take to comply with the provision; and
- “(e) the date before which the employer must comply with the provision.
- “(3) An improvement notice may state the nature and extent of any loss suffered by any employee as a result of the employer’s failure to comply with the provision (if applicable). 5
- “(4) An improvement notice may be issued—
- “(a) by giving it to the employer concerned; or
- “(b) if the employer does not accept the improvement notice, by leaving it in the employer’s presence and drawing the employer’s attention to it. 10
- “(4A) An improvement notice may not be issued in the period commencing on 17 December and ending with the close of 8 January in the following year. 15
- “(5) An improvement notice may be enforced by the making by the Authority of a compliance order under section 137.
- “223E Objection to improvement notice**
- “(1) An employer may, within 28 days after the improvement notice is issued to the employer, lodge with the Authority an objection to the notice. 20
- “(2) The function of the Authority in respect of an objection is to determine—
- “(a) whether the employer is failing, or has failed, to comply with the specified provision of the relevant Acts; and 25
- “(b) the nature and extent of the employer’s failure to comply with the provision; and
- “(c) the nature and extent of any loss suffered by any employee as a result of the employer’s failure to comply with the provision (if applicable). 30
- “(3) The Authority may confirm, vary, or rescind the improvement notice as the Authority thinks fit.
- “223F Penalty**
- “(1) An employer who fails to comply with an improvement notice issued under **section 223D** is liable, in an action brought by a Labour Inspector, to a penalty imposed by the Authority. 35

“(2) If **subsection (1)** applies, a Labour Inspector may not also bring an action seeking a penalty in respect of the same matter under any of the relevant Acts.

“**223G Withdrawal of improvement notice**

An improvement notice may be withdrawn at any time by a Labour Inspector, but the withdrawal of an improvement notice does not prevent another improvement notice being served in relation to the same matter.” 5

37 Actions by Labour Inspectors

Section 228 is amended by repealing subsection (2) and substituting the following subsection: 10

“(2) If a Labour Inspector commences an action under subsection (1), the Labour Inspector must not issue an improvement notice under **section 223D** or serve a demand notice under section 224 in respect of the same wages or holiday pay or other money.” 15

38 Amendments to Schedules 2 and 3

(1) Schedule 2 (which contains provisions having effect in relation to the Employment Relations Authority) is amended in the manner set out in **Part 1 of Schedule 1** of this Act. 20

(2) Schedule 3 (which contains provisions having effect in relation to the Employment Court) is amended in the manner set out in **Part 2 of Schedule 1** of this Act.

Part 2

Consequential amendments and transitional provision 25

39 Consequential amendments to other enactments

The enactments specified in **Schedule 2** are amended in the manner indicated in that schedule.

40 Transitional provision 30

Section 64 of the principal Act (as inserted by **section 10** of this Act) applies whether the individual employment agree-

ment or terms and conditions that make up the employee's individual terms and conditions of employment were provided to, or agreed with, the employee before or after the commencement of this Act.

s 38

Schedule 1
Amendments to Schedules 2 and 3 of
principal Act

Part 1

Amendments to Schedule 2 5

Clause 11

Repeal and substitute:

“11 Power to award interest

“(1) In any matter involving the recovery of any money, the Authority may, if it thinks fit, order the inclusion, in the sum for which judgment is given, of interest, at the rate prescribed under section 87(3) of the Judicature Act 1908, on the whole or part of the money for the whole or part of the period between the date when the cause of action arose and the date of payment in accordance with the determination of the Authority. 10
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“(2) Without limiting the Authority’s discretion under **subsection (1)**, in deciding whether to order the inclusion of interest, the Authority must consider whether there has been long-standing and repeated non-compliance with a demand notice. 20

“(3) **Subclause (1)** does not authorise the giving of interest upon interest.”

New clause 12A

Insert after clause 12:

“12A Power to dismiss frivolous or vexatious proceedings 25

“(1) The Authority may, at any time in any proceedings before it, dismiss a matter or defence that the Authority considers to be frivolous or vexatious.

“(2) In any such case, the order of the Authority may include an order for payment of costs and expenses against the party bringing the matter or defence.” 30

Clause 14

Add as subclause (2):

“(2) For the purposes of subclause (1), a matter before the Authority must be treated as having been withdrawn if no action on 35

Part 1—*continued*

Clause 14—*continued*

the matter has been taken by a party or the Authority for at least 3 years.”

Part 2

Amendments to Schedule 3

Clause 13(1)

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Repeal and substitute:

“(1) The court may, in relation to discovery that relates to proceedings brought or intended to be brought in the court, or intended to be brought in the Authority, make any order that a District Court may make under section 56A or 56B of the District Courts Act 1947; and those sections apply accordingly with all necessary modifications.” 10

Clause 14(1)

Omit “such rate not exceeding the 90-day bill rate (as at the date of the order), plus 2%, as the court thinks fit” and substitute “the rate prescribed under section 87(3) of the Judicature Act 1908”. 15

Clause 15

Repeal and substitute:

“15 Power to dismiss frivolous or vexatious proceedings

“(1) The court may, at any time in any proceedings before it, dismiss a matter or defence that the court considers to be frivolous or vexatious. 20

“(2) In any such case, the order of the court may include an order for payment of costs and expenses against the party bringing the matter or defence before the Authority.” 25

Part 2—*continued*

Clause 18

Add as subclause (2):

“(2) To avoid doubt, if a matter is withdrawn under subclause (1), it does not affect any other matters before the court that form part of the same proceedings.”

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Schedule 2

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**Consequential amendments to other
enactments**

Holidays Act 2003 (2003 No 129)

Section 83(2): repeal and substitute: 5

“(2) To avoid doubt, for the purposes of subsection (1), an action before the Authority includes the determination of an objection to—

“(a) an improvement notice issued under **section 223D** of the Employment Relations Act 2000 that relates to holiday pay; or 10

“(b) a demand notice served under section 224 of the Employment Relations Act 2000 that relates to holiday pay.”

Minors’ Contracts Act 1969 (1969 No 41)

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Section 12(8): add “; or” and:

“(d) **section 149(3A)** of the Employment Relations Act 2000”.

Legislative history

16 August 2010	Introduction (Bill 196–1)
19 August 2010	First reading and referral to Transport and Industrial Relations Committee
2 November 2010	Reported from Transport and Industrial Relations Committee (Bill 196–2)
16 November 2010	Second reading, committee of the whole House (Bill 196–3)
