

[AS REPORTED FROM THE LABOUR COMMITTEE]

House of Representatives, 8 August 1990.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

Right Hon. Helen Clark

LABOUR RELATIONS AMENDMENT

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A BILL INTITULED

An Act to amend the Labour Relations Act 1987 and certain other Acts

BE IT ENACTED by the Parliament of New Zealand as follows:

1. **Short Title**—This Act may be cited as the Labour Relations Amendment Act 1990, and shall be read together with and deemed part of the Labour Relations Act 1987* (hereinafter referred to as the principal Act). 5

PART I

AMENDMENTS TO PRINCIPAL ACT

10

2. **Interpretation**—(1) Section 2 (1) of the principal Act is hereby amended by repealing the definition of the term “agreement”, and substituting the following definition:

“ ‘Agreement’ means—

“(a) An agreement registered by the Arbitration Commission in settlement of a dispute of interest between the parties to it by means of the procedure described in section 164 of this Act: 15

Struck Out

“(b) A composite agreement under section 166 of this Act: 20

“(c) An enterprise agreement that results from negotiations initiated under section 165A(1) of this Act:”.

*1987, No. 77

Amendments: 1988, No. 27; 1989, No. 94

New

“(b) A composite agreement registered in accordance with section 166 of this Act:

5 “(c) An enterprise agreement which results from negotiations initiated under **section 165A (1)** of this Act and which is registered in accordance with section 164 of this Act (as applied by **section 165B (11)** of this Act):”.

10 (2) Section 2 (1) of the principal Act is hereby amended by inserting, after the definition of the term “homeworker”, the following definition:

 “‘Industry award’ means an award (including a composite award)—

15 “(a) The coverage of which is determined primarily by reference to the nature of the *(business of)* activities carried on by the employers bound by the award rather than by reference only to the work done by the workers bound by the award; but

20 “(b) Which does not necessarily cover all of the occupations of workers engaged in *(the business)* those activities:”.

(3) Section 2 (1) of the principal Act is hereby amended by repealing the definition of the term “Inspector”, and substituting the following definition:

25 “‘Inspector’ means a Labour Inspector designated under **section 197** of this Act:”.

(4) Section 2 (1) of the principal Act is hereby amended by inserting, after the definition of the term “worker”, the following definition:

30 “‘Workplace’—

 “(a) Means premises at which an employer (*operates a business or a part of a business*) carries on the activities of the employer; and

35 “(b) Where an employer (*operates a business or a part of a business*) carries on the activities of the employer from premises at two or more places (each of which has a different physical location), means each of those premises at each of those places and not all of those premises collectively:”.

3. Consequential changes to coverage—Section 12 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) If the union that is provisionally registered under section 11 of this Act—

“(a) Becomes registered under sections 10 and 14 of this Act; or

“(b) Amalgamates with another union under section 25 of this Act (whether or not that union is itself provisionally registered),—

the amendment to the membership rule of the existing union that was deemed by subsection (1) of this section to be made shall be confirmed and the Registrar shall record it accordingly.”

4. Effect of provisional registration—Section 13 of the principal Act is hereby amended by adding the following subsection:

“(3) Nothing in subsection (2) of this section prevents the amalgamation of a provisionally registered union under section 25 of this Act.”

5. Appeals—Section 16 of the principal Act is hereby amended by repealing subsection (5), and substituting the following subsection:

“(5) On any such appeal the Labour Court, after making full inquiry and hearing, if it desires to appear, the group or union concerned,—

“(a) Shall advise the Registrar whether, in its opinion, the decision made by the Registrar was correct; and

“(b) If it does not consider the decision to be correct, may give the Registrar such directions (if any) as it thinks fit to ensure that a correct decision is made.”

New

5A. Life of union membership clause in relation to awards or agreements to which more than one union or association of unions is a party—The principal Act is hereby amended by repealing section 69A (as enacted by section 5 of the Labour Relations Amendment Act 1989), and substituting the following section:

“69A. (1) This section applies to—

“(a) Every composite award:

New

“(b) Every composite agreement:

“(c) Every award or agreement to which—

“(i) More than one union is party; or

5 “(ii) An association of unions is a party.

“(2) Subject to **subsection (3)** of this section, where an award or agreement to which this section applies replaces, either wholly or partially, awards or agreements each of which contains a union membership clause inserted as a result of a ballot, a
10 union membership clause shall be inserted in that award or agreement.

“(3) Where any of the awards or agreements replaced by the award or agreement to which this section applies contained a union membership clause that was inserted pursuant to section
15 69 (2) (b) of this Act (whether before or after the commencement of this section), that clause shall not be automatically inserted in that award or agreement.

“(4) Where an award or agreement to which this section applies replaces, either wholly or partially, any award or agreement that does not contain a union membership clause, a
20 union membership clause shall not be inserted in the award or agreement to which this section applies except as the result of a ballot held in accordance with this Act.

