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Volunteers Employment Protection Act 1973

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Ministry of Business, Innovation, and Employment.

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An Act to make provision for the protection of the employment of volunteers to Her Majesty's Armed Forces

1 Short Title

This Act may be cited as the Volunteers Employment Protection Act 1973.

2 Interpretation

(1) In this Act, unless the context otherwise requires,—

Armed Forces—

(a) means the Armed Forces within the meaning of the Defence Act 1990; and

(b) includes any branch, corps, command, formation, unit, or other part of the Armed Forces within the meaning of the Defence Act 1990; but

(c) does not include any part of the cadet forces

chief executive means the chief executive of the department

department means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

employee has the same meaning as in section 6 of the Employment Relations Act 2000

employment agreement has the meaning given to that term in section 5 of the Employment Relations Act 2000 and, for the avoidance of doubt, includes any employment contract that continues in force under section 242 of the Employment Relations Act 2000

Employment Court means the Employment Court constituted under the Employment Relations Act 2000

Employment Relations Authority means the Employment Relations Authority established under the Employment Relations Act 2000

Labour Inspector means a Labour Inspector designated under section 223 of the Employment Relations Act 2000

protected voluntary service or training—

(a) means voluntary service or training in the Armed Forces necessitating an absence from employment (other than during a period of holiday or

leave to which the employee is entitled other than by virtue of this Act) for a period or periods of—

(i) whole-time service in the form of 1 or more periods of continuous service or training not exceeding in the aggregate 3 months in any training year with the Armed Forces; and

(ii) part-time service in the form of annual, special, weekend, and evening service or training, not exceeding in the aggregate 3 weeks in any training year; and

(b) includes—

(i) any period or periods spent in travelling to and from any place of service or training:

(ii) any period or periods during which a volunteer is prevented from resuming employment after service or training because of sickness or any reasonable cause attributable to the service or training; but

(c) does not include any service that, even though it necessitates an absence from employment, is service in respect of which leave may be granted under Part 2 or Part 3

reserve forces has the meaning given to that term by section 2(1) of the Defence Act 1990

State employee means—

(a) every person whose rate of remuneration is determined under the Public Service Act 2020:

(b) every person whose rate of remuneration is determined under any of the provisions of Part 4 of the Policing Act 2008:

(c) every person employed in the State services whose remuneration is determined by the Remuneration Authority

State services has the meaning given to that term by section 5 of the Public Service Act 2020

territorial forces has the meaning given to that term by section 2(1) of the Defence Act 1990

training year means the period commencing on 1 July in one year and ending with 30 June in the following year, both dates inclusive

undertaking includes any business, whether carried on by way of trade or not, and the activities of any body of persons, whether incorporated or not

union means a union registered under the Employment Relations Act 2000

volunteers leave—

(a) means leave to which an employee is entitled in accordance with Part 1 or Part 2 or Part 3; and

(b) includes leave of the kind described in paragraph (a) to which an employee is entitled by virtue of—

(i) any Act other than this Act; or

(ii) any employment agreement.

(2) Where it is necessary, for the purposes of applying any of the provisions of sections 7A, 14H(b), and 14R, to ascertain, in relation to any of the circumstances mentioned in clauses 1 to 5 of Schedule 2,—

(a) whether any employee has remained in the employment of the same employer during any period of time; or

(b) whether any employee has resumed employment with the same employer,—

the provisions of that schedule apply.

Section 2: substituted, on 1 April 2004, by section 4 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

Section 2(1) **State employee** paragraph (a): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

Section 2(1) **State employee** paragraph (b): amended, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

Section 2(1) **State services**: amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

3 Act to bind the Crown

This Act shall bind the Crown.

3A Application of this Act to employees who have non-statutory rights to volunteers leave

(1) Parts 1 to 4 apply to all employees except any employee who has rights and benefits that—

(a) entitle the employee to volunteers leave; and

(b) are in their overall effect, as favourable to that employee as, or more favourable to that employee than, the rights and benefits provided for in Parts 1 to 4; and

(c) are provided under a comprehensive employment agreement or arrangement (other than this Act).

(2) An employment agreement or other arrangement is comprehensive if it effectively addresses all of the following matters:

(a) the conditions of eligibility for volunteers leave under Part 1 and volunteers leave under Part 2 and volunteers leave under Part 3:

(b) the duration of volunteers leave under Part 1 and volunteers leave under Part 2 and volunteers leave under Part 3:

(c) the degree of protection for the employee's position in the employment of the employer during and subsequent to any absence on volunteers leave:

(d) the employer's obligation or lack of obligation to pay remuneration during volunteers leave:

(e) the procedural requirements relating to volunteers leave.

(3) The provisions of an employment agreement or other arrangement that are not comprehensive are of no effect so far as they relate to volunteers leave.

(4) Parts 5 to 7 apply to all employees.

Compare: 1987 No 129 s 4

Section 3A: inserted, on 1 April 2004, by section 6 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

Part 1
Protected voluntary service or training

Part 1 heading: inserted, on 1 April 2004, by section 7 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

4 Employee deemed to have leave of absence from employment

(1) Where any employee who is employed by any employer performs or undergoes any protected voluntary service or training for any period or periods, his employer shall be deemed to have granted him leave of absence for the period or periods:

provided that, in the case of the employee's whole-time service, the leave of absence shall be deemed to extend for such further period from the end of that service, not exceeding 7 days, as the employee may require:

provided also that, where in any case the employee is prevented by his sickness or by any other reasonable cause from resuming his employment at the end of any period or extended period of leave of absence hereinbefore provided for, the leave of absence shall be deemed to have been extended for such further period as may be reasonable.

(2) Subject to the provisions of this Act as to holidays, the employer of any such employee shall not be obliged to pay him any remuneration for the period of leave of absence provided for by this section.

Compare: 1961 No 116 s 60

Section 4 heading: amended, on 1 April 2004, pursuant to section 5(1) of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

Section 4(1): amended, on 1 April 2004, by section 5(1) of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

Section 4(1) first proviso: amended, on 1 April 2004, by section 5(1) of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

Section 4(1) first proviso: amended, on 1 April 2004, by section 5(2) of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

Section 4(1) second proviso: amended, on 1 April 2004, by section 5(1) of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

Section 4(2): amended, on 1 April 2004, by section 5(1) of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

5 Resumption of employment after leave of absence

Where any employee presents himself to his employer at or before the end of any period of leave of absence to which he is entitled under section 4, the employer shall forthwith resume the employment of the employee in the occupation in which he was last employed before the leave of absence, and on terms and conditions not less favourable to him than those that would have been applicable to him if he had not performed or undergone the protected voluntary service or training:

provided that, in the case of employment of a temporary, seasonal, or casual nature, this section shall not apply if, having regard to the general conditions applicable to the industry concerned, the employment of the employee would not normally have continued until the end of the period of leave of absence.

