

House of Representatives

Supplementary Order Paper

Tuesday, 21 October 2014

Employment Relations Amendment Bill

Proposed amendments

Hon Michael Woodhouse, in Committee, to move the following amendments:

Clause 10A

In *clause 10A(2)*, *new section 43(2)(b)(ii)*, after “initiating” (page 10, line 16), insert “the”.

Clause 11

In *clause 11*, *new section 44B(2)(a)*, replace “the employer’s” (page 11, lines 16 and 17) with “its”.

Clause 12: new section 50K

In *clause 12*, after *new section 50K(5)* (page 13, after line 31), insert:

“(6) This section applies subject to **section 50KA**.”

New clause 12A

After *clause 12* (page 13, before line 32), insert:

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

After **section 50K**, insert:

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

“(1) The Authority must dismiss an application made under **section 50K(1) and must refuse to make a declaration or determination under **section 50K(3) or (4)** if the Authority is satisfied that the party seeking the declaration has failed to observe good faith as described in **subsection (3)**.**

- “(2) However, the Authority is not precluded from making a declaration or determination if the party seeking the declaration has failed to observe good faith, but the Authority is satisfied that the party has rectified the failure.
- “(3) The failures to observe good faith are as follows:
- “(a) a failure to comply with the duty of good faith in section 4, if the failure—
- “(i) relates to the collective bargaining in respect of which the declaration is sought; and
- “(ii) has undermined the collective bargaining;
- “(b) a failure to deal in good faith in any mediation or facilitation directed by the Authority under **section 50K(2)** (whether in relation to the Authority or the other party or parties to the collective bargaining).
- “(4) To avoid doubt, for the purposes of **subsection (3)(a)**, a failure may relate to a matter before or after the application for the determination is made.
- “(5) If the Authority is precluded by **subsection (1)** from making a declaration or a determination, the Authority may make orders or recommendations or issue directions about what steps the parties to the collective bargaining ought to or must take, including (but not limited to) how the party who has failed to observe good faith may rectify the failure.”

Clause 17

After *clause 17(2)* (page 15, after line 7), insert:

- (2A) In section 63A(1)(g), replace “section 69M or section 69N” with “section 69OJ”.
- (2B) In section 63A(1)(h), replace “section 69I” with “section 69N”.

New clause 20A

After *clause 20* (page 15, after line 27), insert:

20A Section 69AAA amended (Interpretation)

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

Clause 28

In *clause 28*, new *section 69A(2)(b)(ii)*, after “conditions” (page 17, line 29), insert “of employment”.

Clause 30

In *clause 30*, new *section 69CC(3)(a)*, replace “employees of person B” (page 22, line 31) with “person B or employees (if any) of person B”.

In *clause 30*, new *section 69CC(3)(b)*, replace “employees of the subcontractor” (page 22, line 33) with “the subcontractor or employees (if any) of the subcontractor”.

In *clause 30, new section 69CC(3)(c)*, replace “employees of person B and partly by employees of the subcontractor” (page 22, lines 35 and 36) with “person B or employees (if any) of person B and partly by the subcontractor or employees (if any) of the subcontractor”.

In *clause 30, new section 69CC(4)(a)(ii)*, replace “employees of person C” (page 23, line 7) with “person C or employees (if any) of person C”.

In *clause 30, new section 69CC(4)(b)(ii)*, replace “employees of the subcontractor” (page 23, lines 11 and 12) with “the subcontractor or employees (if any) of the subcontractor”.

In *clause 30, new section 69CC(4)(c)(ii)*, replace “the employees of person C” (page 23, line 17) with “person C or the employees (if any) of person C”.

In *clause 30, new section 69CC(4)(d)(ii)*, replace “employees of the subcontractor” (page 23, lines 22 and 23) with “the subcontractor or employees (if any) of the subcontractor”.

In *clause 30*, replace *new section 69CD(8)* (page 24, line 36 to page 25, line 2) with:

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

In *clause 30*, heading to *new section 69CE*, delete “**or passed on**” (page 26, line 34).

Clause 32

In *clause 32, new section 69G(1)*, after “but no later than” (page 29, line 6), insert “15 working days before”.

In *clause 32, new section 69G(3)(c)(i)*, replace “elected” (page 30, line 18) with “had elected”.

In *clause 32, new section 69G(5)*, replace “post, fax, or email” (page 30, line 36) with “post or electronic means”.

In *clause 32, new section 69G(6)*, replace “post, fax, or email” (page 31, line 2) with “post or electronic means”.

In *clause 32*, after *new section 69G(7)* (page 31, after line 9), insert:

- “(7A) In **subsection (7), sufficient notice** means—
 - “(a) as soon as practicable; but
 - “(b) no later than 20 working days before the date on which the restructuring takes effect.

Clause 35

In *clause 35, new section 69LA(2)*, replace “statutory” (page 32, line 7) with “legislative”.

In *clause 35, new section 69LC(3)* replace “proceedings, in any court of competent jurisdiction, against that employer for damages” (page 34, lines 24 and 25)

with “proceedings for damages, in any court of competent jurisdiction, against that employer”.

Clause 39

In *clause 39*, new *section 69OB(1)*, definition of **individualised employee information**, *paragraph (a)(iv)(B)*, replace “wage” (page 37, line 11) with “wages”.