“(5) Where a union membership clause is inserted pursuant
25 to **subsection (2)** of this section in an award or agreement to which this section applies, the following provisions shall apply in determining whether such a clause shall be inserted in subsequent awards or agreements to which this section applies:

“(a) If any of the awards or agreements replaced by the
30 award or agreement to which this section applies contained a union membership clause that was inserted pursuant to section 69 (2) (b) of this Act (whether before or after the commencement of this section), that clause shall not be automatically
35 inserted in any subsequent award or agreement to which this section applies; or

“(b) If any of the awards or agreements replaced by an
40 award or agreement to which this section applies contained a union membership clause that was inserted pursuant to section 69 (2) (a) of this Act (whether before or after the commencement of this Act) and **paragraph (a)** of this subsection does not

New

apply to that award or agreement, that union membership clause shall be inserted in the award or agreement subsequent to the award or agreement referred to in **subsection (2)** of this section; or 5

“(c) If neither **paragraph (a)** nor **paragraph (b)** of this subsection applies in respect of an award or agreement to which this section applies in which a union membership clause is inserted pursuant to **subsection (2)** of this section, a union membership clause shall be inserted in— 10

 “(i) The award or agreement that is subsequent to the award or agreement specified in **subsection (2)** of this section; and

 “(ii) The award or agreement that is subsequent to the award or agreement specified in **subparagraph (i)** of this paragraph. 15

“(6) This section is subject to section 106 of this Act relating to change of union coverage.”

6. General object in relation to awards and agreements—(1) Section 132 of the principal Act is hereby amended by inserting, after paragraph (b), the following paragraph: 20

 “(ba) A transition from a bargaining system based on occupational negotiations towards one with an appropriate mix of viable bargaining arrangements (with a particular emphasis on industry and enterprise negotiations) is promoted and facilitated.”. 25

(2) Section 132 of the principal Act is hereby amended by repealing paragraph (e), and substituting the following paragraphs: 30

 “(e) Where an employer employs in any one workplace at least 50 relevant workers (as defined in **section 165b (12)** of this Act) that employer may at any time initiate a ballot for the right to negotiate an enterprise agreement— 35

 “(i) For that workplace; or

 “(ii) For that workplace and any other of the employer’s workplaces,— 40

with all the unions concerned:

5 “(ea) Where an employer who employs in any one workplace at least 50 relevant workers (as defined in **section 165B(12)** of this Act) commences in accordance with this Act to negotiate an enterprise agreement and lodges claims accordingly—

10 “(i) The employer and the workers shall continue to be covered by any appropriate existing award or existing award and existing agreement until the earlier of the registration of the enterprise agreement or the expiration of the period of 6 months beginning with the date on which the last of the notices of claims served, under **section 165B(6)** of this Act, was served; and

15 “(ii) Any enterprise agreement registered as a result of the negotiations shall apply, to the exclusion of any existing award or agreement; and

20 “(iii) The employer and the workers may be brought back within the scope of any subsequent award negotiations only if that employer and the union party agree:

25 “(eb) Any agreement reached with an employer bound by an award (other than an enterprise agreement reached in accordance with the principles set out in paragraphs (c) to (ea) of this section or an agreement reached with an employer who has been specified for separate negotiations) cannot be registered and allows the employer to seek exemption from any relevant award.”

30 **7. Object in relation to awards**—Section 133 of the principal Act is hereby amended by repealing paragraph (d), and substituting the following paragraph:

35 “(d) If the conciliation council fails to settle the dispute, any decision to submit the unsettled dispute for determination by the Commission must be agreed to by both parties unless the Commission determines after protracted negotiations that one of the parties has not been negotiating in good faith.”

8. Industry awards—The principal Act is hereby amended by inserting, after section 137, the following section:

40 “137A. (1) Notwithstanding that any award (other than an industry award) is current and applies to the workers who would be bound by an industry award, negotiations for the

making of an industry award may be initiated at any time under section 134 of this Act.

“(2) Where the matters to be contained in an industry award are settled or determined under this Act, the industry award may, notwithstanding anything in section 150B of this Act, be registered by the Commission whether or not its coverage overlaps with that of a current award (other than another industry award).” 5

“(3) Where an industry award is registered by the Commission and its coverage overlaps with the coverage of a current award (other than another industry award),—” 10

“(a) The coverage clause of that current award shall be deemed to be amended to the extent necessary to ensure that the industry award is the only award applying to the workers in question; and” 15

“(b) The Commission shall, when registering the industry award, ensure that the current award is named in the industry award as a current award whose coverage is reduced by the industry award.”

“(4) Where, on the initiation of negotiations for an industry award, workers covered by the proposed coverage clause are already covered by any current award (other than an industry award), the following provisions shall apply:” 20

“(a) The current award shall continue to apply to those workers until the industry award is registered, even if it is otherwise superseded in the interim; and” 25

“(b) Any award replacing the current award shall—

“(i) If the industry award claims are withdrawn, apply to those workers; and

“(ii) If the industry award claims are not withdrawn, apply only to such of those workers as are eventually not covered by the coverage clause of the industry award.” 30

9. Unsettled disputes—(1) Section 147 of the principal Act is hereby amended by repealing subsection (7) (as amended by section 4 (1) of the Labour Relations Amendment Act 1988), and substituting the following subsection:” 35

“(7) Where, in respect of any dispute,—

“(a) A Commissioner has exercised any or all of the powers conferred by subsection (4) of this section; and” 40

“(b) The parties do not agree to the dispute being heard and determined by the Commission; and

“(c) At least two years have elapsed—

“(i) Since the expiry of the currency of the award that the parties are seeking to supersede; or

“(ii) Where the parties are not seeking to supersede a current award, since the award negotiations were initiated,—

5

sections 149A to 149E of this Act shall apply to the negotiations.”

(2) Section 4 (1) of the Labour Relations Amendment Act 1988 is hereby consequentially repealed.