Compare: 1961 No 116 s 61

Section 5: amended, on 1 April 2004, by section 5(1) of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

Section 5 proviso: amended, on 1 April 2004, by section 5(1) of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

6 Workers not to be dismissed by reason of protected voluntary service or training

[Repealed]

Section 6: repealed, on 1 April 2004, by section 8 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

7 Workers' rates of remuneration to be computed as if protected period were time served

[Repealed]

Section 7: repealed, on 1 April 2004, by section 8 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

7A Continuity of employment

Where an employee resumes service with the same employer at the end of a period of leave under this Part,—

(a) the employee's service, for the purpose of any rights and benefits that are conditional on unbroken service, are not broken by the taking of leave under this Part; and

(b) any period during which the employee was on leave under this Part counts—

(i) subject to sections 8 and 9, as time served under the employee's employment agreement; and

(ii) subject to section 7B, as service for the purpose of any superannuation scheme to which the employee belongs in the employee's capacity as an employee of the employer.

Compare: 1987 No 129 s 43

Section 7A: inserted, on 1 April 2004, by section 9 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

7B Contributions to superannuation schemes

Nothing in section 7A(b)(ii)—

(a) entitles an employee to have any period counted as service for the purposes of a superannuation scheme if the employee is required to pay contributions in respect of that period and has not done so; or

(b) relieves an employee from any obligation under a superannuation scheme to pay contributions in respect of any period during which the employee is on leave under this Part.

Compare: 1987 No 129 s 44

Section 7B: inserted, on 1 April 2004, by section 9 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

8 Annual holidays

(1) For the purpose of ascertaining the rights of any employee to annual or periodical holidays or leave with pay, and the obligations of his employer in relation thereto, whether under the Holidays Act 2003 or otherwise, where the time served by the employee in the employment of that employer is interrupted by the employee's protected voluntary service or training, the period of the leave of absence to which he is entitled under section 4 in respect of that service or training shall be deemed to be time served in that employment.

(2) Where an employer is required to allow annual or periodical holidays or leave to any employee, the holidays or leave shall not, except at the request of the employee, be allowed at times comprised within any period of protected voluntary service or training.

Compare: 1961 No 116 s 63

Section 8(1): amended, on 1 April 2004, by section 5(1) of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

Section 8(1): amended, on 1 April 2004, by section 5(2) of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

Section 8(1): amended, on 1 April 2004, by section 91(2) of the Holidays Act 2003 (2003 No 129).

Section 8(2): amended, on 1 April 2004, by section 5(1) of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

9 Other holidays

Where any employee who is employed by any employer performs or undergoes any protected voluntary service or training, the rights of the employee to be allowed any day as a holiday on full pay during the period of that service or training, and the obligations of his employer in relation thereto, shall be ascertained as if the employee had ceased to be employed by the employer at the beginning of that service or training.

Compare: 1961 No 116 s 65

Section 9: amended, on 1 April 2004, by section 5(1) of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

10 Apprentices

[Repealed]

Section 10: repealed, on 1 April 2004, by section 10 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

11 Employees to notify employers before commencing protected voluntary service or training

(1) Where any employee volunteers for any protected voluntary service or training which will necessitate his absence from work, he shall notify his employer thereof not less than 14 days before undertaking that service or training.

(2) Every person who fails to comply in any respect with the foregoing provisions of this section shall not have his then current employment protected under this Act.

Compare: 1961 No 116 s 67

Section 11 heading: amended, on 1 April 2004, pursuant to section 5(1) of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

Section 11(1): amended, on 1 April 2004, by section 5(1) of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

12 Applications for postponement of service or training

(1) Where any employee volunteers for any protected voluntary service or training in the Armed Forces, the employer may apply to a person appointed by the chief executive under subsection (2) for a postponement of that service or training upon the ground that the employee's volunteering for that service or training will cause undue hardship to the employer.

(2) The chief executive may from time to time appoint such person or persons as he thinks fit, whether or not an officer or officers of the department, for the purpose of determining applications for postponement under this section. Any such person who holds no other appointment as an officer or employee of the State services within the meaning of the Public Service Act 2020 may be paid, out of money appropriated by Parliament for the purpose, remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the

provisions of that Act shall apply accordingly as if he were a member of a statutory board within the meaning of that Act.

(3) The person to whom any application for postponement is made under subsection (1) may, after considering any statement of fact or any documentary or other evidence supplied to him or obtained by him,—

(a) grant a postponement for such period as he thinks fit; or

(b) dismiss the application.

(4) Every determination by a person appointed under subsection (1) shall be final.

Compare: 1961 No 116 s 22

Section 12(1): amended, on 1 April 2004, by section 5(1) of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

Section 12(1): amended, on 1 April 2004, by section 5(2) of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

Section 12(1): amended, on 1 April 2004, by section 11(a) of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

Section 12(2): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

Section 12(2): amended, on 1 April 2004, by section 11(a) of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

Section 12(2): amended, on 1 April 2004, by section 11(b) of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

13 Proceedings may be taken by Labour Inspector

[Repealed]

Section 13: repealed, on 1 April 2004, by section 10 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14 Evidence

(1) A certificate of an authorised officer as to the duration of a person's protected voluntary service or training shall be conclusive for the purposes of any proceedings under or for the purposes of this Act.

(2) Every document purporting to be such a certificate as aforesaid or any other certificate authorised by this Act and to be signed by an authorised officer shall be received in evidence and shall, in the absence of proof to the contrary, be deemed to be such a certificate of an authorised officer; and in any proceedings under or for the purposes of this Act the production of a document purporting to be certified by or on behalf of an authorised officer to be a true copy of any such certificate as is mentioned in this subsection shall, in the absence of proof to the contrary, be sufficient evidence of the certificate.

(3) In this section the term **authorised officer** means an officer of the Armed Forces nominated as an authorised officer for the purposes of this Act by the appropriate Chief of Service.

Compare: 1961 No 116 s 69

Section 14(3): amended, on 20 September 2007, by section 4 of the Volunteers Employment Protection Amendment Act 2007 (2007 No 86).

Part 2
Service in time of war or emergency

Part 2: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14A Employees to whom this Part applies

This Part applies to the following employees:

(a) every employee—

(i) who is a member of the territorial forces or the reserve forces; and

(ii) who, in time of war or other like emergency or during any state of emergency declared under the Emergency Management Act 2026, is, as a consequence of a Proclamation made under section 39(2) or section 40(2) of the Defence Act 1990, called out for continuous service, either in New Zealand or elsewhere; and

(iii) who was, at the time of the making of the Proclamation, employed by an employer:

(b) every employee—

(i) who is a member of the territorial forces or the reserve forces; and

(ii) who, in the event of an actual or imminent emergency involving the deployment of members of the Armed Forces outside New Zealand, is, as a consequence of a Proclamation made under section 39(3) or section 40(3) of the Defence Act 1990, called out for continuous service, either in New Zealand or elsewhere; and

(iii) who was, at the time of the making of the Proclamation, employed by an employer.

