

Employment Relations Amendment Bill

Government Bill

As reported from the Education and Workforce Committee

Commentary

Recommendation

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

About the bill as introduced

This bill would amend the Employment Relations Act 2000 by reintroducing certain minimum standards and protections for employees. It would also make changes to collective bargaining and union rights in the workplace. The changes intend to increase fairness between employees and employers in order to promote productive employment relationships.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced by majority. We do not discuss minor or technical amendments.

Union delegates' entitlement to reasonable paid time to represent employees

For clarity, we recommend in new section 18A specifying that time spent on union activities is to be paid at the same rate as if the employee were performing their ordinary employment duties. We believe this entitlement should not prevent an employer providing an employee with enhanced or additional entitlements to spend paid time undertaking union activities (new section 18A(5)).

Employers' information-sharing obligations

Clause 17 of the bill as introduced would insert new section 59AA into the Act. This would enable unions to ask employers to provide information to new employees about the union's role and function.

We recommend inserting new clause 8A to renumber this new section as 30A. Our new section 30A would contain more detail about how this arrangement would work.

Grounds for refusing to provide information

As introduced, clause 17, new section 59AA, would require employers to give the union information to new employees unless it is defamatory or confidential. However, determining defamation is not within the Employment Relations Authority's jurisdiction.

Therefore, we recommend removing this provision. We recommend inserting more appropriate grounds for refusal in our new section 30A(3)(b). This would be if the information:

- is about the employer and
- would, or is likely to, mislead or deceive the prospective employee and
- would significantly undermine bargaining between the employer and the prospective employee.

We agree with some submitters' concerns that 10 days is too short for employers to notify unions that they refuse to provide the requested information. Therefore, we recommend extending the time frame to 15 working days through our proposed new section 30A(5).

We also recommend amending new section 59AA to allow employer representatives or nominated employees to accept or refuse information on behalf of the employer or employee (section 30A(3) and (5)).

Cost of providing information to be borne by union

We believe the union should bear the cost of providing the information about the role and function of the union for the employer to provide to prospective employees. Therefore, we recommend inserting new section 30A(6) to specify that the union would have to provide information to the employer in the form they want it to be passed along to the prospective employee. The employer would be obligated to then provide it to the prospective employee in that form.

The intent of new section 30A(6) is that unions would provide the employer with the appropriate number of hard copies if they required information to be given to prospective employees in hard copy. Under our proposed new section 30A(6)(b), the employer would need to notify the union in writing when it needs more hard copies.

Sharing new employee information with union

Clause 18 would replace section 62 with new sections 62, 63, and 63AA. New section 63AA, which we propose to renumber as section 62A, outlines how an employer

should tell new employees that their information will be passed on to a union unless they opt out. It also sets out how employees would notify employers that they intend to join a union or object to their information being passed to a union.

We recommend amending new sections 62A(2)(a) and (b) and (3)(b)(ii) to reflect that employees only need to signal their intention to join or not join. This is because some unions require an officer to approve new members and some limit the occupations or employees who are eligible to join. Therefore, an employee may not actually finish enrolling with a union in the prescribed period.

Employees' notification of intention to join union

We recommend amending new section 62A(4) to change the requirements about the period in which an employee may complete and return the form notifying the employer of whether they intend to join a union. We recommend that the period start when the employee receives the form, rather than 10 days after the employee begins employment, which is what the bill as introduced would require. We recommend that the employee can complete and return the form up until the 30th day of their employment, instead of 40. This will provide employees time to talk to union delegates and understand the choice available to them while experiencing the terms and conditions of the collective agreement under the 30-day rule.

We also recommend amending the time frame in section 62A(5) from 20 to 10 working days. This would reduce the number of days the employer has to notify the union of the employee's name and whether they have completed a form. This streamlines the process and aligns better with other time frames within the bill.

For clarity, we recommend inserting subsection (5A) to specify that new section 62A would not stop an employee from joining or leaving a union at any time.

Collective agreements to include rates of wages or salary

We recommend amending clause 16, section 54(4), to provide greater specificity about the requirements under which a collective agreement would be considered to include rates of wages or salaries.

Under our amended section 54(4)(a), a collective agreement would be considered to contain rates of wages and salary payable to employees for certain work or types of work, or to certain employees or types of employees, if it contains any of the following:

- the rates of wages or salary (subparagraph (i))
- the minimum rates of wages or salary (subparagraph (ii))
- a method or methods of calculating the rates or minimum rates of wages or salary (subparagraph (iii)).

The recommended amendment means that collective agreements must include at least the minimum rates for the work or types of work done by employees for named employees or types of employees. The option to include actual rates would signal that

pay steps may be included in a collective agreement while mitigating any risks associated with requiring this level of detail.

Under our new section 54(4)(b), the agreement would also have to indicate how rates could increase during the term of agreement.

30-day rule does not prevent negotiation of more favourable terms and conditions

We believe employers and employees should be able to negotiate terms and conditions that are more favourable than those included in the collective agreement. We believe parties should be able to do this even during the 30-day period when employees who are non-union members are given the same terms and conditions they would receive if they were part of a collective agreement. We recommend making this clear in clause 18, new section 62(3)(b) and (6).

Trial periods

As other legislation contain various definitions of small-to-medium-sized employers, we recommend amending clause 29 to replace section 67A (which is about 90-day trial periods). Our new section 67A(2) would define small-to-medium-sized employers as employers with fewer than 20 employees at the beginning of the day on which a relevant employment agreement is entered.

The Green Party view is that the 90 day trial period should be removed in its entirety, as there is no reputable nor objective evidence that it has increased employment opportunities for those who are young, with criminal convictions, or otherwise vulnerable employees as it was argued it would when introduced. The committee has heard submissions from a number of employees who have been harmed by the clause, and the Green Party wants to acknowledge their courage in speaking about their experience. The Green Party believes most business owners and employers behave fairly, such that the ability to invoke unjustified dismissal is an unnecessary part of New Zealand legislation open to exploitation. All employees deserve their rights regardless of the size of their employer.

Addition to types of roles exempt from prescribed rest and meal break requirements

Agencies like the Government Communications Security Bureau and the New Zealand Security Intelligence Service have operational needs involving national security. Some roles involved in protecting national security require continuous staffing, including overnight, and that makes it difficult to administer breaks.

The bill already provides an exemption from providing the prescribed rest and meal breaks for employers in essential services when certain conditions are met. We recommend amending section 69ZEA through clause 35 to include that an employer engaged in the protection of New Zealand's national security may be exempt.

Calculating financial compensation in lieu of breaks

We recommend clarifying how financial compensation should be calculated in circumstances when it is offered to employees unable to take rest and meal breaks that are paid variable rates (such as piece rates). We recommend replacing paragraph (b) in new section 69ZEB(3). Subparagraph (i) would require that the compensation for employees who are paid variable rates during a work period would be equivalent to the amount they would have earned during a rest or meal break. It would have to be calculated at the average rate of pay the employee would have earned during the relevant work period.

Minister to be able to amend categories of work protected from restructuring

We recommend inserting new clause 39A, new section 237A. This would allow the Minister to recommend that the Governor-General add, delete, or amend by Order in Council the categories of employees listed in Schedule 1A of the Act. These categories of employees are provided protections in the event of restructuring. Under our new section 237A(2), the Minister would have to be satisfied that the employees in the category of employees:

- are employed in a sector in which restructuring occurs frequently and
- tend to have their terms and conditions undermined by restructuring and
- have little bargaining power.

In addition, under our new section 237A(5), before recommending the making of an Order in Council, the Minister must have received a request to add, amend, or delete a category of employees from a person or organisation that:

- clearly identifies the category of employees their request relates to and
- specifies the sector in which the category of employees provides services and
- includes evidence that the relevant employees satisfy or no longer satisfy (as applicable) the criteria that would allow them to be a protected category.