10 **10. New heading and sections inserted**—The principal Act is hereby amended by inserting, after section 149, the following heading and sections:

“Special Powers of Commission

15 “149A. **Protracted negotiations**—(1) Where negotiations have been initiated under section 134 (1) of this Act for the making of an award, **sections 149B to 149E** of this Act shall, subject to **subsection (2)** of this section, apply to those negotiations if—

20 “(a) They are negotiations for the making of an award to supersede an award that has expired and at least 2 years have elapsed since the expiry of the currency of the expired award; or

25 “(b) They are negotiations for the making of an award (not being an award to supersede an award) and at least 2 years have elapsed since the initiation of the negotiations.

“(2) Nothing in **sections 149B to 149E** of this Act prevents the parties to any negotiations to which those sections apply from settling at any time the dispute of interest created by the initiation of those negotiations.

30 “149B. **Application to Commission**—(1) Either party to negotiations to which this section applies may apply to the Arbitration Commission for relief.

“(2) Every such application shall—

35 “(a) Show why this section applies to the negotiations; and
“(b) Give the reasons why the negotiations have not resulted in the making of an award; and

“(c) State the relief that the applicant seeks from the Arbitration Commission.

40 “(3) The applicant shall, as soon as practicable after the making of the application, give a copy of the application—

“(a) To the other party to the negotiations; and

“(b) To the mediator.

- “149c. **Powers of Commission**—(1) The Arbitration Commission, on receiving an application under **section 149b** of this Act and after giving the parties an opportunity to be heard, may do any or all of the following things:
- “(a) If the negotiations to which the application relates are of the kind described in **section 149A (1) (a)** of this Act and the award sought to be superseded is still in force, extend that award, notwithstanding the provisions of section 171 of this Act, for such period as the Commission thinks fit: 5
- “(b) If the negotiations are held up, in whole or in part, by a disagreement between the parties about the coverage of the proposed award, give directions to the parties concerning the manner in which they are to resolve their disagreement (which manner shall be that which the Commission considers best achieves the object set out in **section 132 (ba)** of this Act): 10
- “(c) Exercise any of its powers under section 147 of this Act: 20
- “(d) Settle the outstanding matters by arbitration in accordance with **section 149e** of this Act if—
- “(i) There is no disagreement between the parties about the coverage of the proposed award or the Commission has, in relation to the negotiations, already exercised its powers under **paragraph (b)** of this subsection; and 25
- “(ii) The Commission is satisfied that any party to the negotiations has not been negotiating in good faith: 30
- “(e) Refer the outstanding matters back to the parties without taking any further action.
- “(2) The Commission, in giving directions under **subsection (1) (b)** of this section in relation to any negotiations, shall take into account— 35
- “(a) Any other negotiations which have been entered into by either of the parties and which are connected to the coverage of the proposed award; and
- “(b) Such other matters as it thinks fit.
- “(3) Directions given under **subsection (1) (b)** of this section may be of a procedural nature or a substantive nature or both. 40
- “(4) The Commission, may in respect of any negotiations to which this section applies, exercise, on more than one occasion in respect of those negotiations, any or all of the powers conferred on the Commission by any of the provisions of **paragraphs (a) to (c) of subsection (1)** of this section. 45

“149D. **Negotiating in good faith**—(1) The Commission shall, in determining for the purposes of **section 149c (1) (d) (ii)** of this Act whether a party to any negotiations to which that section applies has been negotiating in good faith, have regard to—

5

“(a) That party’s attendance (if any) at meetings of the conciliation council; and

“(b) The extent (if any) to which that party has put forward claims or counterclaims during the negotiations; and

10

“(c) The extent (if any) to which the party has during the negotiations provided reasons or arguments that support that party’s position or claims;

“(d) The extent (if any) to which that party has complied with any directions given by the Commission under **section 149c (1) (b)** of this Act:

15

“(e) The general conduct of that party during the course of the negotiations.

“(2) The Commission may, for the purposes of this section,—

20

“(a) Require the mediator to report on any of the matters specified in **paragraphs (a) to (e) of subsection (1)** of this section; and

“(b) Accept as evidence any report provided by a mediator pursuant to a requirement under **subsection (1)** of this section.

25

“149E. **Final offer arbitration**—(1) The Commission’s power to arbitrate under **section 149c (1) (d)** of this Act shall be exercised in the following manner:

30

“(a) The Commission shall require each party to the negotiations to provide the Commission and the other party, within a time or by a date specified by the Commission, with full particulars of the party’s final offer in respect of the provisions of the proposed award:

35

“(b) If a party to the negotiations fails to provide a final offer within the specified time or by the specified date, the Commission shall regard that party as having provided a nil offer:

“(c) The Commission shall give the parties the opportunity to be heard and to present evidence:

40

“(d) The Commission shall, at the conclusion of the hearing and before making its determination, give each of the parties the opportunity to restate in writing, within a specified time or by a specified date, its final offer:

- “(e) Subject to paragraphs (f) and (g) of this subsection, the Commission shall determine the dispute between the parties—
- “(i) By applying the criteria set out in section 148 of this Act; and 5
- “(ii) By applying the objects of this Part of this Act; and
- “(iii) By applying the principles set out in sections 150A to 150c of this Act:
- “(f) In determining the dispute, the Commission must accept in full the final offer made by one of the parties: 10
- “(g) The Commission may not adopt only a part or parts of one final offer and a part or parts of the other final offer.
- “(2) The Commission shall register its determination as an award.” 15

11. Coverage clause and refusal to register award—
 Section 150B (1) of the principal Act (as inserted by section 6 of the Labour Relations Amendment Act 1989), is hereby amended by inserting, after the words “Subject to”, the words “section 137A of this Act and to”. 20