Section 14A: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

Section 14A(a)(ii): amended, on 4 September 2026, by section 235 of the Emergency Management Act 2026 (2026 No 53).

14B Entitlement to leave

Except as otherwise provided in this Part, every employee is entitled to leave in accordance with this Part if that employee—

(a) is an employee to whom this Part applies; and

(b) is, at the time of the making of the relevant Proclamation under section 39 or section 40 of the Defence Act 1990, employed by his or her employer for at least 10 hours a week.

Compare: 1987 No 129 s 7

Section 14B: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14C Date of commencement of leave

Leave under this Part begins—

(a) on the day on which the employee is called out for continuous service, either in New Zealand or elsewhere, as a consequence of a Proclamation under section 39 or section 40 of the Defence Act 1990; or

(b) on such earlier or later date as is agreed on by the employee and the employee's employer.

Compare: 1987 No 129 s 12

Section 14C: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14D Obligation to notify employer in relation to service in time of war or emergency

(1) Where an employee becomes aware that he or she is, as a consequence of a Proclamation made under section 39 or section 40 of the Defence Act 1990, called out, or is liable to be called out, for continuous service, either in New Zealand or elsewhere, that employee must, as soon as practicable, give written notice to the employee's employer that the employee has been so called out or is liable to be so called out.

(2) The notice must state, in addition, whether or not the employee wishes to take leave under this Part.

(3) If the employee wishes to take leave under this Part, the notice must—

(a) state the proposed date on which the employee wishes to commence leave; and

(b) contain either—

(i) a statement of the duration of the leave; or

(ii) if the duration of the leave is not then known to the employee, a statement to the effect that the employee does not know the duration of the leave but will, as soon as practicable after the duration of the leave becomes known to the employee, give to the employer written notice of the duration of the leave.

(4) If a notice under subsection (1) contains a statement complying with subsection (3)(b)(ii), the employee must, as soon as practicable after the duration of the leave becomes known to the employee, give to the employee's employer written notice of the duration of the leave.

(5) If, after an employee has given to the employee's employer a statement complying with subsection (3)(b)(i) or subsection (4), the duration of the employee's leave is extended (other than with the consent of the employee's

employer), the employee must give to the employee's employer, as soon as practicable, written notice of the extension of the duration of the leave.

Compare: 1987 No 129 s 31(1), (2)

Section 14D: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14E Obligation to notify employee

(1) Every employer who receives a notice under section 14D(1) that states that the employee wishes to take leave under this Part must, within 21 days after receipt of the notice, give to the employee who gave that notice a written notice in the prescribed form—

(a) stating whether the employee is entitled to take leave under this Part; and

(b) where an employer states that the employee is not entitled to take leave under this Part, stating the reasons why the employee is not so entitled; and

(c) stating that, until the end of the employee's leave under this Part, the employee's position in the employment of the employer—

(i) can be kept open; or

(ii) cannot be kept open; and

(d) where the employer states that the employee's position cannot be kept open, informing the employee—

(i) that the employee may dispute the employer's statement that the employee's position cannot be kept open; and

(ii) that the employer will, for the period of 26 weeks beginning with the day on which the leave under this Part ends, give the employee preference over other applicants for any position which is vacant and which is substantially similar to the position held by the employee at the beginning of the leave under this Part; and

(e) informing the employee of the substance of sections 14A, 14B, 14C, and 14S.

(2) Where an employee receives a notice given under subsection (1) and the employee disputes any statement given in that notice, that employee may invoke any procedure set out in Part 6.

Compare: 1987 No 129 s 36(1), (3)

Section 14E: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14F Employer's notice in relation to return to work and preference for appointment

Within 21 days after the beginning of an employee's leave under this Part, the employer of the employee must give to the employee a written notice stating—

(a) either—

(i) where the employer is able to keep the employee's position open until the end of the employee's leave under this Part, that, if the employee decides to return to work at the end of the employee's leave under this Part, the employee will be required to return to work, on the next working day after the date on which the employee's leave under this Part ends; or

(ii) in any other case, that, for the period of 26 weeks beginning with the day on which the leave under this Part ends, the employer will give the employee preference over other applicants for any position which is vacant and which is substantially similar to the position held by the employee at the beginning of the employee's leave under this Part; and

(b) where paragraph (a)(i) applies,—

(i) the employee's obligations under section 14N; and

(ii) the employee's rights under section 14T(1)(a) and the employee's obligations under section 14T(2)(a); and

(iii) the employee's rights under section 14U; and

(c) where paragraph (a)(ii) applies,—

(i) the employee's rights under section 14T(1)(b) and the employee's obligations under section 14T(2)(b); and

(ii) the employee's rights under section 14U.

Compare: 1987 No 129 s 38

Section 14F: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

Part 3
Service in situation of national interest

Part 3: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14G Employees to whom this Part applies

This Part applies to every employee—

(a) who undertakes special service under section 50 of the Defence Act 1990; and

(b) whose obligation to undertake that service arises from the acceptance, during a period specified to be in the national interest in an order made under section 50A of the Defence Act 1990, of an offer that was made under section 50 of that Act; and

(c) who was, at the beginning of the period specified in the order made under section 50A of the Defence Act 1990, employed by an employer.

Section 14G: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14H Entitlement to leave

Except as otherwise provided in this Part, every employee is entitled to leave in accordance with this Part if that employee—

(a) is an employee to whom this Part applies; and

(b) has, for the period of 12 months immediately preceding the making of the relevant order under section 50A of the Defence Act 1990, been in the employment of the same employer for at least an average of 10 hours a week during that period.

Compare: 1987 No 129 s 7

Section 14H: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14I Duration of leave

Leave taken under this Part must be taken in one continuous period not exceeding 12 months.

Compare: 1987 No 129 s 9(1)

Section 14I: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14J Right of employer and employee to determine date of commencement of leave by agreement

Leave under this Part may, by agreement between the employee and the employee's employer, begin on any date.

Compare: 1987 No 129 s 12

Section 14J: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14K Obligation to notify employer in relation to leave for special service

(1) An employee who wishes to take leave under this Part in order to undertake special service under section 50 of the Defence Act 1990 must give written notice to the employee's employer of the employee's wish to take that leave.

(2) The notice must state the proposed date on which the employee wishes to commence leave, and the duration of the leave.

(3) The notice must be given at least 28 days before the proposed date on which the employee wishes to commence leave.

