

Employment Relations Amendment Bill

Government Bill

Explanatory note

General policy statement

Introduction

The purpose of this Bill is to implement the Government's post-election commitments to restore key minimum standards and protections for employees, and a suite of changes to promote and strengthen collective bargaining and union rights in the workplace. The changes are intended to introduce greater fairness in the workplace between employees and employers, in order to promote productive employment relationships.

The changes require amendments to the Employment Relations Act 2000 (the **Act**).

Collective bargaining and unions

The amendments in *Part 1* of the Bill include proposals designed to strengthen collective bargaining and union rights in the workplace in order to secure improved terms and conditions for union members, while supporting workplace productivity.

The amendments to Part 4 of the Act will enable unions and their representatives to more effectively carry out union activities and support members by—

- removing the requirement for a union representative to gain consent from an employer before entering a workplace;
- requiring employers to allow union delegates reasonable time during working hours to perform their duties in respect of the employees of that employer.

The amendments to Part 5 of the Act will strengthen unions' rights in the workplace and support successful collective bargaining by—

- reinstating the principle that the duty of good faith in section 4 requires parties to conclude a collective agreement, and repealing the provisions that enable the

Employment Relations Authority (the **Authority**) to determine that bargaining has concluded:

- reinstating the ability of unions to initiate collective bargaining 20 days before an employer:
- repealing sections 44A to 44C, which allow employers to opt out of multi-employer collective bargaining once bargaining has been initiated:
- requiring that collective agreements must contain rates of pay and that rates of pay must be agreed during collective bargaining.

Sections 95A to 95H in Part 8 of the Act are also repealed to remove an employer's ability to deduct pay as a response to partial strikes.

The amendments to Part 6 of the Act will improve employees' ability to make an informed choice about whether to join a union by allowing them appropriate time and information to consider their options. The amendments intend to achieve this by—

- requiring that new employees are afforded the same terms and conditions as the applicable collective agreement relating to their work for the first 30 days of their employment:
- requiring employers to provide the applicable collective agreement and union contact details and the option to join the union at the same time as they provide an intended individual employment agreement to an employee:
- requiring that employers provide information about the role and functions of the applicable union when the intended employment agreement is given to prospective employees:
- encouraging an active choice by a new employee on whether to join the union, and whether to object to the employee's employer providing the employee's name and notice of the employee's choice to the relevant union.

The amendments to Part 9 of the Act are intended to protect union members from unfair treatment by an employer because of their involvement in a union by—

- extending the grounds for discrimination to include an employee's union membership:
- extending the time frame under section 107 for which an employee's union activities may be considered to contribute to an employer's discriminatory behaviour from 12 months to 18 months.

Restoring key minimum standards and protections for employees

The amendments in *Part 2* of the Bill to Parts 6, 6A, and 6D of the Act reintroduce minimum standards and protections that are intended to make vulnerable workers more secure in their employment while still allowing flexibility for employers. These include—

- removing the exemption for employers with fewer than 20 employees from the current rules about business transfers, which will allow employees of these employers to elect to transfer to an incoming employer:

- extending the time frame for employees to elect to transfer to an incoming employer and placing information and notification requirements on employers in respect of their employees' personal information:
- reinstating the right to prescribed rest and meal breaks, with limited exceptions:
- restoring reinstatement as the primary remedy in unjustified dismissal cases, where the employee requests it and where reinstatement is practicable and reasonable:
- limiting trial periods to employers with fewer than 20 employees.

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2018&no=13>

Regulatory impact assessment

The Ministry of Business, Innovation, and Employment produced regulatory impact assessments on 30 November 2017 and 18 January 2018 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

Copies of these regulatory impact assessments can be found at—

- <http://www.mbie.govt.nz/publications-research/publications/employment-and-skills/ris-100-day-commitments-in-Employment-Relations>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. Several provisions come into force 4 months after Royal assent. *Clauses 24 to 27* (which relate to discrimination in relation to union membership status and involvement in union activities) come into force 6 months after Royal assent. The rest of the Bill comes into force on the day after the date of Royal assent.

Clause 3 provides that the Bill amends the Employment Relations Act 2000 (the **principal Act**).