Struck Out

12. Failure to give notice of separate negotiations—
 Section 152 (2) of the principal Act is hereby amended by inserting, after the words “the employer may”, the words “(except where the agreement is negotiated under section 165A of this Act)”. 25

New

12. Failure to give notice of separate negotiations—
 Section 152 (2) of the principal Act is hereby amended by inserting, after the words “an agreement”, the words “(other than an agreement negotiated under section 165A of this Act)”. 30

13. Object in relation to agreements—Section 163 of the principal Act is hereby amended by repealing paragraph (c), and substituting the following paragraph: 35

“(c) The situations in which (*negotiations for an agreement can be formally initiated*) an agreement can be registered are limited to any one of the following situations:

5 “(i) Where a union has, before award negotiations, given notice that it wishes to engage in, or agrees to engage in, negotiations for an agreement:

10 “(ii) Where an employer employs at least 50 workers in a single workplace and a ballot initiated by that employer (after at least 6 weeks notice to the relevant unions) shows that a majority of those workers are in favour of negotiations for an enterprise agreement:

“(iii) Where no award or agreement is current:

15 “(iv) Where new matters have arisen in relation to a current award and the parties to that award have elected to resolve them by negotiating an agreement:

“(v) Where the negotiations have been agreed to under section 166 (2) of this Act.”

20 **14. Coverage clause and refusal to register agreement**—(1) Section 164c(1) of the principal Act (as inserted by section 8 of the Labour Relations Amendment Act 1989) is hereby amended by omitting the expression “subsection (2)”, and substituting the expression “subsections
25 (2) and (3)”.

(2) Section 164c of the principal Act (as so inserted) is hereby further amended by adding the following subsection:

30 “(3) The Commission may register a proposed agreement despite the fact that its coverage clause overlaps with that of a current award or of a current award and a current agreement if the proposed agreement is one that was initiated under **section 165A** of this Act.”

15. New sections inserted—The principal Act is hereby amended by inserting, after section 165, the following sections:

35 “165A. **Enterprise agreements**—(1) An employer may initiate negotiations for an enterprise agreement only if the employer operates a workplace in which the employer employs at least 50 (*workers other than casual workers*) full-time workers or full-time equivalents who are bound—

40 “(a) By any award; or

“(b) By any award and any agreement.

“(2) An enterprise agreement initiated under **subsection (1)** of this section—

- “(a) Shall cover all workers in the workplace who are bound—
- “(i) By any award; or
- “(ii) By any award and any agreement; and 5
- “(b) May cover all workers who are employed by the employer in any other workplace nominated by the employer and who are workers bound—
- “(i) By any award; or
- “(ii) By any award and any agreement; and 10
- “(c) Subject to section 164B of this Act, may cover any other workers employed by the employer in any workplace nominated for the purposes of paragraph (a) or paragraph (b) of this subsection.

“165B. **Procedure in relation to negotiation of enterprise agreement**—(1) Negotiations under **section 165A (1)** of this Act shall be initiated by the employer giving to each relevant union at its registered office a notice— 15

- “(a) Indicating the employer’s intention to ballot the relevant workers about the employer’s wish to negotiate an enterprise agreement; and 20
- “(b) Describing the proposed coverage clause of the enterprise agreement, which clause shall be in accordance with **section 165A (2)** of this Act.

“(2) Where at least six weeks have elapsed since the giving of the last of the notices required by **subsection (1)** of this section, the employer may request the Registrar of Unions to conduct a ballot of the relevant workers. 25

- “(3) Every such ballot—
- “(a) Shall be a secret ballot; and
- “(b) Shall be conducted in a manner determined by the Registrar; and 30
- “(c) Shall be conducted in the employer’s time and at the employer’s expense.

“(4) The expense of conducting the ballot includes the cost of the services performed by the Registrar of Unions and by other employees of the Department of Labour. 35

Struck Out

“(5) The question to be determined by the ballot shall be whether the relevant workers wish to negotiate with the employer an enterprise agreement that will take them outside their current award or agreement coverage. 40

New

5 “(5) The question to be determined by the ballot shall be whether the relevant workers wish their union to negotiate with their employer an enterprise agreement that will take them outside their current award coverage or their current award and current agreement coverage.

10 “(6) If more than 50 percent of the votes cast in the ballot are in favour of the employer’s proposal, the employer may serve notice of claims for an enterprise agreement on the relevant unions.

15 “(7) Where notice of claims is served on the relevant unions under **subsection (6)** of this section, the parties may proceed to negotiate an agreement that may be registered by the Arbitration Commission in accordance with this Act, notwithstanding that the coverage overlaps with that of any current award or any current award and current agreement.

20 “(8) Where notice of claims is served on the relevant unions under **subsection (6)** of this section, the workers concerned may lawfully strike in relation to that dispute of interest and the employer may lawfully lock out in relation to that dispute.

“(9) Where notice of claims is served on the relevant unions under **subsection (6)** of this section, the current award or agreement shall, notwithstanding that it might otherwise be superseded, continue to apply to the relevant workers until—

25 “(a) The registration of an enterprise agreement in respect of the relevant workers; or

Struck Out

30 “(b) The expiration of the period of six months beginning with the date on which the last of the notices of claims served, under **subsection (6)** of this section, was served,—

New

35 “(b) Where the dispute of interest is not settled within the period of 6 months beginning with the date on which the last of the notices of claims served under

New

subsection (6) of this section was served, the expiration of that period,—

whichever is the earlier.