Compare: 1987 No 129 s 31

Section 14K: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14L Obligation to notify employee

(1) Every employer who receives a notice under section 14K(1) must, within 21 days after receipt of the notice, give to the employee who gave that notice a written notice in the prescribed form—

(a) stating whether the employee is entitled to take leave under this Part; and

(b) where an employer states that the employee is not entitled to take leave under this Part, stating the reasons why the employee is not so entitled; and

(c) stating that, until the end of the employee's leave under this Part, the employee's position in the employment of the employer—

(i) can be kept open; or

(ii) cannot be kept open; and

(d) where the employer states that the employee's position cannot be kept open, informing the employee—

(i) that the employee may dispute the employer's statement that the employee's position cannot be kept open; and

(ii) that the employer will, for the period of 26 weeks beginning with the day on which the leave under this Part ends, give the employee preference over other applicants for any position which is vacant and which is substantially similar to the position held by the employee at the beginning of the leave under this Part; and

(e) informing the employee of the substance of sections 14G, 14H, 14I, 14J, 14T, and 14U.

(2) Where an employee receives a notice given under subsection (1) and the employee disputes any statement given in that notice, that employee may invoke any procedure set out in Part 6.

Compare: 1987 No 129 s 36(1), (3)

Section 14L: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14M Employer's notice in relation to return to work and preference for appointment

Within 21 days after the beginning of an employee's leave under this Part, the employer of the employee must give to the employee a written notice stating—

(a) the date on which the employee's leave under this Part will end; and

(b) either,—

(i) where the employer is able to keep the employee's position open until the end of the employee's leave under this Part, the date on which, if the employee decides to return to work at the end of the employee's leave under this Part, the employee will be required to

return to work, being the date of the next working day after the date on which the employee's leave under this Part ends; or

(ii) in any other case, the period of 26 weeks during which the employer will give the employee preference over other applicants for any position which is vacant and which is substantially similar to the position held by the employee at the beginning of the employee's leave under this Part; and

(c) where paragraph (b)(i) applies,—

(i) the employee's obligations under section 14N; and

(ii) the employee's rights under section 14T(1)(a) and the employee's obligations under section 14T(2)(a); and

(iii) the employee's rights under section 14U; and

(d) where paragraph (b)(ii) applies,—

(i) the employee's rights under section 14T(1)(b) and the employee's obligations under section 14T(2)(b); and

(ii) the employee's rights under section 14U.

Compare: 1987 No 129 s 38

Section 14M: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

Part 4
Provisions applying in relation to employees taking leave under Part 2 or Part 3

Part 4: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14N Employee's notice in relation to return to work

(1) This section applies to every employee who is on leave under Part 2 or Part 3 and whose position is being kept open by the employer.

(2) An employee must, not later than 21 days before the date on which the employee's leave under Part 2 or Part 3 ends, give to his or her employer written notice stating whether or not the employee will be returning to work at the end of that leave.

(3) An employee is not required to give a notice under subsection (2) if it is not reasonably practicable for the employee to give a notice under that subsection.

(4) If an employee who is not required to give a notice under subsection (2) does not wish to return to work at the end of the employee's leave under Part 2 or Part 3, that employee must, as soon as practicable, give to the employer written notice stating that the employee will not be returning to work at the end of that leave.

(5) If an employee who is not required to give a notice under subsection (2) wishes to return to work at the end of the employee's leave under Part 2 or Part 3,—

(a) that employee and the employee's employer must co-operate in good faith for the purpose of agreeing on arrangements for the employee's return to work; but

(b) if the employee and the employee's employer cannot agree on arrangements for the employee's return to work, the employee must give to the employee's employer not less than 7 days' notice in writing of the date on which the employee will be returning to work.

Compare: 1987 No 129 s 39(1)

Section 14N: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14O Presumption that employee's position can be kept open

(1) Where an employee takes a period of leave under Part 2 or Part 3, the employer is to be presumed in any proceedings under this Act, to be able to keep open for the employee, until the end of the employee's leave under Part 2 or Part 3, the employee's position in the employment of the employer unless, in any case where the period of leave is, or is likely to be, more than 4 weeks, the employer proves that the employee's position cannot be kept open—

(a) because a temporary replacement is not reasonably practicable due to the key position occupied within the employer's enterprise by the employee; or

(b) because of the occurrence of a redundancy situation.

(2) In determining whether or not a position is a key position for the purposes of subsection (1)(a), regard may be had, among other things, to—

(a) the size of the employer's enterprise; and

(b) the training period or skills required in the job.

Compare: 1987 No 129 s 41(1), (2)

Section 14O: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14P Employer's obligations in respect of remuneration and holiday pay

(1) Subject to subsection (2), the employer of an employee who takes leave under Part 2 or Part 3 is not obliged to pay that employee any remuneration for—

(a) any period of the employee's leave under Part 2 or Part 3; or

(b) any period during which the employee is entitled under this Act, following any period of leave under Part 2 or Part 3, to preference in obtaining employment with the employer.

(2) If an employee becomes entitled to an annual holiday on pay during—

(a) a period of leave under Part 2 or Part 3; or

(b) a period of preference in obtaining employment; or

(c) the period of 12 months commencing with the date on which the employee returns to work after a period of leave under Part 2 or Part 3 or a period of preference in obtaining employment,—

the employee is, despite anything in section 21 of the Holidays Act 2003, entitled to holiday pay for that holiday only at the rate of the employee's average weekly earnings for the 12 months immediately before the end of the last pay period before the annual holiday.

Compare: 1987 No 129 s 42

Section 14P: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14Q Power to increase entitlement to holiday pay

Any employment agreement may, in addressing the matter of holiday pay for an employee taking any period of leave under Part 2 or Part 3, provide that the employee is entitled to holiday pay in respect of annual holidays, at the same rate as, or at a higher rate than, the rate referred to in section 14P(2).

Compare: 1987 No 129 s 72

Section 14Q: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14R Continuity of employment

Where an employee resumes service with the same employer at the end of a period of leave under Part 2 or Part 3 or while the employee is entitled, following leave under Part 2 or Part 3, to preference in obtaining employment with the employee's employer,—

(a) the employee's service, for the purpose of any rights and benefits that are conditional on unbroken service, are not broken—

(i) by the taking of leave under Part 2 or Part 3; or

(ii) by the employee being without a position in the employer's service during part of the period of preference; or

(iii) by both; and

(b) any period during which the employee was on leave under Part 2 or Part 3 and any period during which the employee was entitled, following leave under Part 2 or Part 3, to preference in obtaining employment with the employer counts—

(i) subject to section 14P, as time served under the employee's employment agreement; and

(ii) subject to section 14S, as service for the purpose of any superannuation scheme to which the employee belongs in the employee's capacity as an employee of the employer.