Part 1

Amendments relating to collective bargaining and unions

Amendments to Part 4 (recognition and operation of unions)

Clause 4 inserts *new section 18A*, which provides that an employee who is appointed as a union delegate is entitled to reasonable paid time during normal working hours to undertake union activities relating to the representation of other employees if the activities do not unreasonably disrupt the employer's business or the employee's performance.

Clause 5 consequentially amends section 20, which relates to access to workplaces by a representative of a union. The amendment removes cross-references to section 20A (which is repealed by *clause 6*).

Clause 6 repeals section 20A. The repeal removes the requirement for a representative of a union to obtain consent before entering a workplace under section 21.

Clause 7 amends section 21 to provide that nothing in that section allows an employer to unreasonably deny a representative of a union access to a workplace.

Clause 8 amends section 25, which imposes a penalty in relation to certain acts in relation to entering a workplace. The amendment inserts *new section 25(a)*, which imposes a penalty in relation to refusing, without lawful excuse, to allow a representative of a union to enter a workplace.

Amendments to Part 5 (collective bargaining)

Clause 9 amends section 31, which sets out the object of Part 5. The amendment inserts *new section 31(aa)*, which provides that one of the objects of Part 5 is to require parties bargaining for a collective agreement to conclude the agreement unless there are genuine and reasonable grounds not to do so.

Clause 10 amends section 32, which deals with good faith in collective bargaining. The amendment inserts *new section 32(1)(ca)*, which provides that the duty of good faith requires a union and an employer that reach a standstill or deadlock about a matter during bargaining to continue to bargain about any other matters on which they have not reached agreement.

Clause 11 replaces section 33 with a *new section 33*. *New section 33* provides that the duty of good faith requires a union and an employer that are bargaining for a collective agreement to conclude the collective agreement unless there is a genuine reason, based on reasonable grounds, not to do so. *New section 33(2)* provides that the following reasons are not genuine reasons:

- opposition or objection in principle to being a party to a collective agreement or including rates of pay in a collective agreement; and
- disagreement about the inclusion of a bargaining fee clause under Part 6B in the collective agreement.

Clause 12 replaces section 41(3) and (4) with *new section 41(3) and (4)*. The existing section 41 deals with the timing for initiating bargaining for a collective agreement. Subsections (3) and (4) of that section enable either party to initiate bargaining within specified time limits, which are the same for both parties. *New subsections (3) and (4)* replace that timing mechanism with a regime that enables the union to have the first opportunity to initiate bargaining, with the employer's right to do so starting 20 days later (or 60 days later 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).

Clause 13 repeals sections 44A to 44C, which enable an employer to opt out of collective bargaining where more than 1 employer is an intended party to bargaining for a single collective agreement. The repeal of sections 44A to 44C removes the ability of an employer to opt out of collective bargaining in this situation.

Clause 14 repeals sections 50K and 50KA and the cross-heading above section 50K. Sections 50K and 50KA enable a party bargaining for a collective agreement to apply to the Employment Relations Authority for a determination as to whether the bargaining has concluded. The repeal of those sections relates to the amendments to sections 31 to 33 made by *clauses 9 to 11*.

Clause 15 repeals section 53(2A) and (4). Section 53 provides for a collective agreement to continue after its expiry date if a union or employer initiated bargaining for the purpose of replacing the expired collective agreement before it expired. Section 53(2A) deals with the continuation of collective agreements where an employer opts out of bargaining under section 44A. This provision is no longer required because section 44A is repealed by *clause 13*. Section 53(4) deals with the treatment of periods during which parties cannot bargain under section 50K(3)(b) and is no longer required because section 50K is repealed by *clause 14*.

Clause 16 amends section 54 (which deals with the form and content requirements of collective agreements). *New section 54(3)(a)(ii)* requires collective agreements to contain the rates of wages or salary payable to employees.

Clause 17 inserts *new section 59AA*. *New section 59AA* provides that, if a union requests that an employer provide certain information about the role and functions of the union to new employees, the employer may refuse to provide the information only if the information is defamatory (within the meaning of the Defamation Act 1992) or confidential.

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

Clause 18 replaces section 62 with *new sections 62 to 63AA*.

New section 62 provides that the terms and conditions of a new employee whose work is covered by a collective agreement but who is not a member of a union are the terms and conditions in the collective agreement that would bind the employee if the employee were a member of the union plus any additional terms and conditions mutu-

ally agreed between the employee and the employer that are not inconsistent with the terms and conditions in the collective agreement.