“(10) When a current award or agreement ceases to apply to any workers as a result of the registration of an enterprise agreement, its coverage clause shall be deemed to be amended accordingly. 5

“(11) In all other respects, sections 164 to 164₁ of this Act shall apply to any enterprise agreement that results from negotiations under **section 165A (1)** of this Act. 10

“(12) In this section and **section 132** of this Act, “relevant workers”, in relation to an employer, means workers employed by the employer—

“(a) Who are currently covered by an award or agreement; 15
and

“(b) Who are within the proposed coverage clause of the enterprise agreement.

“165c. **Union meetings**—(1) Where an employer gives notice under **section 165B (1)** of this Act, every union member employed by that employer who is to be covered by the proposed enterprise agreement shall be allowed to attend a union meeting of up to 2 hours duration during the period of 6 weeks referred to in **section 165B (2)** of this Act, and (*subsections (2) to (5)*) subsections (3) to (5) of section 57 of this Act shall apply accordingly. 20 25

New

“(2) The union shall give the employer at least 7 days notice of the date and time of any union meeting to which **subsection (1)** of this section is to apply. 30

“165D. **Union rights where enterprise agreement notified**—(1) Where a notice under **section 165B (1)** of this Act is given by an employer, all the unions to which the notice is given may, at any time in the period of 6 weeks referred to in **section 165B (2)** of this Act, jointly serve notice of claims on that employer for a composite agreement— 35

“(a) Which shall cover at least all the workers that would be covered by the proposed enterprise agreement; but

Struck Out

“(b) Which may cover other workers of the type described in section 165A (2) (c) of this Act.

New

5 “(b) Which, subject to section 164B of this Act, may cover
any other workers who are not bound by an award
or agreement but who are employed by the
employer in any workplace nominated by the
10 employer for the purposes of paragraph (a) or paragraph
(b) of section 165A (2) of this Act.

“(2) Where notice of claims for a composite agreement are made in accordance with subsection (1) of this section, the procedure initiated by the employer by the giving of a notice under section 165B (1) of this Act shall be suspended.

15 “(3) If, within 3 months after the date of the notice given by the employer under section 165B (1) of this Act, the negotiations for a composite agreement have not resulted in the settlement of a composite agreement then, unless the employer elects to continue negotiations for a composite agreement,—

20 “(a) The negotiations for a composite agreement shall lapse; and

“(b) The dispute of interest shall cease to exist; and

25 “(c) The procedure suspended by subsection (2) of this section shall cease to be suspended and shall be continued from the point at which it was interrupted.

“(4) Any strike by the workers concerned in relation to the negotiation of the composite agreement or lockout by the employer in relation to that negotiation shall be lawful only if section 233 (1) of this Act applies to it.”

30 **16. Awards and agreements to prevail over contracts of service in cases of conflict**—Section 174 of the principal Act is hereby amended by omitting the words “in force on the coming into force of the award or agreement”.

35 **17. Under-rate workers who are exempt from union membership**—The principal Act is hereby amended by inserting, after section 177, the following section:

“177A. (1) Where a person who has, under section 92 of this Act, an exemption from union membership, is incapable of earning the applicable minimum award wage that person may apply to the Secretary of Labour for the right to be paid at a rate of pay below that fixed by the award. 5

“(2) The Secretary shall, on receipt of an application under subsection (1) of this section, consult with the relevant union concerning the application and thereafter subsections (4) to (6) of section 177 of this Act shall apply as if the Secretary were the relevant union and the Secretary’s certification shall have effect accordingly.” 10

18. New matters—Section 178 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) Where a union or employer or employer party considers, 15
in relation to a current award or agreement,—

“(a) That the award or agreement does not deal adequately with any new matter relating to workers employed under it; and

“(b) That as a result negotiations under this Act should be entered into between the parties for— 20

“(i) An amendment to that award or agreement;
or

“(ii) Another award or agreement to come into force during the currency of that award or agreement,— 25

the union or employer or employer party, either alone or jointly, may apply to the Labour Court to determine whether a new matter exists.”

19. Restrictions on compensation for redundancy— 30
(1) The principal Act is hereby amended by inserting, after section 184, the following section:

“184A. (1) Where a worker’s employment is being terminated by his or her employer by reason only of the sale or transfer by the employer of the whole or part of the employer’s business, nothing in any award or agreement or any registered redundancy agreement shall require the employer to pay compensation for redundancy to the worker if— 35

“(a) The person acquiring the business or the part being sold or transferred— 40

“(i) Has offered the worker employment in the business or the part being sold or transferred; and

- “(ii) Has agreed to treat service with the employer as if it were service with that person and as if it were continuous; and
- 5 “(b) The conditions of employment offered to the worker by the person acquiring the business or the part of the business being sold or transferred are the same as, or are no less favourable than, the worker’s conditions of employment, including—
- 10 “(i) Any service-related conditions; and
 “(ii) Any conditions relating to redundancy; and
 “(iii) Any conditions relating to superannuation—
 under the employment being terminated; and
- 15 “(c) The offer of employment by the person acquiring the business or the part of the business being sold or transferred is an offer to employ the worker in that business or that part of that business either—
- “(i) In the same capacity as that in which the worker was employed by his or her employer; or
- 20 “(ii) In a capacity that the worker is willing to accept.

New

25 “(2) Nothing in **subsection (1)** of this section shall be construed as affecting the right of any worker, union, employer, employers organisation, or association to enter into at any time any agreement relating to redundancy.”