Under our new section 237A(5)(b), there would also have to be a report from the department that assesses whether the employees satisfy the criteria required to be a protected category. Our new section 237A(5)(c) would require the Minister to provide the report to, and consult, any employers, employees, representatives of employers or employees, and other appropriate people and organisations. Under our new section 237A(6), the Minister would not have to provide information in the report that could be properly withheld under the Official Information Act 1982 if it were requested.

Definition of wages inserted

Currently, the Act does not specify what wages include. Therefore, we recommend inserting a definition into section 5 of the Act. The new definition would clarify that wages includes the amounts payable for time, piece work, or by way of commission (whether wholly or in part).

Strikes and lockouts

For clarity, we recommend inserting clause 21A to amend section 86A. Under new subsection (3A), minor or technical errors would not invalidate strike notices.

National Party minority view

National opposes both the ideological basis of this bill and the specific legislative changes contained in it that will destabilise the New Zealand industrial relations landscape.

The cumulative impact of changes to workplace relations contained in this bill will place a handbrake on economic growth, further undermine business confidence, reduce job creation opportunities for vulnerable employees, create a return to 1970s style aggressive adversarial trade union activity, and will ultimately be bad for both employees and employers.

This bill seeks to grow trade union membership and influence in the workplace.

It reinforces the political, historic, and financial relationships between the trade union movement and the New Zealand Labour Party.

A good industrial relations framework and a flexible labour market are critical to a strong and growing economy. This bill does nothing to achieve that outcome and will have a negative impact on jobs, on costs, and the economy.

Over the past 10 years, New Zealand has had amongst the highest growth rates in the OECD and our unemployment rates have been amongst the lowest.

The bill imposes 14 inflexible rules on employers and employees that will cumulatively act as a roadblock to achieving positive and productive employment relationships. The bill will lead to lost productivity and more strikes.

It is our view that the bill will return the New Zealand industrial relations landscape to one where employees are pitted against employers and where good faith, trust, and co-operation are sacrificed for purely ideologically driven political purposes.

We oppose the bill and give notice that a future National-led Government will repeal these provisions so that a co-operative, good faith based industrial relations legislative environment can be restored for the benefit of both employees and employers.

Appendix

Committee process

The Employment Relations Amendment Bill was referred to the committee on 1 February 2018. The closing date for submissions was 30 March 2018. We received and considered 453 submissions from interested groups and individuals. We heard oral evidence from 86 submitters at hearings in Auckland and Wellington.

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

Committee membership

Dr Parmjeet Parmar (Chairperson)

Simeon Brown

Hon Nikki Kaye

Denise Lee

Marja Lubeck

Jo Luxton

Mark Patterson

Jamie Strange

Chlöe Swarbrick

Jan Tinetti

Nicola Willis

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Iain Lees-Galloway

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The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the Employment Relations Amendment Act **2018**.

2 Commencement

This Act comes into force as follows:

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- (a) the following provisions come into force 4 months after the date of Royal assent:
 - (i) **section 4** (which provides for union delegates to have reasonable paid time to represent employees):
 - (ii) **sections 9 to 11** (which provide for the duty of good faith to require collective agreements to be concluded): 10
 - (iii) **section 16** (which provides for rates of wages and salary to be included in collective agreements):
 - (iv) **sections ~~18 to 20~~ 8A and 17 to 19A** (which relate to employers' obligations in relation to new and prospective employees who are not union members): 15
 - (v) **section 29** (which relates to when employment agreements may provide for trial periods of 90 days or less):
 - (vi) **sections 30 to 34** (which relate to continuity of employment if an employee's work is affected by restructuring): 20
 - (vii) **sections 35 to 37** (which relate to rest breaks and meal breaks):
- (b) **sections 24 to 27** (which relate to discrimination in relation to union membership and involvement in union activities) come into force 6 months after the date of Royal assent:
- (c) the rest of this Act comes into force on the day after the date of Royal assent. 25

3 Principal Act

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

Part 1**Amendments relating to collective bargaining and unions** 30*Amendments to Part 2 (preliminary provisions)***3A Section 5 amended (Interpretation)**

In section 5(1), insert in its appropriate alphabetical order:

wages includes amounts payable to an employee in respect of services provided to the employer—

- (a) for time; or
- (b) for piece work; or
- (c) wholly or in part by way of commission

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Amendments to Part 4 (recognition and operation of unions)

4 New section 18A inserted (Union delegates entitled to reasonable paid time to represent employees)

After section 18, insert:

- 18A Union delegates entitled to reasonable paid time to represent employees** 10
- (1) An employee is entitled to spend reasonable paid time undertaking union activities during the employee's normal hours of work if—
- (a) the employee has been appointed or elected as a union delegate, in accordance with the rules or procedures of the union, to represent other employees of the employee's employer who are members of the union on matters relating to their employment; and 15
 - (b) the activities relate to representation of employees of the employer; and
 - (c) the activities would not unreasonably disrupt the employer's business or the union delegate's performance of employment duties.
- (2) Before undertaking activities under **subsection (1)**, an employee must— 20
- (a) agree with the employer that the employee may undertake activities under this section from time to time without notice; or
 - (b) notify the employer—
 - (i) when the employee intends to undertake the activities; and
 - (ii) how long the employee intends to spend undertaking the activities. 25
- (3) The employer may refuse to allow an employee to undertake the activities only if the employer is satisfied, on reasonable grounds, that the activities would unreasonably disrupt the employer's business or the union delegate's performance of employment duties. 30
- (4) An employer must pay the employee for any time spent undertaking union activities under **subsection (1)** at the rate of pay that the employee would otherwise have received if the employee were performing their ordinary employment duties during that time.
- (5) This section does not prevent an employer from providing an employee with enhanced or additional entitlements to spend paid time undertaking union activities on a basis agreed with the employee. 35

5 Section 20 amended (Access to workplaces)

In section 20(1) and (4), replace “sections 20A and 21” with “section 21”.

6 Section 20A repealed (Representative of union must obtain consent to enter workplace)

Repeal section 20A.

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7 Section 21 amended (Conditions relating to access to workplaces)

After section 21(4), insert:

- (5) Nothing in subsections (1) to (4) allows an employer to unreasonably deny a representative of a union access to a workplace.

8 Section 25 amended (Penalty for certain acts in relation to entering workplace)

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Replace section 25(a) and (ab) with:

- (a) refuses to allow a representative of a union to enter a workplace; or

8A New section 30A and cross-heading inserted

After section 30, insert:

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Employer’s information sharing obligations

30A Union may provide employer with information about role and functions of union to pass on to prospective employees

- (1) A union that is a party to a collective agreement may, at any time, request an employer that is a party to the agreement to provide certain specified information about the role and functions of the union to prospective employees under section 63B(3)(b).

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- (2) The union must—

- (a) specify the information that the union requests the employer to provide to prospective employees; and
- (b) specify the form in which the union requests the employer to provide the information to prospective employees; and
- (c) provide the information to the employer in the specified form.

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- (3) The employer or a representative of the employer may refuse to comply with the request only if—

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- (a) the information is confidential; or

- (b) the information—

- (i) is about the employer; and

- (ii) would, or is likely to, mislead or deceive the prospective employee; and

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- (iii) would significantly undermine bargaining between the employer and the prospective employee.
- (4) An employer who agrees to comply with the request must provide the information to prospective employees under **section 63B(3)(b)** in the specified form.
- (5) An employer must be treated as having agreed to comply with the request if the employer or a representative of the employer does not respond to the request within 15 working days. 5
- (6) If the union requests under **subsection (2)(b)** that the employer provide hard copies of the information to prospective employees,—
- (a) the union must supply to the employer any hard copies of the information that the employer is requested to provide to prospective employees; and 10
- (b) the employer must notify the union in writing when the employer requires further hard copies of the information to comply with the request. 15

Amendments to Part 5 (collective bargaining)

9 Section 31 amended (Object of this Part)

After section 31(a), insert:

- (aa) to provide that the duty of good faith in section 4 requires parties bargaining for a collective agreement to conclude a collective agreement unless there is a genuine reason, based on reasonable grounds, not to; and 20

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

After section 32(1)(c), insert:

- (ca) even though the union and the employer have come to a standstill or reached a deadlock about a matter, they must continue to bargain (including doing the things specified in paragraphs (b) and (c)) about any other matters on which they have not reached agreement; and 25

11 Section 33 replaced (Duty of good faith does not require collective agreement to be concluded) 30

Replace section 33 with:

33 Duty of good faith requires parties to conclude collective agreement unless genuine reason not to

- (1) The duty of good faith in section 4 requires a union and an employer bargaining for a collective agreement to conclude a collective agreement unless there is a genuine reason, based on reasonable grounds, not to. 35
- (2) For the purposes of **subsection (1)**, **genuine reason** does not include—

- (a) opposition or objection in principle to—
 - (i) bargaining for, or being a party to, a collective agreement; or
 - (ii) including rates of wages or salary in a collective agreement; or
- (b) disagreement about including a bargaining fee clause under Part 6B in a collective agreement.