New section 63 provides that an employer must provide a prospective employee with information about the union.

New section 63AA provides that the employer must share certain information about a new employee with the union unless the employee objects.

Clause 19 amends section 63A, which deals with an employer's obligation when bargaining for individual employment agreements and individual terms and conditions of employment with employees. The amendments extend the obligations to apply to bargaining for additional terms and conditions under *new section 62* and make a consequential amendment to section 63A(1)(e) to align that paragraph with the amendments to section 65.

Clause 20 amends section 65 so that it only applies to the form and content of individual employment agreements in relation to employees whose work is not covered by a collective agreement that binds the employees' employer.

Amendments to Part 8 (strikes and lockouts)

Clause 21 consequentially amends section 80 to reflect the repeal of sections 95A to 95H and the cross-headings above sections 95A, 95B, and 95F by *clause 22*.

Clause 22 repeals sections 95A to 95H and the cross-headings above sections 95A, 95B, and 95F in order to remove the ability of employers to make specified pay deductions (as defined in section 95A of the principal Act) from the wages or salary of employees who participate in a partial strike (as defined in section 95A of the principal Act).

Clause 23 consequentially amends section 100 to reflect the repeal of sections 95A to 95H and the cross-headings above sections 95A, 95B, and 95F by *clause 22*.

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

Clause 24 amends section 104, which defines "discriminated against in that employee's employment" for the purposes of section 103(1)(c). The amendment provides that conduct described in paragraphs (a) to (c) of section 104(1) by reason directly or indirectly of an employee's union membership status is discrimination for the purposes of section 104.

Clause 25 amends section 106, which provides for exceptions in relation to discrimination. *New section 106(4)* provides that an employee is not discriminated against because of the employee's union membership status simply because the employee's terms and conditions of employment are different from those of another employee employed by the same employer because the employee is a member of a union. *New section 106(5)* provides that section 104 must be read subject to section 9(3), which provides that the Act does not prevent a collective agreement containing a term or condition that is intended to recognise the benefits of a collective agreement or arising out of the relationship on which a collective agreement is based.

Clause 26 amends section 107. Existing section 107 defines “involvement in the activities of a union” for the purposes of section 104. *Clause 26(1) and (3)* amends section 107 so that it also includes a definition of “union membership status” for the purposes of section 104. *Clause 26(2)* amends section 107(1) to provide that discrimination by reason directly or indirectly of involvement in union activities in the previous 18 months (instead of 12 months) may constitute discrimination for the purposes of section 103(1)(c).

Clause 27 amends section 119, which provides for a presumption in discrimination cases that an employer who engages in conduct described in section 104(1) discriminated against the employee for the reason alleged by the employee. The amendment provides that the presumption applies in discrimination cases relating to union membership status only if the employee establishes that the employee was a member of a union or intended to join a union in terms of section 107.

Amendments to Part 10 (institutions)

Clause 28 repeals section 161(1)(cba) and (la) to reflect the repeal of sections 50K and 95D. Section 161(1)(cba) enables the Authority to determine whether bargaining has been concluded under section 50K and is no longer needed. *Clause 28(2)* removes a cross-reference to section 161(1)(cba).

Part 2

Other amendments

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

Clause 29 amends section 67A, which provides for when an employment agreement may provide for a trial period. The amendments provide that an employment agreement may provide for a trial period only if the employer employs fewer than 20 employees.

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

Clause 30 repeals section 69A(4). Section 69(4) provides that the protections in subpart 1 of Part 6A do not apply if the new employer is an exempt employer. This provision is no longer needed because the exceptions for exempt employers are removed by *clause 34*.

Clause 31 repeals the definition of exempt employer. This definition is no longer needed because *new sections 69D to 69I* (as inserted by *clause 34*) no longer refer to exempt employers.

Clause 32 replaces sections 69CA to 69I with *new sections 69D to 69I*. *New sections 69D to 69I* substantially re-enact sections 69CA to 69I with amendments to remove the exemption for small to medium enterprises from the protections in Part 6A for specified categories of employees (for example, employees who provide cleaning ser-

vices) if, as a result of a proposed restructuring, their work is to be performed by a new employer.