(2) Section 184 (4) of the principal Act is hereby amended by inserting, before the words “Any redundancy agreement”, the words “Subject to **section 184A** of this Act,”.

30 **20. Validity of awards and agreements**—Section 193 (2) of the principal Act is hereby amended by repealing paragraph (c), and substituting the following paragraph:

Struck Out

35 “(c) The coverage clause in the award or agreement overlaps with that of another current award or agreement (not being an industry award or a composite agreement or an enterprise agreement initiated under **section 165A (1)** of this Act).”

New

“(c) The coverage clause in the award or agreement (not being an industry award or a composite agreement or an enterprise agreement initiated under **section 165A (1)** of this Act) overlaps with that of another current award or current agreement.” 5

21. New sections substituted—The principal Act is hereby amended by repealing section 197, and substituting the following sections:

“**197. Labour Inspectors**—(1) For the purposes of— 10

“(a) This Act; and

“(b) The Equal Pay Act 1972; and

“(c) The Holidays Act 1981; and

“(d) The Minimum Wage Act 1983; and

“(e) The Volunteers Employment Protection Act 1973,— 15
the Secretary of Labour may designate as Labour Inspectors such employees of the Department of Labour as the Secretary from time to time considers necessary.

“(2) Every Labour Inspector shall have a warrant of designation signed by the Secretary of Labour and shall produce it for inspection if requested to do so in the course of the Labour Inspector’s duties. 20

“**197A. Powers of Labour Inspectors**—(1) For the purpose of enforcing any Act specified in **section 197 (1)** of this Act, every Labour Inspector shall, subject to this section, have the following powers: 25

“(a) The power to enter, at any reasonable hour during the day, any premises (other than a dwellinghouse) where any person is employed or where the Inspector has reasonable cause to believe that any person is employed, accompanied, if the Inspector thinks fit, by any other employee of the Department of Labour qualified to assist: 30

“(b) The power to interview any person at any premises of the kind described in **paragraph (a)** of this subsection and the power to interview any employer or any worker: 35

“(c) The power to (inspect, and) require the production of, and to inspect and take copies from,—

- “(i) Any wages and time record or any holiday book whether kept under this Act or any other Act; or
- 5 “(ii) Any other document held which records the remuneration of any workers:
- “(d) The power to inspect, and take copies of, any record kept under section 323 of this Act of strikes and lockouts:
- 10 “(e) The power to question any employer about compliance with any of the Acts referred to in **section 197 (1)** of this Act.
- “(2) In entering any premises under **subsection (1) (a)** of this section, an Inspector shall be bound by any existing reasonable safety and health procedures and requirements applying at the
- 15 premises and shall, to the extent that such procedures or requirements reasonably limit or prohibit the entry of persons other than workers to particular parts of the premises, not enter such parts.
- “(3) Every *(person)* Inspector who enters any premises under the authority of **subsection (1) (a)** of this section shall, on first entering those premises, and, if requested, at any subsequent time, produce to the employer or a representative of the employer that person’s warrant under **section 197 (2)** of this Act.
- 20 “(4) Where an Inspector enters any premises under the authority of **subsection (1) (a)** of this section and is unable, despite reasonable efforts, to find at those premises the employer or any representative of the employer, that person shall, after the entry and inspection and before leaving those premises, leave at those premises a written notice addressed to the employer,
- 25 which shall state—
- 30 “(a) The identity of the person who entered the premises; and
- “(b) The fact that the person is a Labour Inspector; and
- “(c) The date and time of the entry; and
- 35 “(d) The reasons for the entry.
- “(5) Any Inspector who inspects any document pursuant to this section shall use any information obtained as a result of the inspection only for the purposes of the Acts referred to in **section 197 (1)** of this Act.
- 40 “(6) No person shall, on examination or inquiry under this section, be required to give to any question any answer tending to incriminate that person.”

New

21A. Power to order compliance—(1) Section 207 (1) (b) of the principal Act is hereby amended by inserting, after the words “Registrar of Unions”, the words “or an Inspector”.

(2) Section 207 (2) of the principal Act is hereby amended by inserting, after the words “or an employer”, the words “or an Inspector”.

22. Right to use personal grievance procedures—Section 216 of the principal Act is hereby amended by adding the following subsection:

“(3) A young worker within the meaning of section 156 of this Act who is not covered by a union shall, for the purpose of access to the personal grievance procedures set out in the Seventh Schedule to this Act, be deemed to be a union member and section 158 of this Act shall apply as if that Schedule were an award.”

23. Strikes and lockouts in relation to disputes of interest—(1) Section 233 (1) (d) of the principal Act is hereby amended by adding the expression “; or”.

(2) Section 233 (1) of the principal Act is hereby further amended by adding the following paragraph:

“(e) It relates to a matter that is the subject of a dispute of interest created with intent to procure an enterprise agreement under **section 165A** of this Act.”

24. Unlawful strikes and lockouts—(1) Section 234 (1) (e) of the principal Act is hereby amended by adding the expression “; or”.

(2) Section 234 (1) of the principal Act is hereby further amended by adding the following paragraph:

“(f) A dispute of interest that is before the Arbitration Commission under **section 149c** of this Act for determination of any matter.”

25. Deputy Chief Mediator—(1) The principal Act is hereby amended by inserting, after section 251, the following section:

“251A. (1) The Governor-General may from time to time appoint, on the recommendation of the Minister, a Deputy

Chief Mediator to hold office for such period as may be specified in the commission.

5 “(2) The period so specified shall not exceed 5 years; but any person appointed under this section may from time to time be reappointed.