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12 Section 41 amended (When bargaining may be initiated)

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

- (3) If there is an applicable collective agreement in force,—
 - (a) a union must not initiate bargaining earlier than 60 days before the date on which the collective agreement expires: 10
 - (b) an employer must not initiate bargaining earlier than 40 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— 15
 - (a) a union must not initiate bargaining before the later of the following dates:
 - (i) the date that is 120 days before the date on which the last applicable collective agreement expires: 20
 - (ii) the date that is 60 days before the date on which the first applicable collective agreement expires: 20
 - (b) an employer must not initiate bargaining before the later of the following dates:
 - (i) the date that is 100 days before the date on which the last applicable collective agreement expires: 25
 - (ii) the date that is 40 days before the date on which the first applicable collective agreement expires.

13 Sections 44A to 44C repealed

Repeal sections 44A to 44C.

14 Sections 50K and 50KA and cross-heading repealed

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Repeal sections 50K and 50KA and the cross-heading above section 50K.

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

Repeal section 53(2A) and (4).

16 Section 54 amended (Form and content of collective agreement)

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- (1) After section 54(3)(a)(i), insert:

- (ii) the rates of wages or salary payable to employees bound by the agreement; and

(2) After section 54(3), insert:

(4) For the purposes of **subsection (3)(a)(ii)**, a collective agreement contains the rates of wages or salary payable to employees bound by the agreement if it—

(a) ~~contains the rates of wages or salary payable to employees if it provides, in relation to the work that the agreement covers, for, in respect of the employees bound by the collective agreement (whether by reference to the work or types of work done by the employees or by reference to named employees or types of employees),—~~

(i) the rates of wages or salary payable for certain work or types of work or to certain employees or types of employees; or

(ii) ~~ranges of the minimum rates of~~ wages or salary payable for certain work or types of work or to certain employees or types of employees; or

(iii) 1 or more methods of calculating the rates or minimum rates of wages or salary payable for certain work or types of work or to certain employees or types of employees; and

(b) indicates how the rate of wages or salary payable to an employee bound by the agreement may increase during the term of the agreement.

(b) ~~does not contain the rates of wages or salary payable to employees if it purports to—~~

(i) ~~determine the wages or salary payable solely by reference to a document or process that is not part of the agreement;~~

(ii) ~~give the employer sole discretion to determine the wages or salary payable for certain work or types of work or certain employees or types of employees.~~

17 New section 59AA inserted (Union may provide employer with information about role and functions of union to pass on to new employees)

After section 59A, insert:

59AA Union may provide employer with information about role and functions of union to pass on to new employees

(1) ~~A union that is a party to a collective agreement may, at any time, request that an employer that is a party to the agreement provide certain specified information about the role and functions of the union to new employees under section 63(3)(b).~~

- (2) ~~The request must specify the information that the union wishes the employer to provide to new employees.~~
- (3) ~~The employer may refuse to provide information specified in the request to new employees only if the information is defamatory (within the meaning of the Defamation Act 1992) or confidential.~~
- (4) ~~An employer must be treated as having agreed to provide the information to new employees if the employer does not respond to the request within 10 working days.~~

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

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17 New cross-heading above section 60A inserted

After section 60, insert:

Good faith

17A New cross-heading above section 61 inserted

After section 60A, insert:

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Terms and conditions of employment if work covered by collective agreement

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

Replace section 62 with:

62 Terms and conditions for first 30 days of employment of new employee who is not member of union

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(1) This section—

(a) applies to a new employee who—

- (i) is not a member of a union that is a party to a collective agreement that covers the work to be done by the employee; and
- (ii) enters into an individual employment agreement with an employer that is a party to a collective agreement that covers the work to be done by the employee; but

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(b) does not apply to an employee who—

- (i) resigns as a member of a union and enters into an individual employment agreement with the same employer; or
- (ii) enters into a new individual employment agreement with the same employer.

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(2) ~~The terms and conditions of employment of the new employee are determined in accordance with **subsections (3) to (9)**.~~

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- (2) For the purposes of **subsection (1)(a)**, a collective agreement that includes a coverage clause referring to named employees, or the work done by named employees, to whom the collective agreement applies must be treated as covering the work or type of work done by the named employees (whether done by those employees or any other employees). 5
- (3) For the first 30 days after the new employee commences employment with the employer, the employee's terms and conditions of employment comprise—
- (a) the terms and conditions in the collective agreement that would bind the employee if the employee were a member of the union (other than any bargaining fee payable under Part 6B); and 10
 - (b) any additional terms and conditions mutually agreed to by the employee and employer that are ~~not inconsistent with~~ no less favourable to the employee than the terms and conditions in the collective agreement.
- (4) ~~However, the new employee's terms and conditions of employment do not include any bargaining fee payable under Part 6B.~~ 15
- (5) If the work to be done by the new employee is covered by more than 1 collective agreement, **subsection (3)(a)** applies to the collective agreement that binds the greatest number of the employer's employees in relation to the work the employee will be performing.
- (6) No term or condition of employment may be expressed to alter automatically after the 30-day period in a way that makes it ~~inconsistent with~~ less favourable to the employee than the collective agreement. 20
- (7) ~~After the 30 day period expires, the employee and the employer may, by mutual agreement, vary the individual employment agreement as they think fit.~~
- (8) For an employee who holds a minimum wage exemption permit under section 8 of the Minimum Wage Act 1983, the terms and conditions under **subsection (3)** are subject to the terms of the permit relating to the wages to be paid. 25
- (9) ~~For the purposes of this section, a collective agreement that includes a coverage clause referring to named employees, or the work done by named employees, to whom the collective agreement applies must be treated as covering the work or type of work done by the named employees (whether done by those employees or any other employees).~~ 30
- 63 Employer's obligations when bargaining for terms and conditions of employment of new employee under section 62**
- (1) ~~This section applies to an employer who is bargaining with an individual for terms and conditions of employment for the first 30 days of an individual employment agreement under **section 62(3)**.~~ 35
- (2) ~~The employer must, in addition to doing the things described in section 63A(2), inform the employee—~~

- (a) ~~that a collective agreement exists and covers work to be done by the employee; and~~
- (b) ~~that the employee may join a union that is a party to the collective agreement; and~~
- (c) ~~about how to contact the union; and~~ 5
- (d) ~~that, if the employee joins the union, the employee will be bound by the collective agreement; and~~
- (e) ~~that, if the employee enters into an individual employment agreement with the employer, the employee's terms and conditions of employment will, during the first 30 days of the employee's employment, comprise —~~ 10
- (i) ~~the terms and conditions in the collective agreement that would bind the employee if the employee were a member of the union; and~~
- (ii) ~~any additional terms and conditions mutually agreed to by the employee and employer that are not inconsistent with the terms and conditions in the collective agreement.~~ 15
- (3) ~~The employer must also provide to the employee —~~
- (a) ~~a copy of the collective agreement; and~~
- (b) ~~any information about the role and functions of the union that the employer is required to provide to new employees under **section 59AA**.~~ 20
- (4) ~~If the work to be done by the employee is covered by more than 1 collective agreement, the employer must comply with **subsections (2) and (3)** in relation to each collective agreement that covers the work the employee will be performing.~~
- (5) ~~Every employer who fails to comply with this section is liable to a penalty imposed by the Authority.~~ 25
- (6) ~~In this section, **employee** includes a prospective employee.~~
- 63AA62A Employer must share new employee information with union unless employee objects**
- (1) This section applies to an employer who enters into an individual employment agreement with a new employee under **section 62**. 30
- (2) The employer must, within 10 days after the employee commences employment with the employer, provide the employee with a form approved by the chief executive under section 237AA that the employee may complete and return in accordance with **subsection (4)** for the purposes of— 35
- (a) notifying the employer whether the employee ~~elects~~ intends to join a union (or a particular union):
- (b) objecting to the employer providing information about the employee to,—