Clauses 33 and 34 repeal section 69OAA and section 69OC(2A), (3A), (3B), and (7). Section 69OAA deals with false warranties given by persons claiming to be an exempt employer. Section 69OC(2A), (3A), (3B), and (7) deals with the disclosure of employee transfer costs in relation to exempt employers. These provisions are no longer needed because the exception for exempt employers is removed by the replacement of sections 69CA to 69I with *new sections 69D to 69I* by *clause 32*.

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

Clause 35 replaces sections 69ZC to 69ZEB, largely to restore the sections as originally inserted with effect in 2009 (by the Employment Relations (Breaks, Infant Feeding, and Other Matters) Amendment Act 2008). The main changes are as follows:

- *new section 69ZD* restores the statutory prescription for an employee's entitlement to, and the employer's duty to provide, rest breaks and meal breaks:
- *new section 69ZE* restores the statutory prescription for when the rest breaks and meal breaks must be taken, in the absence of agreement between the employee and employer as to when the breaks are to be taken.

Clause 35 also replaces sections 69ZEA and 69ZEB. *New section 69ZEA* specifies exemptions from the requirement to provide rest breaks and meal breaks. If an employer's circumstances meet all 3 requirements in *new section 69ZEA(1)* and, therefore, the employer qualifies for the exemption, the employer and employee may agree to alternative rest breaks and meal breaks to those specified in *new sections 69ZD and 69ZE*. However, if the employer and employee are unable to agree on alternative rest breaks and meal breaks, the employee is entitled to, and the employer must provide the employee with, compensatory measures, in accordance with *new section 69ZEB*.

Compensatory measures are the last available statutory option for employers who are exempt from the requirement to provide rest breaks and meal breaks, but who are unable to agree on alternative rest breaks and meal breaks with their employees. Compensatory measures must be reasonable and designed to compensate an employee for a failure to provide rest breaks or meal breaks. The measures may involve equivalent time off, or financial compensation that is equivalent to the amount the employee would have earned during the rest or meal break, or a mix of both.

Clause 36 amends section 69ZG to provide that an employment agreement that excludes, restricts, or reduces an employee's entitlements under *new section 69ZD or 69ZE* or fails to comply with *new section 69ZEA or 69ZEB* (as replaced by *clause 37*), has no effect to the extent of the exclusions, restrictions, or reductions, but is not an illegal contract.

Clause 37 replaces section 69ZH of the principal Act to restore the section as originally inserted with effect in 2009 (by the Employment Relations (Breaks, Infant Feeding, and Other Matters) Amendment Act 2008). The main effect of the change is that where rest breaks or meal breaks are provided under another enactment, then whether

Part 6D of the principal Act or the other enactment prevails is determined according to which provides additional or enhanced breaks that are most advantageous to the employee.

Amendments relating to remedy of reinstatement

Clause 38 amends section 5 of the principal Act to insert a definition of reinstatement for clarity.

Clause 39 replaces section 125 of the principal Act. Currently, section 125 provides a discretion to the Authority to provide for reinstatement in certain personal grievance cases, if it is practicable and reasonable to do so. The effect of the replacement is that in those cases, the Authority would be obliged to provide for reinstatement wherever practicable and reasonable. The change from a discretion to an obligation on the Authority to provide for reinstatement in certain personal grievance cases restores the requirement in section 125, as originally enacted in 2000.

Transitional, savings, and related provisions

Clause 40 makes amendments to Schedule 1AA of the principal Act, as specified in the *Schedule*.

Consequential amendments

Clause 41 makes consequential amendments to the Wages Protection Act 1983 which are related to the repeal of section 95B of the principal Act by *clause 22*.

Hon Iain Lees-Galloway

Employment Relations Amendment Bill

Government Bill

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Other amendments**

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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: 5

- (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** (which relate to employers' obligations in relation to new 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):
 - (vii) **sections 35 to 37** (which relate to rest breaks and meal breaks): 20
- (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

Amendments to Part 4 (recognition and operation of unions)

- 4 New section 18A inserted (Union delegates entitled to reasonable paid time to represent employees)** 5
- After section 18, insert:
- 18A Union delegates entitled to reasonable paid time to represent employees**
- (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 as a union delegate to represent other employees of the employee's employer who are members of the union on matters relating to their employment; and 10
- (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. 15
- (2) Before undertaking activities under **subsection (1)**, an employee must—
- (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— 20
- (i) when the employee intends to undertake the activities; and
- (ii) how long the employee intends to spend undertaking the activities.
- (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. 25
- 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)** 30
- Repeal section 20A.
- 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. 35

