

# **Volunteers Employment Protection Amendment Bill**

Member's Bill

As reported from the Foreign Affairs, Defence and  
Trade Committee

## **Commentary**

### **Recommendation**

The Foreign Affairs, Defence and Trade Committee has examined the Volunteers Employment Protection Amendment Bill and recommends that it be passed with the amendments shown.

### **Background**

The Volunteers Employment Protection Amendment Bill, a Member's bill in the name of Dr Wayne Mapp, was referred to us by the House on 20 September 2000. The purpose of the bill, as introduced, is to amend the Volunteers Employment Protection Act 1973 to provide protection of employment for territorial force volunteers in the event of overseas deployment.

We received a number of submissions from various groups and individuals who considered that the bill needed to go much further and mirror the Parental Leave and Employment Protection Act 1987 as closely as possible. Following the public submission process the committee engaged with the Minister of Defence and the New Zealand Defence Force, discussing ways to address the issues raised in the public submissions, some of which were outside the scope of the bill, and amend the bill accordingly. On 18 March 2003 the Minister released Supplementary Order Paper No 66 and, with leave of the House, referred it to us for consideration. We wrote to all the

groups and individuals who made submissions on the original bill and invited them to make a further submission on the SOP.

This commentary outlines the provisions set out on the SOP, the amendments we recommend, and our consideration of the issues raised by submitters.

### **Provisions of the SOP**

The Volunteers Employment Protection Act currently only protects the civil employment of those who volunteer to serve in the territorial forces of all three Services when they are engaged in training or in circumstances where they, or members of the reserve components of the Armed Forces, deploy outside New Zealand pursuant to a Vice-Regal Proclamation made in time of war or emergency. As well as not extending protection of employment to operations other than those that require a Proclamation, the Act has become increasingly out of date. The territorial force personnel who deployed to Timor Leste (formerly East Timor) in significant numbers, and whose contribution was necessary for that operation, were not protected by the Act.

The SOP extends the protection of the Act to employed personnel of both the territorial forces and the reserves called to continuous service by Proclamation, whether that service is within or outside New Zealand. It extends that protection to such personnel who volunteer for special service in the Armed Forces, in circumstances where that service is formally declared to be in a situation of national interest. This measure enables the Government of the day to determine when voluntary special service warrants the protection of the Act. It also authorises regulations to be made to provide compensation to employers whose employees are deployed in situations of national interest.

### **Territorial Forces Employer Support Council**

Significantly, the SOP requires the appointment of a Territorial Forces Employer Support Council to promote service in the territorial forces and to advise the Minister of Defence on matters relating to those forces. We heard from Mr Mark McGowan, the chief executive of the Defence Reserves Support Council in Australia, about the establishment and experience of the Australian council. Mr McGowan emphasised to us the important role the council plays, not only in promoting service in the territorial forces but also in

establishing and facilitating an ongoing flexible partnership and lines of communication between the Defence Force, the community and business. Mr McGowan emphasised to us that the non-legislative changes, such as the broad representation of the council and formal civilian recognition of territorial forces training, introduced at the same time as the council are equally important as the legislative changes.

In order to follow the consensual model of the Australian Defence Reserves Support Council, we encourage the Minister to appoint a Council that includes a wide range of interested parties, including employer, union, Māori and women's representation. We believe it is particularly important, in order for the Council to be effective and accepted by employers, that private sector employers and businesses have sufficient representation on the Council. We also encourage the Minister to refer to the Council the task of looking into the issue of formal civilian recognition of territorial forces training.

### **Alignment with provisions of the Parental Leave and Employment Protection Act**

Providing the necessary administrative procedures for employment protection makes for comprehensive, and possibly complex, legislative provisions. In order to minimise complications and the administrative burden on employers of territorial force service members, the provisions of the bill are aligned as closely as possible with the provisions of the Parental Leave and Employment Protection Act, which are currently widely known and understood by employers and employees. In addition, the similarity between the bill and the Parental Leave and Employment Protection Act will enable future amendments to the Act to be made more easily, as procedures and processes of that Act are refined.

We believe the amendments to the bill strike an appropriate balance between the Crown's interests and those of individual territorial force service member and employers of territorial force service members.