- (i) if the employee ~~elects not to~~ does not intend to join a union, any union; or
 - (ii) if the employee ~~elects~~ intends to join a particular union, any other union.
- (3) The form must be accompanied by a notice that— 5
 - (a) specifies the period during which the employee may complete and return the form, which is the period described in **subsection (4)**; and
 - (b) explains that, unless the employee objects in accordance with this section, the employer will provide the following information to each union that is a party to a collective agreement that covers the work to be done by the employee: 10
 - (i) the name of the employee:
 - (ii) whether the employee has, during the period,—
 - (A) ~~elected~~ notified the employer that the employer intends to join the union ~~during the period~~; or 15
 - (B) ~~elected not~~ notified the employer that the employer does not intend to join the union ~~during the period~~; or
 - (C) not completed and returned the form ~~during the period~~.
- (4) The employee may complete and return the form during the period that—
 - (a) ~~starts 10 days after the employee commences employment with the employer~~ when the employee receives the form; and 20
 - (b) ends ~~40~~ 30 days after the employee commences employment with the employer.
- (5) The employer must, within ~~20~~ 10 working days of the expiry of the period described in **subsection (4)**, provide the following to each union that is a party to a collective agreement that covers the work to be done by the employee (unless the employee has objected in accordance with this section): 25
 - (a) the name of the employee:
 - (b) if the employee completes and returns a form in accordance with this section, the completed form: 30
 - (c) if the employee does not complete and return the form in accordance with this section, notice that the employee did not complete and return the form.
- (5A) Nothing in this section limits or affects the right of an employee to become, or not to become, a member of a union or a particular union at any time. 35
- (6) ~~Every~~ An employer who fails to comply with this section is liable to a penalty imposed by the Authority.

63 **Terms and conditions of employment of employee who is not member of union after expiry of 30-day period**

- (1) This section applies after the expiry of the 30-day period described in **section 62(3)** to an employee who is not a member of a union that is a party to a collective agreement that covers the work done by the employee.
- (2) The employee and the employee's employer may, by mutual agreement, vary the individual employment agreement entered into under **section 62** as they think fit.

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Bargaining

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

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- (1) After section 63A(1)(b), insert:
- (c) under **section 62(3)**, in relation to additional terms and conditions for the first 30 days of an employee's employment:
- (d) under **section-62(7) 63(2)**, in relation to variations to terms and conditions of an individual employment agreement after the 30-day period:
- (2) Replace section 63A(1)(e) with:
- (e) in relation to the terms and conditions of an individual employment agreement (including any variations to that agreement) for an employee if no collective agreement covers the work done, or to be done, by the employee:
- (3) After section 63A(5), insert:
- (6) For the purpose of **subsection (1)(e)**, a collective agreement that includes a coverage clause referring to named employees, or the work done by named employees, to whom the collective agreement applies must be treated as covering the work or type of work done by the named employees (whether done by those employees or any other employees).

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19A **New section 63B and cross-heading inserted**

After section 63A, insert:

63B **Additional employer obligations when bargaining for terms and conditions of employment under section 62**

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- (1) This section applies to an employer who is bargaining with a prospective employee for terms and conditions of employment for the first 30 days of an individual employment agreement under **section 62(3)**.
- (2) The employer must, in addition to doing the things described in section 63A(2), inform the prospective employee—
- (a) that a collective agreement exists and covers work to be done by the prospective employee; and

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- (b) that the prospective employee may join a union that is a party to the collective agreement; and
- (c) how to contact the union; and
- (d) that, if the prospective employee joins the union, the prospective employee will be bound by the collective agreement; and 5
- (e) that, if the prospective employee enters into an individual employment agreement with the employer, the prospective employee's terms and conditions of employment will, during the first 30 days of the prospective employee's employment, comprise—
- (i) the terms and conditions in the collective agreement that would bind the prospective employee if the prospective employee were a member of the union; and 10
- (ii) any additional terms and conditions mutually agreed to by the prospective employee and employer that are no less favourable to the employee than the terms and conditions in the collective agreement. 15
- (3) The employer must also provide to the prospective employee—
- (a) a copy of the collective agreement; and
- (b) any information about the role and functions of the union that the employer is required to provide to prospective employees in accordance with a request by a union under **section 30A**. 20
- (4) An employer who fails to comply with this section is liable to a penalty imposed by the Authority.

Individual employment agreements

- 20 Section 65 amended (Form and content of individual employment agreement)** 25
- (1) ~~In the heading to section 65, after “agreement”, insert “if work not covered by collective agreement”.~~
- (2) ~~In section 65(1), after “individual employment agreement of an employee”, insert “whose work is not covered by a collective agreement that binds the employee's employer”.~~ 30
- (3) ~~After section 65(2), insert:~~
- (3) ~~To determine for the purposes of subsection (1) whether the work of an employee is covered by a collective agreement that binds the employer, a collective agreement that includes a coverage clause referring to named employees, or the work or type of work done by named employees, to whom the collective agreement applies must be treated as covering the work or type of work done by the named employees (whether done by those employees or any other employees).~~ 35

20 New cross-heading above section 65A inserted

After section 65, insert:

Specific terms and conditions of employment

20A New cross-heading above section 68 inserted

After section 67H, insert:

Unfair bargaining

Amendments to Part 8 (strikes and lockouts)

21 Section 80 amended (Object of this Part)

Repeal section 80(bb).

21A Section 86A amended (Notice of strike)

After section 86A(3), insert:

(3A) An omission or error in any information specified under subsection (2)(b) or a failure to comply with subsection (3)(a) does not affect the validity of the notice if the omission, error, or failure is minor and technical only.

22 Sections 95A to 95H and cross-headings repealed

Repeal sections 95A to 95H and the cross-headings above sections 95A, 95B, and 95F.

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

(1) Repeal section 100(1)(c) and (2)(c).

(2) Repeal section 100(4) and (5).

Amendments to Part 9 (personal grievances, disputes, and enforcement)

24 Section 104 amended (Discrimination)

In section 104(1), replace “or involvement in the activities of a union” with “or the employee’s union membership status or involvement in union activities”.

25 Section 106 amended (Exceptions in relation to discrimination)

After section 106(3), insert:

(4) Despite section 104, an employee is not discriminated against in that employee’s employment simply because the employee’s employment agreement or terms and conditions of employment are different from those of another employee employed by the same employer ~~as a consequence of~~ by reason of the employee being a member of a union.

(5) Section 104 must be read subject to section 9(3).

26 Section 107 amended (Definition of involvement in activities of union for purposes of section 104)

- (1) In the heading to section 107, replace “**involvement in activities of union**” with “**union membership status or involvement in union activities**”.
- (2) In section 107(1), replace “**involvement in the activities of a union** means that, within 12 months” with “**involvement in union activities** means that, within the 18 months”.
- (3) After section 107(1), insert:
- (2) For the purposes of **section 104**, **union membership status** means that, within the 18 months before the action complained of, the employee—
- (a) was a member of a union; or
- (b) intended to join a union.

27 Section 119 amended (Presumption in discrimination cases)

In section 119(1)(b), replace “involvement in the activities of a union” with “union membership status or involvement in union activities”.

*Amendments to Part 10 (institutions)***28 Section 161 amended (Jurisdiction)**

- (1) Repeal section 161(1)(cba) and (la).
- (2) In section 161(2), delete “(cba),”.