10 “(3) In any case in which the Chief Mediator becomes incapable of acting by reason of illness, absence, or other sufficient cause or during any vacancy in the office of Chief Mediator, the Deputy Chief Mediator shall have and may exercise all the powers, functions, and duties of the Chief Mediator.

15 “(4) No acts done by a person holding office as the Deputy Chief Mediator in that person’s capacity as the Deputy Chief Mediator shall in any proceedings be questioned on the ground that the occasion for the Deputy Chief Mediator’s so acting had not arisen or had ceased.”

(2) Section 257 (1) of the principal Act is hereby amended by inserting, after the words “Chief Mediator”, the words “, Deputy Chief Mediator,”.

20 **26. Fine for neglecting witness summons**—The principal Act is hereby amended by inserting, after section 303, the following section:

25 “303A. (1) Any person summoned under section 303 (2) of this Act as a witness who refuses or neglects, without sufficient cause, to appear or to produce any documents required by the summons to be produced shall be liable on conviction by the Labour Court to a fine not exceeding \$500.

30 “(2) No person summoned under section 303 (2) of this Act as a witness shall be liable to a fine under **subsection (1)** of this section unless there has been paid or tendered to that person at the time of the service of the summons, or at some other reasonable time before the hearing, such sum in respect of that person’s expenses as is for the time being prescribed in that behalf with respect to witnesses under the District Courts Act
35 1947.”

27. Membership rule—Clause 2 of the First Schedule to the principal Act is hereby amended by adding, as subclause (2), the following subclause:

40 “(2) The description required by subclause (1) of this clause may be given by reference to all or any of the following matters:

“(a) The locality or place in which the workers work:

“(b) The type of work performed by them:

“(c) The employer or the employers or the class of employers for whom the workers work.”

28. New clauses substituted—The First Schedule to the principal Act is hereby amended by repealing clause 9, and substituting the following clauses: 5

“**9. Election of officers**—(1) The election of a committee of management of the union or of any branch of it, the removal of any of its members, and the filling of any vacancies.

“(2) The election of any officers of the union or of any branch of it who are to exercise all or any of the following powers— 10

“(a) Voting at meetings of the committee of management:

“(b) Determining matters of union policy:

“(c) Determining financial policies and allocations:

“(d) Taking disciplinary action against members of the union: 15

“(e) Removing officers of the union from office and filling any extraordinary vacancies in the membership of the committee of management.

“(3) The election of delegates to conferences of the union, the removal of such delegates from office, and the filling of any vacancies for such delegates. 20

“(4) The election, the removal, and the filling of vacancies to be done by secret postal ballot of the financial members of the union or branch, or by such other secret ballot or other means as may be approved by the Registrar as being sufficiently democratic (whether in relation to the method of constitution of the body to determine the matter (if applicable) or as to the method of determining the matter or both), having regard to the form of government of the union and any other relevant considerations. 25 30

Struck Out

“**9A. Appointment of principal officer**—Where the rules provide that the principal officer of a union or branch is to be appointed, the maximum term of each period of appointment of that officer, which maximum term— 35

“(a) Shall not exceed 5 years; and

“(b) Shall apply irrespective of whether the designation given to the principal officer is secretary or executive officer or some other designation.”

New

“9A. Term of office of principal appointed officer—

(1) The maximum term for which the principal appointed officer of a union may be appointed shall not exceed 5 years.

5 “(2) **Subclause (1)** of this clause applies irrespective of whether the description given to the principal appointed officer is secretary or executive officer or some other description.

10 “(3) Nothing in this clause prevents the principal appointed officer of a union from being reappointed from time to time by that union.”

29. Powers and duties of committee and officers—

Clause 13 of the First Schedule to the principal Act is hereby amended by repealing subclause (2), and substituting the following subclause:

15 “(2) The exercising by the committee of management of its powers and functions, which shall include—

“(a) Determining matters of union policy; and

“(b) Determining financial policies and allocations; and

20 “(c) Taking disciplinary action against members of the union.”

30. Employer’s response—Clause 6 of the Seventh Schedule to the principal Act is hereby amended by inserting, after the words “the employer shall”, the words “as soon as possible but in any event”.

25 **31. Written statements waived—**The Seventh Schedule to the principal Act is hereby amended by inserting, after clause 6, the following clause:

30 “6A. Where the union and the employer agree in writing that the exchange of written statements under the preceding provisions is inappropriate or unnecessary, that agreement shall not in any way affect the further application of this procedure.”

32. Grievance committee—Clause 7 of the Seventh Schedule to the principal Act is hereby amended by repealing subclause (1), and substituting the following subclause:

35 “(1) If—

“(a) The union is not satisfied with the employer’s written response; or

“(b) The employer fails to provide a written response within 14 days; or
 “(c) The parties have agreed in writing that an exchange of written statements is inappropriate or unnecessary,—
 the union may call for the setting up of a grievance committee.”

33. Essential services—Part A of the Eighth Schedule to the principal Act is hereby amended by repealing clause 7, and substituting the following clause:
 “7. The provision of all necessary services in connection with the arrival, berthing, loading, unloading, and departure of ships at any port.”

PART II

AMENDMENTS TO OTHER ACTS

Amendments to Equal Pay Act 1972

34. Interpretation—Section 2 (1) of the Equal Pay Act 1972 is hereby amended by repealing the definition of the term “Inspector”, and substituting the following definition:
 “‘Inspector’ means a Labour Inspector designated under section 197A of the Labour Relations Act 1987.”