- 8 Section 25 amended (Penalty for certain acts in relation to entering workplace)**
 Replace section 25(a) and (ab) with:
 (a) refuses to allow a representative of a union to enter a workplace; or
Amendments to Part 5 (collective bargaining) 5
- 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 10
- 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 15
- 11 Section 33 replaced (Duty of good faith does not require collective agreement to be concluded)**
 Replace section 33 with: 20
- 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. 25
- (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. 30
- 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,—

<ul style="list-style-type: none"> (a) a union must not initiate bargaining earlier than 60 days before the date on which the collective agreement expires: (b) an employer must not initiate bargaining earlier than 40 days before the date on which the collective agreement expires. 	5
<p>(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—</p> <ul style="list-style-type: none"> (a) a union must not initiate bargaining before the later of the following dates: <ul style="list-style-type: none"> (i) the date that is 120 days before the date on which the last applicable collective agreement expires: (ii) the date that is 60 days before the date on which the first applicable collective agreement expires: (b) an employer must not initiate bargaining before the later of the following dates: <ul style="list-style-type: none"> (i) the date that is 100 days before the date on which the last applicable collective agreement expires: (ii) the date that is 40 days before the date on which the first applicable collective agreement expires. 	10 15
<p>13 Sections 44A to 44C repealed</p> <p>Repeal sections 44A to 44C.</p>	20
<p>14 Sections 50K and 50KA and cross-heading repealed</p> <p>Repeal sections 50K and 50KA and the cross-heading above section 50K.</p>	
<p>15 Section 53 amended (Continuation of collective agreement after specified expiry date)</p> <p>Repeal section 53(2A) and (4).</p>	25
<p>16 Section 54 amended (Form and content of collective agreement)</p> <ul style="list-style-type: none"> (1) After section 54(3)(a)(i), insert: <ul style="list-style-type: none"> (ii) the rates of wages or salary payable to employees; and (2) After section 54(3), insert: (4) For the purposes of subsection (3)(a)(ii), a collective agreement— <ul style="list-style-type: none"> (a) contains the rates of wages or salary payable to employees if it provides, in relation to the work that the agreement covers, for— <ul style="list-style-type: none"> (i) the wages or salary payable for certain work or types of work or certain employees or types of employees; or 	30 35

(ii)	ranges of wages or salary payable for certain work or types of work or certain employees or types of employees; or	
(iii)	1 or more methods of calculating rates of wages or salary payable for certain work or types of work or certain employees or types of employees:	5
(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.	10

17	New section 59AA inserted (Union may provide employer with information about role and functions of union to pass on to new employees)	15
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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) .	20
(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.	25
(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.	30

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

18	Section 62 replaced (Employer's obligations in respect of new employee who is not member of union)	
	Replace section 62 with:	35

62	Terms and conditions of employment of new employee who is not member of union	
(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	5
	(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	
	(b) does not apply to an employee who—	10
	(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.	
(2)	The terms and conditions of employment of the new employee are determined in accordance with subsections (3) to (9) .	15
(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; and	20
	(b) 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.	
(4)	However, the new employee's terms and conditions of employment do not include any bargaining fee payable under Part 6B.	25
(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 the collective agreement.	30
(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.	35
(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 cover-	40

ing the work or type of work done by the named employees (whether done by those employees or any other employees).

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)**. 5
- (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 10
 - (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
 - (d) that, if the employee joins the union, the employee will be bound by the collective agreement; and 15
 - (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—
 - (i) the terms and conditions in the collective agreement that would bind the employee if the employee were a member of the union; and 20
 - (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. 25
- (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**. 30
- (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. 35
- (6) In this section, **employee** includes a prospective employee.