Compare: 1987 No 129 s 43

Section 14R: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14S Contributions to superannuation schemes

Nothing in section 14R(b)(ii)—

(a) entitles an employee to have any period counted as service for the purposes of a superannuation scheme if the employee is required to pay contributions in respect of that period and has not done so; or

(b) relieves an employee from any obligation under a superannuation scheme to pay contributions in respect of any period during which the employee is on leave under Part 2 or Part 3 or during which the employee is entitled, following leave under Part 2 or Part 3, to preference in obtaining employment with the employee's employer.

Compare: 1987 No 129 s 44

Section 14S: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14T Early ending of leave under Part 2 or Part 3

(1) Subject to subsection (2), an employee who is on leave under Part 2 or Part 3 may,—

(a) if the employee's position is being kept open by the employer, choose, if the employer consents, to end the leave under Part 2 or Part 3 by returning to work before the date on which the employee is required to return to work at the end of the leave under Part 2 or Part 3; or

(b) in any other case, choose, if the employer consents, to end the leave under Part 2 or Part 3 and begin the period of preference.

(2) Where an employee wishes,—

(a) pursuant to subsection (1)(a), to return to work before the date on which the employee is required to return to work at the end of the employee's leave under Part 2 or Part 3; or

(b) pursuant to subsection (1)(b), to end any period of leave under Part 2 or Part 3 and begin the period of preference before the date on which the period of preference would otherwise begin,—

the employee must give to the employer not less than 21 days' notice in writing of the date on which the employee wishes to return to work or begin the period of preference, as the case may be.

Compare: 1987 No 129 ss 39(2), 45(1)(e)–(g)

Section 14T: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14U Extension of leave under Part 2 or Part 3

(1) Subject to subsection (2), an employee who is on leave under Part 2 or Part 3 may, if the employer consents or if an extension of the leave is required as a

consequence of a Proclamation under section 39 or section 40 of the Defence Act 1990, extend the leave under Part 2 or Part 3 until a specified date, which becomes the date on which the employee's leave under Part 2 or Part 3 will end.

(2) Without limiting the right of an employee to take a period of leave other than leave under Part 3, nothing in subsection (1) entitles an employee to extend any period of leave under Part 3 with the result that the period of leave exceeds 12 months.

Compare: 1987 No 129 s 45(3), (4)

Section 14U: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14V Failure to return to work

If an employee who takes up leave under Part 2 or Part 3 and whose position is kept open by the employer—

(a) fails, without good cause, to return to work at the end of the period of leave; or

(b) informs the employer, before the end of the period of leave, that the employee has decided not to return to work at the end of the period of leave,—

the employee's employment is, subject to any agreement between the employer and the employee, to be deemed to have been at an end as from the day on which the period of leave began.

Compare: 1987 No 129 s 46

Section 14V: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14W Failure to accept employment

If an employee who has taken leave under Part 2 or Part 3 fails, without reasonable excuse, to take up, on the date specified by the employer or within 7 days thereafter, any position substantially similar to the position ordinarily held by the employee before taking leave under Part 2 or Part 3 that is offered to the employee by the employee's employer during the period of 26 weeks beginning with the day after the date on which the period of leave under Part 2 or Part 3 ends, that employee's employment is deemed to have been at an end as from the day on which the period of leave under Part 2 or Part 3 began.

Compare: 1987 No 129 s 47

Section 14W: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14X Employees employed to replace employees on leave under Part 2 or Part 3

Where a temporary employee is employed to replace an employee who is on leave under Part 2 or Part 3, the employer must, before employing the temporary employee, inform the temporary employee in writing—

(a) that the temporary employee is being employed on a temporary basis in the place of an employee who is on leave under Part 2 or Part 3; and

(b) that the employee may return to work, in accordance with section 14T, before the date on which the employee is required to return to work at the end of the leave under Part 2 or Part 3.

Compare: 1987 No 129 s 48

Section 14X: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

Part 5
Protection of employment

Part 5: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14Y Termination of employment and discrimination prohibited

(1) No employer may terminate the employment of any employee, or discriminate against any employee in relation to his or her employment, on the grounds that—

(a) the employee has indicated that the employee wishes to take volunteers leave; or

(b) the employee is, or has been, a member of the territorial forces or the reserve forces; or

(c) the employee, being a member of the territorial forces or the reserve forces, is entitled, or may become entitled, to take volunteers leave; or

(d) the employee is on volunteers leave; or

(e) the employee has taken volunteers leave.

(2) It is not a contravention of subsection (1) for an employer to terminate the employment of an employee—

(a) for a substantial reason not related to the employee's rights under this Act; or

(b) with the employee's consent.

Compare: 1987 No 129 ss 49, 54(c); Defence Reserve Service (Protection) Act 2001 s 16(1)(c), (2) (Aust)

Section 14Y: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14Z Special defences relating to termination of employment

Where—

(a) it is alleged in any proceedings under this Act that an employer has, in contravention of section 14Y(1), terminated the employment of an employee; and

(b) it is proved in those proceedings that the employer terminated the employee's employment either—

(i) during the employee's absence on volunteers leave; or

(ii) during the period of 26 weeks beginning with the day on which any period of the employee's volunteers leave ended,—

the defences set out in sections 14ZA and 14ZB are available to the employer.

Compare: 1987 No 129 s 50

Section 14Z: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14ZA Special defences relating to termination of employment during volunteers leave

Where the termination of an employee's employment is proved to have taken place during the employee's absence on volunteers leave, it is a defence for the employer to prove—

(a) that, on the ground of the occurrence of a redundancy situation that occurred in the employer's business after the employer gave the employee notice in terms of section 14E(1)(c)(i) or section 14L(1)(c)(i), the employer was unable to keep the employee's position open; and

(b) that the employer terminated the employee's employment on account of a redundancy situation of such nature that there was no prospect of the employer being able to appoint the employee to a position which was vacant and which was substantially similar to the position held by the employee at the beginning of the employee's volunteers leave; and

(c) that the employer had not, in the period commencing with the beginning of the employee's volunteers leave and ending with the termination of the employee's employment, prejudicially affected either the employee's seniority or the employee's superannuation rights.

Compare: 1987 No 129 s 51

Section 14ZA: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14ZB Special defence relating to termination of employment during 26 weeks following volunteers leave

Where the termination of an employee's employment is proved to have taken place during the period of 26 weeks beginning with the day after the date on

which any period of the employee's volunteers leave ended, it is a defence for the employer to prove—

(a) the matters specified in paragraphs (b) and (c) of section 14ZA; and

(b) that, during the period between the end of the period of the employee's volunteers leave and the termination of the employee's employment, the employer had (despite being prepared to accord the employee preference over other applicants) been unable to appoint the employee to a position which was vacant and which was substantially similar to the position held by the employee at the beginning of the employee's period of volunteers leave.

Compare: 1987 No 129 s 52

Section 14ZB: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14ZC Redundancy payments not affected

Nothing in this Act affects any redundancy payment payable pursuant to the provisions of any Act or of any order or employment agreement.