### **Definition of 'training year'**

We recommend that the definition of the term 'training year' in proposed new section 2(1) of the Act be consistent with the financial year. The NZDF currently budgets for training based on the financial year from 1 July to 30 June the following year, rather than the 'tax

year' of 1 April to 31 March of the following year, as currently drafted in the bill.

### **Possible consequential amendments resulting from Holidays Bill**

We are aware that there may be inconsistencies between our recommendations and the provisions of the Parental Leave and Employment Protection Act set out in the Holidays Bill. We note that further amendment to this bill may be necessary during its committal stage once the Holidays bill is reported back.

### **Issues raised by submitters**

#### **Period of protected service**

We considered whether the phrase 'plus mandatory mobilisation and demobilisation periods' should be inserted in proposed new section 14I (duration of leave). We do not believe this amendment is necessary because the duration of leave for a situation of national importance of 12 months includes the periods required for pre-deployment training and post-deployment administration.

#### **Appointment of representative**

We considered the possibility of enabling an employee to appoint an officer of the Defence Legal Service as his or her representative in volunteers leave complaints, but do not believe this is appropriate. There is potential for conflict of interest between the legal officer's duty to the Crown and his or her appearing as an advocate on behalf of a territorial force service member, which could be against another Crown agency as the employer of a territorial force service member. New section 14ZG, which provides for an employee to appoint an agent or barrister or solicitor, is sufficiently broad as to not require the employee to engage high-priced legal assistance if that is beyond his or her means.

#### **Differentiation between service members**

We considered whether the provisions of the bill would create a difference between those serving in situations declared to be of national importance and those serving in other situations. The purpose of the provisions is to enable the Government of the day to determine whether a particular deployment of the Armed Forces involving territorial force service members warrants the protective

mechanism of the Act. We believe it is important for the Government to have the ability to make such a determination.

### **Mandatory payment of compensation to employers**

We considered the recommendation of Business New Zealand that the payment of compensation to employers be mandatory and be extended to situations where territorial force service members and reservists are compulsorily called up in time of war or emergency. We do not believe this recommendation is appropriate, because it would reduce the Government's ability to make a determination as to whether a particular deployment of the Armed Forces warranted the protective mechanisms of the Act. In a situation of war or emergency, it is likely that there will be regulation of a number of matters, including the workforce, to achieve New Zealand's strategic objectives. In these circumstances, the concerns of employers as part of the wider community are likely to be far more substantial than the absence of their territorial force service member employees.

### **Notification of absence**

The New Zealand Law Society notes that there is no limit prescribed on the amount of protected leave an employee can take in time of war or emergency. In such circumstances, employers are likely to be concerned about far more substantial matters than the possibly indefinite protected absence of their territorial force service member employees. An approach requiring the employer to be notified would be difficult because it would impose an obligation on service members to advise their civilian employers of matters which neither they, nor their service, may—or may be able to—know about.

### **Eligibility for employment protection**

We do not agree with the New Zealand Council of Trade Unions recommendation that the period an employee must have been employed in order to be eligible for protection under the Act be reduced from 12 months to 6 months. This would create a significant difference between the Volunteers Employment Protection Act and the Parental Leave Employment Protection Act, which is undesirable for the reasons mentioned previously.

**Compensation for self-employed**

We do not believe that any amendment is necessary to extend compensation to the self-employed. Except in the case of professional persons, many of the self-employed in New Zealand are legally both shareholders in and employers of private companies of which they are effectively the owners. If the employment arrangements between the company and the individual are properly in place, there appears no reason why such companies should not be compensated for the shareholder's (employee's) absence on protected service.

**Definition of 'key position'**

As consistency with the Parental Leave and Employment Protection Act is important, we do not believe that the term 'key position' should be defined or that a list of factors for determining a 'key position' should be included in the bill. However, we note the submissions of Business New Zealand and the New Zealand Council of Trade Unions that express concern about the practical use of the term under the Parental Leave and Employment Protection Act. We urge the Department of Labour to look at the concerns raised by Business New Zealand and the New Zealand Council of Trade Unions and address these concerns as soon as possible.