63AA 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**.
- (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—
 - (a) notifying the employer whether the employee elects to join a union (or a particular union): 10
 - (b) objecting to the employer providing information about the employee to,—
 - (i) if the employee elects not to join a union, any union; or
 - (ii) if the employee elects to join a particular union, any other union.
- (3) The form must be accompanied by a notice that— 15
 - (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: 20
 - (i) the name of the employee:
 - (ii) whether the employee has—
 - (A) elected to join the union during the period; or
 - (B) elected not to join the union during the period; or 25
 - (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; and
 - (b) ends 40 days after the employee commences employment with the employer. 30
- (5) The employer must, within 20 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): 35
 - (a) the name of the employee:
 - (b) if the employee completes and returns a form in accordance with this section, the completed form:

- (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.
- (6) Every employer who fails to comply with this section is liable to a penalty imposed by the Authority. 5
- 19 Section 63A amended (Bargaining for individual employment agreement or individual terms and conditions in employment agreement)**
- (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: 10
- (d) under **section 62(7)**, 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: 15
- (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). 20
- 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

Amendments to Part 8 (strikes and lockouts)

- 21 Section 80 amended (Object of this Part)**
Repeal section 80(bb).
- 22 Sections 95A to 95H and cross-headings repealed**
Repeal sections 95A to 95H and the cross-headings above sections 95A, 95B, and 95F. 5
- 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) 10

- 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: 15
 - (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 the employee being a member of a union. 20
 - (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**”. 25
 - (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— 30
 - (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)** 5
- (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) 10

- 29 Section 67A amended (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: 15
- (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.

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

- 30 Section 69A amended (Object of this subpart)** 20
- Repeal section 69A(4).

- 31 Section 69B amended (Interpretation)**
- In section 69B, repeal the definitions of **associated person** and **exempt employer**.

- 32 Sections 69CA to 69I replaced** 25
- Replace sections 69CA to 69I with:

69D Meaning of new employer

- (1) In **section 69I**, **new employer**,—
- (a) in relation to contracting in, means person A in the definition of that term: 30
- (b) in relation to contracting out,—
- (i) means person B in the definition of that term; but

<ul style="list-style-type: none"> <li style="margin-left: 40px;">(ii) if person B subcontracts the work (whether before or at the same time as the contracting out), means the subcontractor: (c) in relation to subsequent contracting,— <ul style="list-style-type: none"> (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: (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. 	<p>5</p>	
<ul style="list-style-type: none"> (2) In the rest of this subpart, new employer means the person to whom an employee— <ul style="list-style-type: none"> (a) may elect or has elected to transfer under section 69I; or (b) has transferred under that section. 	<p>10</p>	
<p>69E Examples of contracting in, contracting out, and subsequent contracting</p>		
<ul style="list-style-type: none"> (1) This section contains examples of contracting in, contracting out, and subsequent contracting. (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. 	<p>15</p> <p>20</p>	
<p>Example A</p> <p>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.</p> <p>The agreement under which the independent contractor provides those services to the rest home expires or is terminated.</p> <p>The rest home then uses its employees or engages further employees to provide those services.</p> <p>Employees of the independent contractor to whom section 69F applies may elect to transfer to the rest home.</p>		<p>25</p> <p>30</p>
<p>Example B</p> <p>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.</p> <p>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.</p> <p>Employees of the subcontractor to whom section 69F applies may elect to transfer to the rest home.</p>		<p>35</p>

	<p>Note</p> <p>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.</p> <p>In example A and example B, the persons relate to the definition of contracting in as follows:</p> <ul style="list-style-type: none"> • the rest home is person A: • the independent contractor is person B. 	5
(4)	This subsection sets out examples of contracting out.	
	<p>Example C</p> <p>A school has employees who provide cleaning services.</p> <p>The school then enters into an agreement with an independent contractor to do that work or some of that work.</p> <p>The employees of the school to whom section 69F applies may elect to transfer to the independent contractor.</p>	10 15
	<p>Note</p> <p>Example C would not be a contracting out if, at the outset, the school does not have employees providing cleaning services.</p> <p>In example C, the persons relate to the definition of contracting out as follows:</p> <ul style="list-style-type: none"> • the school is person A: • the independent contractor is person B. 	15 20
	<p>Example D</p> <p>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.</p> <p>Employees of the independent contractor to whom section 69F applies may elect to transfer to the subcontractor.</p>	25
	<p>Note</p> <p>In example D, the persons relate to the definition of contracting out as follows:</p> <ul style="list-style-type: none"> • the independent contractor is person A: • the subcontractor is person B. 	30
	<p>Note</p> <p>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.</p>	35