Compare: 1987 No 129 s 53

Section 14ZC: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14ZD Discrimination

(1) For the purposes of section 14Y(1), an employee is discriminated against in that employee's employment if the employee's employer or a representative of that employer, by reason directly or indirectly of any of the prohibited grounds of discrimination specified in section 14Y(1),—

(a) refuses or omits to offer or afford to that employee the same terms of employment, conditions of work, fringe benefits, or opportunities for training, promotion, and transfer as are made available for other employees of the same or substantially similar qualifications, experience, or skills employed in the same or substantially similar circumstances; or

(b) subjects that employee to any detriment, in circumstances in which other employees employed by that employer on work of that description are not or would not be subjected to such detriment.

(2) For the purposes of this section, **detriment**—

(a) includes anything that has a detrimental effect on the employee's employment, job performance, or job satisfaction; but

(b) does not include termination of the employee's employment.

Compare: 2000 No 24 s 104(1)(b), (2); Defence Reserve Service (Protection) Act 2001 s 16(1)(a), (b), (2) (Aust)

Section 14ZD: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

Part 6
Remedies available to employees

Part 6: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14ZE Interim order

(1) Where any employee alleges that the employee's employer has, within the preceding 2 months and in contravention of section 14Y(l), terminated the employee's employment or given the employee notice terminating the employee's employment, the employee may apply to the Employment Relations Authority for an interim order reinstating the employee in the employee's position or cancelling the notice terminating the employee's employment.

(2) Subject to subsection (3), every interim order made under subsection (1) expires on a date to be specified in the order, being a date not later than 26 weeks after the date on which the order is made.

(3) An interim order made under subsection (1) may be renewed by the Employment Relations Authority from time to time on the application of the employee in whose favour it is made if the Employment Relations Authority is satisfied that the employee is taking reasonable steps to use the procedures available to the employee under sections 14ZG to 14ZL.

(4) An officer of the Employment Relations Authority must send a copy of the interim order and of every decision renewing the interim order to the employer by registered letter.

Compare: 1987 No 129 s 55

Section 14ZE: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14ZF Volunteers leave complaints

(1) Where any employee alleges that the employee's employer—

(a) is not justified in stating, in the notice given to the employee under section 14E or section 14L, that the employee is not entitled to take any period of volunteers leave or that the employee's position cannot be kept open; or

(b) has, in contravention of section 14Y(1), terminated the employee's employment or given the employee notice terminating the employee's employment; or

(c) has taken other action, or has omitted to do something, that affects, to the employee's disadvantage, the employee's rights and benefits in respect of volunteers leave; or

(d) has, in contravention of section 14Y(1), discriminated against that employee in relation to his or her employment,—

that allegation is a volunteers leave complaint to which this section applies, and the employee may use, in respect of that volunteers leave complaint, the procedures provided in sections 14ZG to 14ZL.

(2) A volunteers leave complaint to which this section applies may not be made—

(a) after the expiration of 26 weeks from the date on which the subject matter of the complaint arose; or

(b) after the expiration of 8 weeks from the expiry of any period of volunteers leave taken by the employee,—

whichever is the later.

(3) The procedures provided in sections 14ZG to 14ZL may be used before or after the making of an interim order under section 14ZE.

(4) A volunteers leave complaint to which this section applies is not a personal grievance within the meaning of the Employment Relations Act 2000.

Compare: 1987 No 129 s 56

Section 14ZF: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14ZG Procedures for settlement of volunteers leave complaints

(1) The procedures for the settlement of a volunteers leave complaint must be in accordance with this section and sections 14ZH to 14ZL.

(2) As soon as practicable after a volunteers leave complaint arises, the employee must submit the complaint to the employee's immediate supervisor, affording the immediate supervisor an opportunity to remedy the cause of the complaint, the intent being that it is desirable, if the circumstances permit it, to settle the complaint rapidly and as near as possible to the point of origin.

(3) Where any such attempt at settlement has failed, or where the complaint is of such a nature that a direct discussion between the employee and the employee's immediate supervisor would be inappropriate, the employee must either—

(a) notify a duly authorised representative of any union to which the employee belongs or could belong; or

(b) where the employee elects to act on his or her own behalf or to appoint an agent or barrister or solicitor to act on his or her behalf, forthwith take the matter up, or arrange for that agent or barrister or solicitor, as the case may be, to take the matter up on his or her behalf, with the employer or the representative of the employer.

(4) Where the person notified under subsection (3)(a) considers that there is some substance in the volunteers leave complaint, that person must forthwith take the matter up with the employer or the representative of the employer.

(5) If the matter is not disposed of in discussion with the employer or the representative of the employer, the complaint must be reduced to writing in a statement setting out the facts relied on. The statement establishes the nature of the

employee's complaint, and of the issues, for all subsequent consideration of the case.

Compare: 1987 No 129 s 57

Section 14ZG: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14ZH Power to refer complaint to Employment Relations Authority

(1) Where a volunteers leave complaint is not disposed of between the parties, it may be referred to the Employment Relations Authority.

(2) The Employment Relations Authority must, subject to any decision to provide mediation services, proceed to hear and determine the complaint and, in doing so, must consider—

(a) the written statement of the complaint required by section 14ZG(5); and

(b) any evidence or submissions given by or on behalf of the parties; and

(c) such other matters as the Employment Relations Authority thinks fit.

Compare: 1987 No 129 s 58

Section 14ZH: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14ZI Role of institutions

Where any volunteers leave complaint comes before the Employment Relations Authority, sections 177 to 184 of the Employment Relations Act 2000 apply in relation to that volunteers leave complaint and sections 214 and 215 of that Act apply in relation to appeals to the Court of Appeal.

Compare: 1987 No 129 s 59

Section 14ZI: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14ZJ Duty to promote settlement

It is the duty of every party to a volunteers leave complaint—

(a) to promote the settlement of the complaint under the procedures provided in sections 14ZH to 14ZL; and

(b) to abstain from any action that might impede the effective functioning of the procedures.

Compare: 1987 No 129 s 64

Section 14ZJ: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14ZK Remedies

Where a volunteers leave complaint comes before the Employment Relations Authority, any determination of the Employment Relations Authority on that complaint may, if it includes a finding that any of the provisions of this

Act have been breached by the employer, provide for any 1 or more of the following:

(a) the reinstatement of the employee in the employee's former position or in a position that is not less advantageous to the employee:

(b) the reimbursement to the employee of a sum equal to the whole or any part of any wages lost by the employee:

(c) the payment to the employee of compensation by the employer.

Compare: 1987 No 129 s 65

Section 14ZK: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14ZL Reinstatement

Where the remedy of reinstatement is provided by the Employment Relations Authority or the Employment Court, the employee must be reinstated immediately or on such date as is specified by the Employment Relations Authority or the Employment Court and, despite any appeal against the determination of the Employment Relations Authority or the Employment Court, the provisions for reinstatement remain in full force pending the determination of the appeal.