Part 2**Other amendments***Amendments to Part 6 (individual employees’ terms and conditions of employment)***29 Section 67A ~~amended~~ replaced (When employment agreement may contain provision for trial period for 90 days or less)**

- (1) ~~In section 67A(1), after “employer”, insert “, as defined in **subsection (4)**”.~~
- (2) ~~After section 67A(3), insert:~~
- (4) ~~**Employer** means an employer who employs fewer than 20 employees at the beginning of the day on which the employment agreement is entered into.~~

Replace section 67A with:

67A	<u>When employment agreement may contain provision for trial period for 90 days or less</u>	
(1)	<u>An employment agreement containing a trial provision may be entered into by a small-to-medium-sized employer and an employee who has not previously been employed by the small-to-medium-sized employer.</u>	5
(2)	<u>For the purposes of this section and section 67B,—</u> <u>small-to-medium-sized employer</u> means an employer who employs fewer than 20 employees at the beginning of the day on which the employment agreement is entered into <u>trial provision</u> means a written provision in an employment agreement that states, or is to the effect, that—	10
(a)	<u>for a specified period (not exceeding 90 days), starting at the beginning of the employee's employment, the employee is to serve a trial period; and</u>	
(b)	<u>during that period, the small-to-medium-sized employer may dismiss the employee; and</u>	15
(c)	<u>if the small-to-medium-sized employer does so, the employee is not entitled to bring a personal grievance or other legal proceedings in respect of the dismissal.</u>	
29A	<u>Section 67B amended (Effect of trial provision under section 67A)</u>	20
(1)	<u>In section 67B(1), replace “an employer” with “a small-to-medium-sized employer”.</u>	
(2)	<u>In section 67B(5)(a) and (b), replace “employer” with “small-to-medium-sized employer”.</u>	
	<i>Amendments to Part 6A (continuity of employment if employees' work affected by restructuring)</i>	25
30	Section 69A amended (Object of this subpart) Repeal section 69A(4).	
31	Section 69B amended (Interpretation) In section 69B, repeal the definitions of associated person and exempt employer .	30
32	Sections 69CA to 69I replaced Replace sections 69CA to 69I with:	
69D	Meaning of new employer	
(1)	In section 69I , new employer,—	35

(a)	in relation to contracting in, means person A in the definition of that term:	
(b)	in relation to contracting out,—	
	(i) means person B in the definition of that term; but	
	(ii) if person B subcontracts the work (whether before or at the same time as the contracting out), means the subcontractor:	5
(c)	in relation to subsequent contracting,—	
	(i) means person C in the definition of that term; but	
	(ii) if person C subcontracts the work (whether before or at the same time as the subsequent contracting), means the subcontractor:	10
(d)	in relation to the sale or transfer of an employer's business (or part of it), means the person to whom the business (or part of it) is sold or transferred.	
(2)	In the rest of this subpart, new employer means the person to whom an employee—	15
	(a) may elect or has elected to transfer under section 69I ; or	
	(b) has transferred under that section.	
69E	Examples of contracting in, contracting out, and subsequent contracting	
(1)	This section contains examples of contracting in, contracting out, and subsequent contracting.	20
(2)	Whether, in the following examples, an employee comes within the protection provided by this subpart depends on whether section 69F applies to the employee.	
(3)	This subsection sets out examples of contracting in.	
	Example A	25
	A rest home carries on business in the age-related residential care sector. Instead of providing food catering services through its employees, it enters into an agreement with an independent contractor to provide those services.	
	The agreement under which the independent contractor provides those services to the rest home expires or is terminated.	30
	The rest home then uses its employees or engages further employees to provide those services.	
	Employees of the independent contractor to whom section 69F applies may elect to transfer to the rest home.	
	Example B	35
	The circumstances in this example are the same as in example A except that the independent contractor engages a subcontractor to provide food catering services to the rest home.	

As a result of the agreement between the rest home and the independent contractor expiring or being terminated, the agreement between the independent contractor and the subcontractor expires or is terminated.

Employees of the subcontractor to whom **section 69F** applies may elect to transfer to the rest home.

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Note

In both example A and example B, it does not matter whether the rest home's or the independent contractor's employees originally provided the food catering services or whether the work was contracted out or subcontracted at the outset.

In example A and example B, the persons relate to the definition of contracting in as follows:

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- the rest home is person A:
- the independent contractor is person B.

(4) This subsection sets out examples of contracting out.

Example C

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A school has employees who provide cleaning services.

The school then enters into an agreement with an independent contractor to do that work or some of that work.

The employees of the school to whom **section 69F** applies may elect to transfer to the independent contractor.

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Note

Example C would not be a contracting out if, at the outset, the school does not have employees providing cleaning services.

In example C, the persons relate to the definition of contracting out as follows:

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- the school is person A:
- the independent contractor is person B.

Example D

The circumstances in this example are the same as in example C, except that later on the independent contractor decides that, instead of using its employees for the contract for the school, it will engage a subcontractor to do the work or some of the work.

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Employees of the independent contractor to whom **section 69F** applies may elect to transfer to the subcontractor.

Note

In example D, the persons relate to the definition of contracting out as follows:

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- the independent contractor is person A:
- the subcontractor is person B.

	Note In example C and example D if, at the outset, the independent contractor did not have employees providing cleaning services, but subcontracts the work straight away, then the employees to whom section 69F applies may elect to transfer to the subcontractor.	5
(5)	This subsection sets out examples of subsequent contracting.	
	Example E An airport operator enters into an agreement with an independent contractor to provide food catering services at the airport. Some time later, the agreement under which the independent contractor provides those services expires or is terminated. The airport operator then enters into an agreement with a second independent contractor to provide food catering services at the airport. Employees of the first independent contractor to whom section 69F applies may elect to transfer to the second independent contractor.	10 15
	Note In example E, it does not matter whether the agreement between the airport operator and the first independent contractor constitutes a contracting out. In example E, the persons relate to the definition of subsequent contracting as follows: • the airport operator is person A: • the first independent contractor is person B: • the second independent contractor is person C.	20
	Example F The circumstances in this example are the same as in example E, except that the first independent contractor engages a subcontractor to do the work or some of the work. Later on, the agreement under which the subcontractor provides the work expires or is terminated and the first independent contractor engages a second subcontractor to provide food catering services at the airport. The employees of the first subcontractor to whom section 69F applies may elect to transfer to the second subcontractor.	25 30
	Note In example F, the subsequent contracting occurs at the subcontracting level. In example F, the persons relate to the definition of subsequent contracting as follows: • the independent contractor is person A: • the first subcontractor is person B: • the second subcontractor is person C.	35

69F Application of this subpart

- (1) This subpart applies to an employee if—
- (a) the employee is in a category specified in Schedule 1A; and
 - (b) as a result of a proposed restructuring,—
 - (i) the employee will no longer be required by the employee's employer to perform the work performed by the employee; and 5
 - (ii) the work performed by the employee (or work that is substantially similar) is to be performed by or on behalf of another person.
- (2) To avoid doubt, this subpart applies even though the performance of the work by or on behalf of the other person does not begin immediately after an employee ceases to perform the work for the employee's employer. 10

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. 15

69G Notice of right to make election

- (1) As soon as practicable, but no later than 20 working days before the date on which a restructuring takes effect, the employer of the employees who will be affected by the restructuring must provide the affected employees with— 20
- (a) information about whether the employees have a right to make an election under **section 69I**; and
 - (b) if the employees have a right to make an election under **section 69I**, an opportunity to exercise that right; and 25
 - (c) information sufficient for the employees to make an informed decision about whether to exercise any right to make an election; and
 - (d) the date by which any right to make an election must be exercised, which is—
 - (i) the date that is 10 working days after the day on which the employees are provided with the information described in **paragraphs (a) to (c)**; or 30
 - (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— 35
- (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—
 - (i) must be made in writing and signed by the employee; and
 - (ii) may be delivered, sent by post, or sent by electronic means (for example, by fax or email) to the employee's employer: 5
- (e) notice in writing—
 - (i) that employee transfer costs information and individualised employee information (as those terms are defined in section 69OB) relating to employees who elect to transfer will be provided to the new employer; and 10
 - (ii) that explains that individualised employee information includes (but is not limited to) information about any disciplinary matters relating to those employees and any personal grievances raised by those employees against the employer; and
 - (iii) that those employees are entitled to access the information, and to request correction of the information, in accordance with the Privacy Act 1993. 15
- (3) The employees' employer must send an election that complies with **subsections (1)(d) and (2)(d)** to the new employer as soon as practicable, but no later than 5 working days after the day on which that election is received by the employees' employer. 20
- (4) If an employee sends an election that complies with **subsection (2)(d)** by post or electronic means before the date described in **subsection (1)(d)**, the employee must be treated as having exercised the employee's right to make an election by that date. 25
- (5) If the employee's employer sends an election to the new employer by 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 (3)**.
- (6) 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)**. 30
- (7) In **subsection (6)**, **sufficient notice** means—
 - (a) as soon as practicable; but
 - (b) no later than ~~20~~ 25 working days before the date on which the restructuring takes effect. 35
- (8) An employer or other person who fails to comply with this section is liable to a penalty imposed by the Authority.