35. Powers of Inspectors—The Equal Pay Act 1972 is hereby amended by repealing section 16, and substituting the following section:
 “16. For the purposes of this Act, every Inspector shall have, in addition to any powers conferred by this Act, all the powers that the Inspector has under the Labour Relations Act 1987.”

Amendments to Holidays Act 1981

36. Interpretation—Section 2 (1) of the Holidays Act 1981 is hereby amended by repealing the definition of the term “Inspector of Factories”, and substituting the following definition:
 “‘Labour Inspector’ means a Labour Inspector designated under section 197 of the Labour Relations Act 1987.”

37. Certain provisions to bind the Crown—Section 7 of the Holidays Act 1981 is hereby amended by repealing paragraph (b), and substituting the following paragraph:
 “(b) The employment of any person as an officer, a rating, a soldier, or an airman in the New Zealand Defence

Force constituted by section 11 (1) of the Defence Act 1990,—”.

38. Employment may be deemed continuous if worker dismissed and re-employed within one month—

5 (1) Section 20 (1) of the Holidays Act 1981 is hereby amended by omitting the words “Inspector of Factories”, and substituting the words “Labour Inspector”.

(2) Section 20 (2) of the Holidays Act 1981 is hereby amended—

10 (a) By omitting the words “Inspector of Factories”, and substituting the words “Labour Inspector”; and

(b) By omitting the word “Inspector’s”, and substituting the words “Labour Inspector’s”.

39. Employers to keep holiday books—(1) Section 31 of the Holidays Act (as amended by section 4 of the Holidays Amendment Act 1983) is hereby amended by repealing subsections (3) and (4), and substituting the following subsections:

20 “(3) A Labour Inspector may enter any premises for the purpose of inspecting any holiday book in use for the time being or used within the preceding 6 years, and any such book shall be kept readily available for such inspection:

25 “Provided that, when entering any premises to make such an inspection, the Labour Inspector shall have the same powers and be subject to the same obligations as if the Labour Inspector were making an entry and inspection under the Labour Relations Act 1987.

30 “(4) A Labour Inspector may at any time require the employer to verify the entries in the holiday book by statutory declaration or in such other manner and form as the Labour Inspector directs.”

(2) Section 4 of the Holidays Amendment Act 1983 is hereby consequentially repealed.

40. Powers of Labour Inspectors—The Holidays Act 1981 is hereby amended by repealing section 32, and substituting the following section:

35 “32. For the purposes of this Act, every Labour Inspector shall have, in addition to any powers conferred by this Act, all the powers that the Labour Inspector has under the Labour
40 Relations Act 1987.”

41. Offences and penalties—(1) Section 34 (1) (b) of the Holidays Act 1981 is hereby amended by omitting the words “Inspector of Factories”, and substituting the words “Labour Inspector”.

(2) Section 34 of the Holidays Act 1981 is hereby further amended by repealing subsection (3), and substituting the following subsection: 5

“(3) A penalty for an offence against this Act may be recovered by any Labour Inspector in the same manner as a penalty for a breach of an award, and the provisions of the Labour Relations Act 1987 shall, so far as they are applicable and with the necessary modifications, apply accordingly.” 10

42. Proceedings may be taken by Labour Inspector—The Holidays Act 1981 is hereby amended by repealing section 35, and substituting the following section: 15

“35. Without limiting the powers or remedies of any other person, it is hereby declared that—

“(a) Civil proceedings for the recovery of any money payable by an employer to any worker under this Act may be taken by any Labour Inspector in the name and on behalf of the person entitled to payment in any case where the Labour Inspector is satisfied that default in payment has been made: 20

“(b) Where any such civil proceedings or any proceedings for the recovery of a penalty for an offence against this Act have been instituted by any Labour Inspector they may be continued and conducted by the same or any other Labour Inspector.” 25

Amendments to Minimum Wage Act 1983

43. Interpretation—Section 2 of the Minimum Wage Act 1983 (as substituted by section 2 of the Minimum Wage Amendment Act 1987) is hereby amended by repealing the definition of the term “Inspector”, and substituting the following definition: 30

“‘Inspector’ means a Labour Inspector designated under section 197 of the Labour Relations Act 1987:” 35

44. Right of entry for enforcement purposes—The Minimum Wage Act 1983 is hereby amended by repealing section 8c (as inserted by section 5 of the Minimum Wage Amendment Act 1987). 40

Amendments to Volunteers Employment Protection Act 1973

5 **45. Interpretation**—Section 2(1) of the Volunteers Employment Protection Act 1973 is hereby amended by repealing the definition of the term “Inspector of Factories”, and substituting the following definition:

“‘Labour Inspector’ means a Labour Inspector designated under **section 197** of the Labour Relations Act 1987.”.

10 **46. Proceedings may be taken by Labour Inspector**—The Volunteers Employment Protection Act 1973 is hereby amended by repealing section 13, and substituting the following section:

“13. Without limiting the powers or remedies of any other person, it is hereby declared that—

15 “(a) Civil proceedings for the recovery of compensation from any employer under section 6 of this Act may be taken by any Labour Inspector in the name and on behalf of the person entitled to payment in any case where the Labour Inspector is satisfied that compensation is recoverable:

20 “(b) No Court fees shall be payable by the Labour Inspector in any such proceedings, but the Court may in any case, if it thinks fit, order that the Court fees shall be paid by the defendant:

25 “(c) Where any such civil proceedings or any proceedings for an offence against this Act have been instituted by any Labour Inspector they may be continued and conducted by the same or any other Labour Inspector.”