**Transition of volunteers back to employment by NZDF**

We do not believe that a provision requiring the NZDF to take every reasonable action to facilitate the transition of the reservists from civilian to military employment and back again is necessary. The time and resources available to effect the transition of territorial force personnel to and from military service will vary in different circumstances. The NZDF is aware of the difficulties faced by its territorial force personnel and we believe it is appropriate that the management of their transition remains with the NZDF to manage on a case-by-case basis.

## **Appendix**

### **Committee process**

The Volunteers Employment Protection Amendment Bill was referred to the committee on 20 September 2000. The previous committee received and considered 13 submissions from interested groups and individuals, and heard five submissions.

The committee of the current Parliament received and considered 8 submissions from interested groups and individuals, and heard 3 submissions. We welcomed the input, in a personal capacity, of Brigadier Tim Brewer. We note Brigadier Brewer is the Director of the Defence Employer Support Programme. The committee also had the benefit of hearing about the Australian Defence Reserves Support Council from its chief executive, Mr Mark McGowan, which we greatly appreciated. In total, hearing of evidence took 3 hours 8 minutes and consideration took 1 hour and 35 minutes.

### **Committee membership**

Hon Peter Dunne (Chairperson, United Future)

Luamanuvao Winnie Laban (Deputy Chairperson, Labour)

Tim Barnett (Labour)

Martin Gallagher (Labour)

Keith Locke (Green)

Dr Wayne Mapp (National)

Ron Mark (New Zealand First)

Hon Matt Robson (Progressive)

Dr the Hon Lockwood Smith (National)

---

Volunteers  
Employment Protection Amendment

---

**Key to symbols used in reprinted bill**

**As reported from a select committee**

**Struck out (unanimous)**

Subject to this Act,

Text struck out unanimously

**New (unanimous)**

Subject to this Act,

Text inserted unanimously

---



*Dr Wayne Mapp*

# **Volunteers Employment Protection Amendment Bill**

Member's Bill

## **Contents**

1	Title	14E	Obligation to notify employee
1A	Commencement	14F	Employer's notice in relation to return to work and preference for appointment
<b>Part 1</b>			
<b>Amendments to Volunteers Employment Protection Act 1973</b>			
2	Volunteers Employment Protection Act 1973 called principal Act in this Part	<b>Part 3</b>	
3	Commencement	<b>Service in situation of national interest</b>	
4	Purpose	14G	Employees to whom this Part applies
5	New section 2 substituted	14H	Entitlement to leave
2	Interpretation	14I	Duration of leave
6	References to worker changed to references to employee	14J	Right of employer and employee to determine date of commencement of leave by agreement
7	New section 3A inserted	14K	Obligation to notify employer in relation to leave for special service
3A	Application of this Act to employees who have non-statutory rights to volunteers leave	14L	Obligation to notify employee
8	Part 1 created	14M	Employer's notice in relation to return to work and preference for appointment
<b>Part 1</b>			
<b>Protected voluntary service or training</b>			
9	Repeal of sections 6 and 7	<b>Part 4</b>	
10	New sections 7A and 7B inserted	<b>Provisions applying in relation to employees taking leave under Part 2 or Part 3</b>	
7A	Continuity of employment	14N	Employee's notice in relation to return to work
7B	Contributions to superannuation schemes	14O	Presumption that employee's position can be kept open
11	Repeal of sections 10 and 13	14P	Employer's obligations in respect of remuneration and holiday pay
12	Applications for postponement of service or training	14Q	Power to increase entitlement to holiday pay
13	New Parts 2 to 7 inserted	14R	Continuity of employment
<b>Part 2</b>			
<b>Service in time of war or emergency</b>			
14A	Employees to whom this Part applies	14S	Contributions to superannuation schemes
14B	Entitlement to leave	14T	Early ending of leave under Part 2 or Part 3
14C	Date of commencement of leave	14U	Extension of leave under Part 2 or Part 3
14D	Obligation to notify employer in relation to service in time of war or emergency	14V	Failure to return to work
		14W	Failure to accept employment