69H Employee bargaining for alternative arrangements

- (1) To avoid doubt, an employee may, after the employee's employer has complied with **section 69G(1)** and before deciding whether to exercise any right to elect to transfer to the new employer, bargain with the employee's employer for alternative arrangements. 5
- (2) If the employee and employer agree on alternative arrangements,—
 - (a) the alternative arrangements must be recorded in writing; and
 - (b) if **paragraph (a)** is complied with, the employee may not subsequently elect to transfer to the new employer.

69I Employee may elect to transfer to new employer

- (1) An employee to whom this subpart applies may, before the date provided to the employee under **section 69G(1)(d)**, elect to transfer to the new employer. 10
- (2) If an employee elects to transfer to the new employer, then, to the extent that the employee's work is to be performed by the new employer, the employee—
 - (a) becomes an employee of the new employer on and from the specified date; and 15
 - (b) is employed by the new employer on the same terms and conditions as applied to the employee immediately before the specified date, including terms and conditions relating to whether the employee is employed full-time or part-time; and 20
 - (c) is not entitled to any redundancy entitlements under those terms and conditions of employment from the employee's previous employer because of the transfer.
- (3) To avoid doubt,—
 - (a) the election of an employee to transfer to a new employer may result in the employee being employed by more than 1 employer if— 25
 - (i) only part of the employee's work is affected by the restructuring; or
 - (ii) the work performed by the employee will be performed by or on behalf of more than 1 new employer; and 30
 - (b) a person becomes the new employer of an employee who elects to transfer to the new employer whether or not the new employer—
 - (i) has, or intends to have, employees performing the same type of work as (or work that is substantially similar to) the work performed by the employee who has elected to transfer to the new employer; or 35
 - (ii) was an employer before the employee transferred to the new employer; and

- (c) this section does not affect the employment agreement of an employee who elects not to transfer to the new employer.

Example

This example relates to **subsection (3)(a)**. A retailer owns 3 gift shops and engages an independent contractor to clean the shops. The independent contractor employs a cleaner to clean the gift shops.

The cleaning contract between the retailer and the independent contractor expires.

The retailer enters into a cleaning contract with a second independent contractor for the cleaning of 1 shop, and enters into a new cleaning contract with the first independent contractor for the cleaning of the other 2 shops.

As a result, the first independent contractor no longer requires the cleaner to clean 1 of the shops.

The cleaner may elect to transfer and become an employee of the second independent contractor in relation to 1 shop while remaining an employee of the first independent contractor in relation to the other 2 shops.

- (4) In this section, **specified date** means the date on which the restructuring takes effect.

33 Section 69OAA repealed (False warranty: exempt employer)

Repeal section 69OAA.

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

Repeal section 69OC(2A), (3A), (3B), and (7).

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

35 Sections 69ZC to 69ZEB replaced

Replace sections 69ZC to 69ZEB with:

69ZC Interpretation

In this Part, unless the context otherwise requires, **work period**—

- (a) means the period—
- (i) beginning with the time at which, in accordance with an employee's terms and conditions of employment, an employee starts work; and
 - (ii) ending with the time at which, in accordance with an employee's terms and conditions of employment, an employee finishes work; and
- (b) 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)**.

69ZD Employee's entitlement to, and employer's duty to provide, rest breaks and meal breaks*Entitlement and duty*

- (1) An employee is entitled to, and the employee's employer must provide the employee with, rest breaks and meal breaks in accordance with this Part. 5

Work period between 2 hours and 4 hours

- (2) If an employee's work period is ~~at least 2 hours and no~~ or more but not more than 4 hours, the employee is entitled to one 10-minute paid rest break.

Work period between 4 hours and 6 hours

- (3) If an employee's work period is ~~at least~~ more than 4 hours ~~and no~~ but not more than 6 hours, the employee is entitled to— 10

- (a) one 10-minute paid rest break; and
- (b) one 30-minute meal break.

Work period between 6 hours and 8 hours

- (4) If an employee's work period is ~~at least~~ more than 6 hours ~~and no~~ but not more than 8 hours, the employee is entitled to— 15

- (a) two 10-minute paid rest breaks; and
- (b) one 30-minute meal break.

Work period over 8 hours

- (5) If an employee's work period is more than 8 hours, the employee is entitled to the rest breaks and meal breaks in accordance with **subsections (6) and (7)**. 20

- (6) During the work period of 8 hours, the employee is entitled to—

- (a) two 10-minute paid rest breaks; and
- (b) one 30-minute meal break.

- (7) During the work period beyond 8 hours (the **subsequent period**), the employee is entitled to the following: 25

- (a) if the subsequent period is ~~at least 2 hours and no~~ or more but not more than 4 hours, to one 10-minute paid rest break:

- (b) if the subsequent period is ~~at least~~ more than 4 hours ~~and no~~ but not more than 6 hours, to— 30

- (i) one 10-minute paid rest break; and
 - (ii) one 30-minute meal break:

- (c) if the subsequent period is ~~at least~~ more than 6 hours ~~and no~~ but not more than 8 hours, to—

- (i) two 10-minute paid rest breaks; and 35
 - (ii) one 30-minute meal break.

69ZE Timing of rest breaks and meal breaks*Timing of breaks as agreed*

- (1) If an employee and employer have agreed on the times at which the employee is to take rest breaks and meal breaks during the employee's work period, the rest breaks and meal breaks are to be taken at those times.

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Timing of breaks in absence of agreement

- (2) In the absence of an agreement, the rest breaks and meal breaks are to be taken in accordance with the applicable provision in **subsections (3) to (7)**.

Work period between 2 hours and 4 hours

- (3) If **section 69ZD(2)** applies, an employer must, so far as is reasonable and practicable, provide the employee with the rest break in the middle of the work period.

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Work period between 4 hours and 6 hours

- (4) If **section 69ZD(3)** applies, an employer must, so far as is reasonable and practicable, provide the employee with—
- (a) the rest break one-third of the way through the work period; and
 - (b) the meal break two-thirds of the way through the work period.

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Work period between 6 hours and 8 hours

- (5) If **section 69ZD(4)** applies, an employer must, so far as is reasonable and practicable, provide the employee with—
- (a) a rest break halfway between the start of work and the meal break; and
 - (b) the meal break in the middle of the work period; and
 - (c) a rest break halfway between the meal break and the finish of the work period.

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Work period over 8 hours

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- (6) If **section 69ZD(5) and (6)** apply, an employer must, so far as is reasonable and practicable, provide the employee with—
- (a) a rest break halfway between the start of work and the meal break; and
 - (b) the meal break in the middle of the work period; and
 - (c) a rest break halfway between the meal break and the finish of the work period.