New clause 40A

After *clause 40* (page 39, after line 20), insert:

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

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

Clause 51

After *clause 51(1)* (page 47, after line 23), insert:

(1A) Replace section 91(3)(d) with:

“(d) the date and time on which the lockout will begin; and”.

Clause 56

In *clause 56*, new *section 95A*, replace “**sections 95B to 95E**” (page 49, line 10) with “this Act”.

In *clause 56*, new *section 95A*, definition of **specified pay deduction**, *paragraph (b)(i)*, replace “**section 95D(1)**” (page 50, line 5) with “**section 95D(1) and (2)**”.

In *clause 56*, new *section 95B(2)(a)*, replace “safety or health” (page 50, line 19) with “which relates to lawful strikes on the grounds of safety or health”.

New clauses 60A and 60B

After *clause 60* (page 56, after line 12), insert:

60A New section 166B inserted

After section 166A, insert:

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

“(1) The Chief of the Authority must ensure that an appropriate delegation is at all times in place under this section to enable 1 member of the Authority to act in place of the Chief of the Authority during—

“(a) any absence or incapacity of the Chief of the Authority;
or

“(b) any vacancy in the office of Chief of the Authority.

“(2) A delegation under this section—

“(a) must be in writing; and

“(b) may be made subject to any restrictions and conditions that the Chief of the Authority thinks fit; and

- “(c) may include a power to subdelegate any function, duty, or power to any other member of the Authority; and
- “(d) is revocable at any time, by notice in writing.
- “(3) The person to whom any functions, duties, or powers are delegated under this section may perform or exercise them in the same manner and with the same effect as if they had been conferred on the person directly by this Act and not by delegation.
- “(4) A person purporting to act under any delegation under this section is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.
- “(5) No delegation under this section affects or prevents the performance or exercise of any function, duty, or power by the Chief of the Authority, or affects the responsibility of the Chief of the Authority for the actions of any person acting under the delegation.
- “(6) A delegation, until it is revoked, continues to have effect according to its terms even if the Chief of the Authority by whom it was made has ceased to hold office.”

60B Section 173A amended (Recommendation to parties)

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

Clause 61

In *clause 61*, after *new section 174C(1)* (page 58, after line 30), insert:

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

New clause 61AB

After *clause 61A* (page 60, after line 21), insert:

61AB Section 181 amended (Report in relation to good faith)

In section 181(2), replace “section 174” with “**section 174A(2), 174B(2), 174C(2), or 174D(2)**”.

Schedule 1

In *Schedule 1*, *new Schedule 1AA*, *clause 2(3)*, replace “**section 13**” (page 63, line 33) with “**section 13(1)**”.

Explanatory note

This Supplementary Order Paper (SOP) amends the Employment Relations Amendment Bill. It replaces SOP No 427 and SOP No 453 and contains the amendments included in those SOPs.

In addition, this SOP—

- makes further amendments to *new section 69G* in *clause 32*;
- inserts a *new section 50KA* into the principal Act (see *new clause 12A*), which states when the Authority must not make a declaration or determination under *new section 50K* that collective bargaining has concluded;
- inserts *new section 166B* into the principal Act (see *new clause 60A*), which provides for the delegation of the Chief of the Employment Relations Authority's functions, duties, or powers.

The effect of the main changes is as follows:

Collective bargaining

New section 50K in *clause 12* is amended to make it subject to *new section 50KA* in *new clause 12A*.

New section 50K provides for the Employment Relations Authority (the **Authority**) to determine whether collective bargaining has concluded because of difficulties in concluding collective bargaining. If the Authority determines that collective bargaining has concluded, it must make a declaration to that effect.

New section 50KA inserted by this Supplementary Order Paper precludes the Authority from making a declaration if the party seeking the declaration has not observed good faith and this has undermined the collective bargaining, unless the Authority is satisfied that the party has rectified the failure.

Restructuring (vulnerable employees)

This Supplementary Order Paper includes a new amendment to *new section 69G(1)* and inserts a *new section 69G(7A)* in *clause 32*. These amendments insert additional time limits relating to the notification of a restructuring and of affected employees' election to transfer. The intention of specifying these time limits is so that the position of outgoing employers, incoming employers, and affected employees is clarified by the date of a restructuring. At the moment, under section 69G (whether in the Act or the Bill) matters may not be clarified or resolved before the date of restructuring, which may lead to uncertainty and limit the ability to manage the restructuring.

Delegation of Chief of Authority's functions, duties, or powers

This Supplementary Order Paper inserts *new section 166B* into the principal Act. *New section 166B* provides that the Chief of the Authority must ensure that an appropriate delegation is at all times in place to enable a member of the Authority to act in place of the Chief of the Authority if he or she is absent or incapacitated or there is a vacancy in that office.

Other amendments

The other amendments correct cross-references, improve the consistency of certain provisions in the Bill with the principal Act, and make other minor and technical drafting changes.

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Supplementary Order Paper. The disclosure statement provides access to information about any material policy changes to the Bill and identifies any new significant or unusual legislative features of the Bill as amended.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=sop&subtype=government&year=2014&no=1&>.