(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.	5
	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
	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:	15
	<ul style="list-style-type: none"> • the airport operator is person A: • the first independent contractor is person B: • the second independent contractor is person C. 	
	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.	20
	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.	25
	The employees of the first subcontractor to whom section 69F applies may elect to transfer to the second subcontractor.	
	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:	30
	<ul style="list-style-type: none"> • the independent contractor is person A: • the first subcontractor is person B: • the second subcontractor is person C. 	
69F	Application of this subpart	35
(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
- (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. 5
- 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. 10
- 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— 15
- (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 20
- (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— 25
- (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
- (ii) if the employees' employer and the new employer agree to a later date, that agreed date. 30
- (2) Without limiting the information to be provided under **subsection (1)(c)**, the information provided under that provision must include—
- (a) the name of the new employer:
- (b) the nature and scope of the restructuring:
- (c) the date on which the restructuring is to take effect: 35
- (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:
- (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
 - (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.
- (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.
- (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.
- (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)**.
- (7) In **subsection (6)**, **sufficient notice** means—
 - (a) as soon as practicable; but
 - (b) no later than 20 working days before the date on which the restructuring takes effect.
- (8) An employer or other person who fails to comply with this section is liable to a penalty imposed by the Authority.

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.

- (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. 5

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.
- (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— 10
- (a) becomes an employee of the new employer on and from the specified date; and
 - (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 15
 - (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. 20
- (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—
 - (i) only part of the employee's work is affected by the restructuring; or 25
 - (ii) the work performed by the employee will be performed by or on behalf of more than 1 new employer; and
 - (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 30
 - (ii) was an employer before the employee transferred to the new employer; and 35

- (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. 5

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. 10

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. 15

- (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) 20

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: 25

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 30
 - (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)**. 35

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 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 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 4 hours and no 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 6 hours and no 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 more than 4 hours, to one 10-minute paid rest break:
- (b) if the subsequent period is at least 4 hours and no 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 6 hours and no 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. 5

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. 10

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— 15
- (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.

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— 20
- (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.

Work period over 8 hours

- (6) If **section 69ZD(5) and (6)** apply, an employer must, so far as is reasonable and practicable, provide the employee with— 25
- (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. 30
- (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: 35
- (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 4 hours and no more than 6 hours,—
 - (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 at least 6 hours and no 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.

5

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.
- (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**—
 - (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
 - (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,—
 - (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:
 - (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:
 - (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.

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**—
 - (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.

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,—
 - (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. 5

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) 10

39 Section 125 replaced (Remedy of reinstatement)

Replace section 125 with:

125 Reinstatement to be primary remedy

- (1) This section applies if— 15
- (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 must provide for reinstatement wherever practicable and reasonable, irrespective of whether it provides for any other remedy as specified in section 123. 20

Transitional, savings, and related provisions

40 Schedule 1AA amended

- (1) In Schedule 1AA, before clause 1, insert the Part heading set out in **Part 1 of the Schedule** of this Act. 25
- (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.

Consequential amendments to Wages Protection Act 1983

41 Consequential amendment to Wages Protection Act 1983 30

- (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”.

- (3) Repeal section 6(3)(ba) and (5).

Schedule
Transitional, savings, and related provisions

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Part 1

New Part 1 heading inserted into Schedule 1AA 5

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 10

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

(1) The following continue to have effect as if **sections 14, 15, and 28** of the 2018 Act had not come into force: 30

- (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** 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 63** of this Act (as inserted by **section 18** of the 2018 Act) applies to an employer who is bargaining with an individual on or after the commencement of **section 18** 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 17** of the 2018 Act but before the commencement of **section 18** of the 2018 Act, that an employer provide certain specified information to new employees, the refer-

	ence to section 63(3)(b) in section 59AA (as inserted by section 17 of the 2018 Act) must be read as if section 63(3)(b) had already commenced.	
(2)	However, an employer who receives information under section 59AA before the commencement of section 18 of the 2018 Act is required to provide the information only on or after the commencement of section 63(3)(b) (as inserted by section 18 of the 2018 Act).	5
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.	10
(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.	
	<i>Provisions relating to trial periods of 90 days or less</i>	15
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 section 29 of the 2018 Act in accordance with section 67A (as it was immediately before it was amended by section 29) of the 2018 Act continues to apply as if section 29 of the 2018 Act had not commenced.	20
	<i>Provision relating to rest breaks and meal breaks</i>	
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).	25
(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,—	30
	(a) 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	
	(b) 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 accord-	35

- ance 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)**.
- (5) The provisions of this clause have effect despite any provision to the contrary in any contract or agreement. 15
- 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.