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- (7) If **section 69ZD(5) and (7)** apply, an employer must, so far as is reasonable and practicable, provide the employee with the breaks as follows:
- (a) if the subsequent period is ~~at least 2 hours and no~~ more than 4 hours, the rest break in the middle of the subsequent period:
 - (b) if the subsequent period is ~~at least~~ more than 4 hours and no but not more than 6 hours,—

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- (i) the rest break one-third of the way through the subsequent period; and
- (ii) the meal break two-thirds of the way through the subsequent period:
- (c) if the subsequent period is ~~is at least~~ more than 6 hours ~~and no~~ but not more than 8 hours,—
 - (i) a rest break halfway between the start of the subsequent period and the meal break; and
 - (ii) the meal break in the middle of the subsequent period; and
 - (iii) a rest break halfway between the meal break and the finish of the subsequent period.

69ZEA Exemption from requirement to provide rest breaks and meal breaks

- (1) ~~An employer is exempt from the requirement to provide rest breaks and meal breaks in accordance with **section 69ZD(1)** if—~~
- ~~(a) the employer is engaged in an essential service; and~~
 - ~~(b) the continuity of service or production in the essential service is critical to the public interest, including (without limitation) services affecting public safety; and~~
 - ~~(c) the employer would incur unreasonable cost in replacing an employee, employed in the essential service, during rest breaks and meal breaks—~~
 - ~~(i) with another person who has sufficient skills and experience; and~~
 - ~~(ii) without compromising public safety.~~
- (1) An employer is exempt from the requirement to provide rest breaks and meal breaks in accordance with **section 69ZD(1)** if—
- (a) the employer is engaged in—
 - (i) the protection of New Zealand’s national security; or
 - (ii) an essential service; and
 - (b) the continuity—
 - (i) of service is critical to New Zealand’s national security; or
 - (ii) of service or production in the essential service is critical to the public interest, including (without limitation) services affecting public safety; and
 - (c) the employer would incur unreasonable cost in replacing an employee, employed in the protection of New Zealand’s national security or in the essential service, during rest breaks and meal breaks—
 - (i) with another person who has sufficient skills and experience; and
 - (ii) without compromising—

(A) New Zealand's national security; or

(B) public safety.

- (2) If **subsection (1)** applies, the employer and employee may agree that any rest breaks and meal breaks are to be taken in a different manner (including the number and timing of breaks) than specified in this Part.

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69ZEB Compensatory measures

- (1) If the employer and employee are unable to reach agreement under **section 69ZEA(2)**, an employee is entitled to, and the employee's employer must provide the employee with, compensatory measures.

- (2) In this section, **compensatory measure**—

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

(b) may include (without limitation)—

(i) 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); or

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(ii) financial compensation; or

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(iii) both time off work at an alternative time and financial compensation.

- (3) For the purposes of **subsection (2)**,—

(a) if the compensatory measure provided is time off work at an alternative time,—

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(i) the employee must be provided with at least 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

(ii) the time off work at an alternative time must be provided on the same basis as the rest break or meal break that the employee would otherwise have taken:

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~~(b) if the compensatory measure provided is financial compensation, that financial compensation must be at least an amount that is equivalent to the amount that the employee would have earned during the time that the employee would otherwise have taken as a rest break or meal break:~~

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(b) if the compensatory measure provided is financial compensation, that financial compensation must,—

- (i) in the case of an employee paid at variable rates during a work period, be at least an amount—
 - (A) that is equivalent to the amount that the employee would have earned during the time that the employee would otherwise have taken as a rest break or meal break; and 5
 - (B) that is calculated at the average of the rate of pay that the employee would have earned in that work period; or
- (ii) in the case of any other employee, be at least an amount that is equivalent to the amount that the employee would have earned during the time that the employee would otherwise have taken as a rest break or meal break; 10
- (c) if the compensatory measure includes both time off work at an alternative time and financial compensation, the total amount of alternative time plus time for which payment is made must be at least equivalent to the amount of time that the employee would otherwise have taken as a rest break or meal break. 15

36 Section 69ZG amended (Relationship between Part and employment agreements)

Replace section 69ZG(2) and (3) with:

- (2) An employment agreement that excludes, restricts, or reduces an employee's entitlements under **section 69ZD or 69ZE** or fails to comply with **section 69ZEA or 69ZEB—** 20
 - (a) has no effect to the extent that it does so; but
 - (b) is not an illegal contract under subpart 5 of Part 2 of the Contract and Commercial Law Act 2017. 25

37 Section 69ZH replaced (Relationship between Part and other enactments)

Replace section 69ZH with:

69ZH Relationship between this Part and other enactments

- (1) If an employee is provided with, or entitled to, rest breaks or meal breaks under an enactment other than this Part,— 30
 - (a) this Part prevails if the breaks provided under this Part are additional or enhanced breaks:
 - (b) the other enactment prevails if the breaks provided under the other enactment are additional or enhanced breaks.
- (2) If an employee is required to take a rest break by, or under, an enactment other than this Part, the requirement for a rest break defined by, or under, the other enactment applies instead of the provisions or entitlements for rest breaks or meal breaks provided under this Part. 35

- (3) However, if **subsection (2)** applies, the employee's employer must provide the employee with—
- (a) at least the same number of breaks as provided under this Part; and
 - (b) breaks of at least the same duration as the breaks provided under this Part.

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Amendments relating to remedy of reinstatement

38 Section 5 amended (Interpretation)

In section 5, insert in its appropriate alphabetical order:

reinstatement is a remedy in a personal grievance raised by an employee that may be granted as described in section 123(1)(a)

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39 Section 125 replaced (Remedy of reinstatement)

Replace section 125 with:

125 Reinstatement to be primary remedy

- (1) This section applies if—
 - (a) the remedies sought by, or on behalf of, an employee in respect of a personal grievance include reinstatement; and
 - (b) it is determined that the employee did have a personal grievance.
- (2) If this section applies, the Authority or court must provide for reinstatement wherever practicable and reasonable, irrespective of whether it provides for any other remedy as specified in section 123.

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Amendments to Part 11 (general provisions)

39A New section 237A inserted (Amendments to Schedule 1A)

After section 237AA, insert:

237A Amendments to Schedule 1A

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, amend Schedule 1A to add, delete, or amend categories of employees.
- (2) The Minister may recommend the making of an Order in Council to amend Schedule 1A to add a category of employees only if the Minister is satisfied that the employees in the category of employees—
 - (a) are employed in a sector in which restructuring of an employer's business occurs frequently; and
 - (b) have terms and conditions of employment that tend to be undermined by the restructuring of an employer's business; and
 - (c) have little bargaining power.

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- (3) The Minister may recommend the making of an Order in Council to amend Schedule 1A to amend a category of employees only if the Minister is satisfied that the employees in the category of employees (if the category is amended in accordance with the recommendation) will satisfy the criteria in **subsection (2)**. 5
- (4) The Minister may recommend the making of an Order in Council to amend Schedule 1A to delete a category of employees only if the Minister is satisfied that the employees in the category of employees no longer satisfy the criteria in **subsection (2)**.
- (5) Before recommending the making of an Order in Council to amend Schedule 1A, the Minister must— 10
- (a) receive a request to add, amend, or delete a category of employees from a person or an organisation that—
- (i) clearly identifies the category of employees to which the request relates; and 15
- (ii) specifies the sector in which the category of employees provides service; and
- (iii) includes evidence that the relevant employees satisfy or no longer satisfy (as applicable) the criteria in **subsection (2)**; and
- (b) receive a report from the department on whether the employees in the category of employees satisfy the criteria in **subsection (2)**; and 20
- (c) provide the report to, and consult, any employers, employees, representatives of employers or employees, or other persons or organisations as the Minister considers appropriate.
- (6) Nothing in **subsection (5)(c)** requires the making available of information that could properly be withheld in accordance with the provisions of the Official Information Act 1982 if the information were requested under that Act. 25
- (7) In this section, **restructuring** has the same meaning as in section 69B.