Compare: 1987 No 129 s 66

Section 14ZL: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14ZM Non-compliance with formal requirements

(1) An employer must not unreasonably refuse to allow an employee to exercise any rights and benefits in respect of volunteers leave that the employee would be entitled to exercise but for an irregularity.

(2) In this section, **irregularity** means—

(a) omitting to do something required by or under this Act or under the alternative provision under which the leave is taken; or

(b) doing something required by or under this Act or the alternative provision under which the leave is taken before or after the time when it is required to be done; or

(c) otherwise doing anything irregularly in matter of form.

(3) An employee or an employer, or any person acting on behalf of an employee or employer, may apply to the Employment Relations Authority or the Employment Court for relief in respect of an irregularity.

(4) The Employment Relations Authority or the Employment Court must grant relief to an employee in respect of a failure to comply with the notice requirements of this Act or of the alternative provision under which the leave is taken if satisfied that—

(a) the employee's failure to comply with the notice requirements was in good faith; and

(b) the extent to which the employee did or did not comply with the notice requirements was reasonable in all of the circumstances of the case.

(5) The Employment Relations Authority or the Employment Court may grant relief in respect of any other irregularity if it thinks it is reasonable to do so, having regard to the nature of the irregularity, the good faith or otherwise of the parties, and any other matters it thinks proper.

(6) The Employment Relations Authority or the Employment Court may grant relief—

(a) by amending or waiving the irregularity, extending the time within which anything is to be or may be done, confirming the right of the employee to exercise rights and benefits in respect of volunteers leave, or granting any other relief that is reasonable:

(b) subject to such terms, if any, as the Employment Court, in the circumstances of each case, thinks fit.

Compare: 1987 No 129 s 68

Section 14ZM: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14ZN Enforcement of judgments

(1) A certificate signed by an officer of the Employment Relations Authority or the Registrar of the Employment Court specifying the amount payable under any order for the payment of money made under this Act by the Employment Relations Authority or the Employment Court, and the persons by whom and to whom it is payable, may be filed in the District Court, and, subject to subsection (2), is then enforceable in the same manner as a judgment given by the District Court in an action for the recovery of a debt.

(2) No proceedings may be taken under the Imprisonment for Debt Limitation Act 1908 against any person for failing or refusing to pay any penalty imposed on that person under this Act.

Compare: 1987 No 129 s 70

Section 14ZN: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

Section 14ZN(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

14ZO Role of Labour Inspectors

(1) A Labour Inspector may,—

(a) in relation to an employee's entitlement to leave under section 14B, determine, if the employee and employer fail to agree, whether an employee is, at the time of the making of the relevant Proclamation under section 39 or section 40 of the Defence Act 1990, employed by his or her employer for at least 10 hours a week:

(b) in relation to an employee's eligibility for leave under Part 3, determine, if the employee and employer fail to agree, whether an employee will have been in the employment of the same employer for at least an average of 10 hours a week during a 12-month period in accordance with section 14ZP; or

(c) serve a demand notice as provided in section 14ZQ; or

(d) otherwise enforce the rights and benefits in respect of volunteers leave.

(2) A Labour Inspector must, as soon as practicable after making a determination, serve a copy on the employee and the employer.

(3) The consequences of a determination are that it is prima facie evidence of the matter determined.

Compare: 1987 No 129 s 70A

Section 14ZO: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14ZP Eligibility criteria based on average hours of work and allowing for periods of authorised leave

(1) An employee is treated as being in the employment of the same employer for at least an average of 10 hours a week during a 12-month period if the employee is in the employment of that employer—

(a) no less than an average of 10 hours a week during that period; and

(b) either no less than 1 hour in every week during that period or no less than 40 hours in every month during that period.

(2) An employee is treated as being in the employment of an employer for an hour, despite being absent from work, if the employee would normally have been at work for that employer for that hour but is—

(a) absent on leave with pay for that hour; or

(b) on leave without pay (other than volunteers leave) with the employer's agreement for that hour; or

(c) entitled to a payment of weekly compensation under the Injury Prevention, Rehabilitation, and Compensation Act 2001 for that hour; or

(d) on parental leave (within the meaning of the Parental Leave and Employment Protection Act 1987) for that hour; or

(e) absent because of any other circumstances that are considered by a Labour Inspector not to disrupt the normal pattern of the employee's employment.

(3) The hours that the employee would normally have been at work must be calculated—

(a) in accordance with the terms of the employee's employment; or

(b) by reference to the employee's hours of work before any period of leave without pay began, in the case of a period of leave without pay that started longer than 12 months ago.

(4) **Week** means the employee's ordinary working week.

Compare: 1987 No 129 s 72A

Section 14ZP: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14ZQ Demand notice

(1) A Labour Inspector may serve on an employer a demand notice, in the prescribed form, if—

(a) either—

(i) an employee makes a complaint to the Labour Inspector that an employer has denied the employee's entitlement to take volunteers leave in a case where the Labour Inspector has previously made a determination that the employee is entitled to take leave; or

(ii) the Labour Inspector believes on reasonable grounds that an employer has denied the employee's entitlement to take volunteers leave; and

(b) the Labour Inspector has given the employer not less than 7 days to comment on the complaint or the grounds for the Labour Inspector's belief; and

(c) the Labour Inspector, after considering any comments made by the employer under paragraph (b), is satisfied that the employee is entitled to take volunteers leave; and

(d) the Labour Inspector is satisfied that the employer is not prepared to acknowledge the employee's entitlement to volunteers leave in a reasonable manner or within a reasonable time.

(2) A demand notice must be served—

(a) by giving it to the employer concerned; or

(b) if the employer does not accept the demand notice, by leaving it in the employer's presence and drawing the employer's attention to it.

Compare: 1987 No 129 s 70B

Section 14ZQ: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14ZR Objections to determination or demand notice

(1) An employer or an employee may lodge with the Employment Relations Authority an objection to a determination or a demand notice.

(2) An objection must be lodged with the Authority within 28 days after the determination or demand notice is served on the employer or employee who makes the objection.

(3) A demand notice has the consequences specified in section 14ZS—

(a) if no objection is lodged before the close of the period specified in subsection (2); or

(b) if any objection lodged before the close of the period specified in subsection (2) is withdrawn (whether before or after the close of that period).

Compare: 1987 No 129 s 70C

Section 14ZR: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14ZS Consequences of demand notice

The consequences of a demand notice are that it—

(a) imposes a legal requirement on the employer to comply with it; and

(b) is prima facie evidence that the employee has the entitlement specified in the notice; and

(c) may be enforced by the making by the Employment Relations Authority of a compliance order under section 137 of the Employment Relations Act 2000.