Transitional, savings, and related provisions

- 40 Schedule 1AA amended** 30
- (1) In Schedule 1AA, before clause 1, insert the Part heading set out in **Part 1 of the Schedule** of this Act.
- (2) In Schedule 1AA, clause 1, replace “schedule” with “Part”.
- ~~(3) In Schedule 1AA, after clause 4, insert the **Part 2** set out in **Part 2 of the Schedule** of this Act.~~ 35
- (3) In Schedule 1AA, insert the **Part 2** set out in **Part 2 of the Schedule** of this Act in its appropriate numerical order according to the date of enactment of the provisions of that Schedule.

*Consequential amendments to Wages Protection Act 1983***41 Consequential amendment to Wages Protection Act 1983**

- (1) This section amends the Wages Protection Act 1983.
- (2) In section 6(1), definition of **recoverable period**, delete “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”. 5
- (3) Repeal section 6(3)(ba) and (5).

Schedule
Transitional, savings, and related provisions

s 40

Part 1
New Part 1 heading inserted into Schedule 1AA

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Part 1
**Provisions relating to Employment Relations Amendment Act 2014,
Employment Relations Amendment Act 2016, and Employment
Relations Amendment Act (No 2) 2016**

Part 2
New Part 2 inserted into Schedule 1AA

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Part 2
Provisions relating to Employment Relations Amendment Act 2018

5 Interpretation

In this Part, **2018 Act** means the Employment Relations Amendment Act **2018**. 15

Provisions relating to collective bargaining and unions

6 Duty to conclude applies to bargaining initiated before commencement

Sections 31 to 33 of this Act (as amended by **sections 9 to 11** of the 2018 Act) apply to all bargaining that has not concluded before the commencement of **sections 9 to 11** of the 2018 Act, whether the bargaining was initiated before or on the commencement of **sections 9 to 11** of the 2018 Act. 20

7 Existing opt-out notice under section 44B continues to have effect

Sections 44B(3), 44C, and 53(2A) (as they were immediately before they were repealed by **sections 13 and 15** of the 2018 Act) continue to apply in relation to an opt-out notice given before the commencement of this clause in accordance with section 44B (as it was immediately before it was repealed by **section 13** of the 2018 Act). 25

8 Existing declarations or determinations under section 50K continue to have effect

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- (1) The following continue to have effect as if **sections 14, 15, and 28** of the 2018 Act had not come into force:

(a)	any declaration or determination made by the Authority under section 50K(3) or (4) or 50KA(2) before the commencement of this clause:	
(b)	any orders or recommendations made by, or directions issued by, the Authority under 50KA(5) before the commencement of this clause.	
(2)	Sections 53(4) and 161(1)(cba) (as they were immediately before they were repealed by sections 15 and 28 of the 2018 Act) continue to apply in relation to any declaration or determination made by the Authority under section 50K(3) before the commencement of this clause.	5
(3)	However, an application made under section 50K (as it was immediately before it was repealed by section 14 of the 2018 Act) that is not determined or dismissed before the commencement of this clause must be treated as if it had not been made.	10
9	Requirement for collective agreement to include rates of wages or salary applies only to collective agreement concluded on or after commencement	
(1)	Section 54 (as amended by section 16 of the 2018 Act) applies to a collective agreement concluded on or after the commencement of section 16 of the 2018 Act whether bargaining for the agreement was initiated before, on, or after the commencement of section 16 of the 2018 Act.	15
(2)	Section 54 (as it was immediately before it was amended by section 16 of the 2018 Act) continues to apply to a collective agreement concluded before the commencement of section 16 of the 2018 Act.	20
10	Amendments relating to new employees apply to employees who enter into IEAs on or after commencement	
(1)	Sections 62 and 63AA 62A of this Act (as inserted by section 18 of the 2018 Act) apply to a new employee who commences work with an employer, or signs an employment agreement with an employer, on or after the commencement of section 18 of the 2018 Act.	25
(2)	Section 63B of this Act (as inserted by section 48 19A of the 2018 Act) applies to an employer who is bargaining with an individual on or after the commencement of section 48 19A of the 2018 Act for terms and conditions of employment for the first 30 days of the individual's employment under section 62 (as inserted by section 18 of the 2018 Act) whether the bargaining was initiated before, on, or after the commencement of section 18 of the 2018 Act.	30
11	Union may provide information about role and functions of union for employer to pass on to new employees before commencement of section 18 of 2018 Act	35
(1)	If the union requests, on or after the commencement of section 47 8A of the 2018 Act but before the commencement of section 48 19A of the 2018 Act, that an employer provide certain specified information to new employees, the	40

reference to **section 63B(3)(b)** in **section-59AA 30A** (as inserted by **section-47 8A** of the 2018 Act) must be read as if **section 63B(3)(b)** had already commenced.

- (2) However, an employer who receives information under **section-59AA 30A** before the commencement of **section-48 19A** of the 2018 Act is required to provide the information only on or after the commencement of **section 63B(3)(b)** (as inserted by **section-48 19A** of the 2018 Act).

12 Specified pay deductions must cease on commencement

- (1) An employer who is making specified pay deductions from the salary or wages of an employee under section 95B must cease the deductions on the commencement of **sections 22 and 23** of the 2018 Act.
- (2) Sections 95F to 95H and section 100(1)(c), (2)(c), (4), and (5) (as they were immediately before they were repealed by **sections 22 and 23** of the 2018 Act) continue to apply in relation to any specified pay deductions made before the commencement of this clause.

Provisions relating to trial periods of 90 days or less

13 Trial provisions contained in employment agreements entered into before commencement continue to apply

A trial provision contained in an employment agreement entered into before the commencement of **sections 29 and 29A** of the 2018 Act in accordance with section 67A (as it was immediately before it was ~~amended~~ replaced by **section 29**) of the 2018 Act continues to apply as if **sections 29 and 29A** of the 2018 Act had not commenced.

Provision relating to rest breaks and meal breaks

14 Employees receiving compensatory measures before commencement of section 35 of 2018 Act

- (1) This provision applies to an employee who is receiving compensatory measures under sections 69ZEA and 69ZEB (as they were immediately before they were replaced by **section 35** of the 2018 Act) (**existing compensatory measures**).
- (2) On the commencement of **section 35** of the 2018 Act, if an exemption under **section 69ZEA(1)** applies to an employer providing existing compensatory measures,—
- the employer and employee may agree that any rest breaks and meal breaks are to be taken in a different manner (including the number and timing of breaks) than that specified in Part 6D; but
 - if the employer and employee are unable to reach agreement under **paragraph (a)**, the employee is entitled to, and the employee's

- employer must provide the employee with, compensatory measures in accordance with **section 69ZEB** (as replaced by **section 35** of the 2018 Act).
- (3) On the commencement of **section 35** of the 2018 Act, if an exemption under **section 69ZEA(1)** does not apply to an employer providing existing compensatory measures, the employee is entitled to, and the employee's employer must provide the employee with, rest breaks and meal breaks in accordance with **sections 69ZD and 69ZE** (as replaced by **section 35** of the 2018 Act). 5
- (4) On and from the commencement of **section 35** of the 2018 Act, the employee continues to be entitled to receive the existing compensatory measures until the earlier of the following: 10
- (a) the coming into force of an agreement between the employer and the employee under **subclause (2)(a)**;
- (b) the employer provides the employee with compensatory measures under **subclause (2)(b)**. 15
- (5) The provisions of this clause have effect despite any provision to the contrary in any contract or agreement.
- Provision relating to remedy of reinstatement*
- 15 Remedy of reinstatement in personal grievance proceedings**
- (1) Any personal grievance proceedings brought before the Authority or the court (or a court on appeal), but not finally determined or completed, before the commencement of this clause must be determined or completed under the law as it was at the time the proceedings were brought. 20
- (2) Any personal grievance proceedings brought before the Authority or the court (or a court on appeal) on or after the commencement of this clause must be determined in accordance with **section 125** as replaced by **section 39** of the 2018 Act. 25
- (3) **Subclause (2)** applies irrespective of whether the action alleged to amount to a personal grievance occurred or came to the notice of the employee before, on, or after the commencement of **section 39** of the 2018 Act. 30

Legislative history

29 January 2018
1 February 2018

Introduction (Bill 13–1)
First reading and referral to Education and Workforce Committee