Compare: 1987 No 129 s 70D

Section 14ZS: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14ZT Authority to determine entitlement to volunteers leave on objection

The function of the Employment Relations Authority in respect of an objection is to determine whether or not the employee has the entitlement specified in the determination or demand notice.

Compare: 1987 No 129 s 70E

Section 14ZT: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14ZU Withdrawal of demand notice

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

Compare: 1987 No 129 s 70F

Section 14ZU: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14ZV Procedures available to State employees

Nothing in this Act limits the procedures by which State employees may enforce their conditions of employment and those procedures may be used, where appropriate, to enforce the rights conferred on State employees by this Act.

Compare: 1987 No 129 s 71

Section 14ZV: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

Part 7
Miscellaneous provisions

Part 7: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

14ZW Regulations

(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

(a) prescribing forms for the purposes of this Act:

(b) prescribing procedures and practices for the implementation of this Act:

(c) providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

(2) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 14ZW: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

Section 14ZW(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

14ZX Compensation for employers

(1) Regulations made under section 14ZW may provide for payments, by way of compensation, to be made to employers whose employees, being employees to whom Part 3 applies, are granted leave under that Part.

(2) The amount of the compensation that is payable to an employer, in respect of any 1 employee, is to be, in respect of the period during which the employee is on leave, an amount equal to the amount of the wages that the employer would be required to pay to that employee if that employee—

(a) were a member of the class of workers entitled to the highest rates of minimum wages payable under the Minimum Wage Act 1983; and

(b) were continuing to work for the employer in that period; and

(c) were paid, for the work that the employee would usually perform in that period for the employer and for the days or hours or both during which that work would usually be performed in that period by the employee for the employer, wages at the rates applicable to the employee's work under the Minimum Wage Act 1983.

(3) Compensation is not to be payable in respect of any period of leave that is 28 days or less.

Section 14ZX: inserted, on 1 April 2004, by section 12 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

15 Priority in bankruptcy or winding up of compensation ordered to be paid by employer

[Repealed]

Section 15: repealed, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

16 Cancellation of existing liability for service

Upon the commencement of this Act no person shall be under any further liability to perform or undergo compulsory military training or service, or to register, or to submit to medical examination, by reason of any liability that arose under the National Military Service Act 1961.

17 Consequential repeals and amendments

(1) The enactments specified in the Schedule are hereby consequentially repealed.

(2) *[Repealed]*

(3) *Amendment(s) incorporated in the Act(s)*.

(4) The Defence Act 1971 is hereby amended—

(a) *Amendment(s) incorporated in the Act(s)*.

(b) *[Repealed]*

(c), (d) *Amendment(s) incorporated in the Act(s)*.

Section 17(2): repealed, on 14 December 1979, by section 2(3) of the Labour Department Amendment Act 1979 (1979 No 95).

Section 17(4)(b): repealed, on 27 May 1988, by section 10(2) of the Defence Amendment Act (No 2) 1988 (1988 No 88).

Schedule 1
Enactments repealed

s 17(1)

National Military Service Act 1961 (1961 No 116)

National Military Service Amendment Act 1964 (1964 No 25)

National Military Service Amendment Act 1968 (1968 No 9)

National Military Service Amendment Act 1969 (1969 No 60)

Schedule 2
Change of employer

s 2(2)

Schedule 2: added, on 1 April 2004, by section 14 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

1 If a trade or business or an undertaking (whether or not it is an undertaking established by or under an Act) is transferred from 1 person to another (whether before or after the date of the commencement of the Volunteers Employment Protection Amendment Act 2004),—

(a) the period of employment of an employee in the trade or business or undertaking at the time of the transfer counts as a period of employment with the transferee; and

(b) the transfer does not break the continuity of the period of employment of any employee in the trade or business or undertaking; and

(c) any employer who employed any employee in the trade or business or undertaking at any time before the transfer and the transferee are deemed, in relation to the employee, to be the same employer.

2 If by or under any Act, whether passed before or after the date of the commencement of the Volunteers Employment Protection Amendment Act 2004, an employment agreement between any body corporate and an employee is modified and some other body corporate is substituted as the employer,—

(a) the employee's period of employment at the time when the substitution takes effect counts as a period of employment with the second-mentioned body corporate; and

(b) the substitution does not break the continuity of the period of employment of the employee; and

(c) the first-mentioned body corporate and the second-mentioned body corporate are deemed, in relation to the employee, to be the same employer.

3 If on the death of an employer an employee is taken into the employment of the personal representatives or trustees of the deceased (whether before or after the commencement of the Volunteers Employment Protection Amendment Act 2004),—

(a) the employee's period of employment at the time of the death counts as a period of employment with the employer's personal representatives or trustees; and

(b) the death does not break the continuity of the period of employment of the employee; and

(c) the employer and the employer's personal representatives or trustees are deemed, in relation to the employee, to be the same employer.

4 If there is a change (whether before or after the commencement of the Volunteers Employment Protection Amendment Act 2004) in the partners, personal representatives, or trustees who employ any employee,—

(a) the employee's period of employment at the time of the change counts as a period of employment with the partners, personal representatives, or trustees after the change; and

(b) the change does not break the continuity of the period of employment of the employee; and

(c) the partners, personal representatives, or trustees who employed the employee before the change and the partners, personal representatives, or trustees who employ the employee after the change are deemed, in relation to the employee, to be the same employers.

5 If (whether before or after the commencement of the Volunteers Employment Protection Amendment Act 2004) an employee of an employer is taken into the employment of another employer who, at the time when the employee enters that other employer's employment is an associated employer of the first-mentioned employer,—

(a) the employee's period of employment at that time counts as a period of employment with the associated employer; and

(b) the taking of the employee into the employment of the associated employer does not break the continuity of the period of employment; and

(c) the first-mentioned employer and the associated employer are deemed, in relation to the employee, to be the same employer.

6 For the purposes of clause 5, any 2 employers are to be treated as **associated** if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control; and the expression **associated employer** is to be construed accordingly.

Notes

1 General

This is a consolidation of the Volunteers Employment Protection Act 1973 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 Legal status

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 Editorial and format changes

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 Amendments incorporated in this consolidation

Emergency Management Act 2026 (2026 No 53): section 235

Secondary Legislation Act 2021 (2021 No 7): section 3

Public Service Act 2020 (2020 No 40): section 135

District Court Act 2016 (2016 No 49): section 261

Policing Act 2008 (2008 No 72): section 130(1)

Volunteers Employment Protection Amendment Act 2007 (2007 No 86)

Insolvency Act 2006 (2006 No 55): section 445

Volunteers Employment Protection Amendment Act 2004 (2004 No 12)

Holidays Act 2003 (2003 No 129): section 91(2)

Defence Amendment Act (No 2) 1988 (1988 No 88): section 10(2)

Labour Department Amendment Act 1979 (1979 No 95): section 2(3)

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