**Volunteers Employment  
Protection Amendment**

<p>14X Employees employed to replace employees on leave under Part 2 or Part 3</p> <p style="text-align: center;"><b>Part 5 Protection of employment</b></p> <p>14Y Termination of employment and discrimination prohibited</p> <p>14Z Special defences relating to termination of employment</p> <p>14ZA Special defences relating to termination of employment during volunteers leave</p> <p>14ZB Special defence relating to termination of employment during 26 weeks following volunteers leave</p> <p>14ZC Redundancy payments not affected</p> <p>14ZD Discrimination</p> <p style="text-align: center;"><b>Part 6 Remedies available to employees</b></p> <p>14ZE Interim order</p> <p>14ZF Volunteers leave complaints</p> <p>14ZG Procedures for settlement of volunteers leave complaints</p> <p>14ZH Power to refer complaint to Employment Relations Authority</p> <p>14ZI Role of institutions</p> <p>14ZJ Duty to promote settlement</p> <p>14ZK Remedies</p> <p>14ZL Reinstatement</p> <p>14ZM Non-compliance with formal requirements</p> <p>14ZN Enforcement of judgments</p> <p>14ZO Role of Labour Inspectors</p> <p>14ZP Eligibility criteria based on average hours of work and allowing for periods of authorised leave</p> <p>14ZQ Demand notice</p> <p>14ZR Objections to determination or demand notice</p> <p>14ZS Consequences of demand notice</p> <p>14ZT Authority to determine entitlement to volunteers leave on objection</p>	<p>14ZU Withdrawal of demand notice</p> <p>14ZV Procedures available to State employees</p> <p style="text-align: center;"><b>Part 7 Miscellaneous provisions</b></p> <p>14ZW Regulations</p> <p>14ZX Compensation for employers</p> <p>14 Priority in bankruptcy or winding up of compensation ordered to be paid by employer</p> <p>15 New Schedule 2 added</p> <p>16 Consequential amendments</p> <p>17 Repeals</p> <p style="text-align: center;"><b>Part 2 Amendments to Defence Act 1990</b></p> <p>18 Defence Act 1990 called principal Act in this Part</p> <p>19 Commencement</p> <p>20 Purpose</p> <p>21 New section 42 substituted</p> <p>42 Protection of employment when Proclamation made</p> <p>22 Special service</p> <p>23 New sections 50A and 50B inserted</p> <p>50A Power to declare situation of national interest in relation to special service</p> <p>50B Protection of employment when situation of national interest declared</p> <p>24 New section 91A inserted</p> <p>91A Territorial Forces Employer Support Council</p> <p style="text-align: center;"><b>Schedule 1 References to worker changed to references to employee</b></p> <p style="text-align: center;"><b>Schedule 2 New Schedule 2 added to principal Act</b></p> <p style="text-align: center;"><b>Schedule 3 Consequential amendments</b></p> <p style="text-align: center;"><b>Schedule 4 Enactments repealed</b></p>
--	--

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

**1 Title**

This Act is the Volunteers Employment Protection Amendment Act **2000**.

**Struck out (unanimous)**

(2) In this Act, the Volunteers Employment Protection Act 1973<sup>1</sup> is called “the principal Act”.

<sup>1</sup> 1973 No 25

5

**New (unanimous)**

**1A Commencement**

- (1) **Part 1** and **Schedules 1 to 4** come into force as provided in **section 3**.
- (2) **Part 2** comes into force as provided in **section 19**.
- (3) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

10

**Struck out (unanimous)**

**2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent.

**3 Purpose**

The purpose of this Act is to amend the Volunteers Employment Protection Act 1973 to provide for protection of employment for territorial force volunteers in the event of overseas deployment.

15

**4 New Part heading inserted**

The principal Act is amended by inserting, after section 2, the following Part heading:

20

**“Part 1  
“Volunteers employment protection”**

## Struck out (unanimous)

- 5 New Part inserted**  
The principal Act is amended by inserting after section 17, the following Part heading and sections:
- “Part 2**
- “Protection for employment of territorial force volunteers while deployed overseas** 5
- “18 Interpretation**
- In this Part, unless the context otherwise requires,—
- “**overseas service** means full-time service in the armed forces overseas 10
- “**overseas service leave** means leave for volunteers which is protected under the terms of this Part
- “**volunteer** means any person who is a member of the territorial forces.
- “19 Protection of employment for volunteers serving overseas** 15
- “(1)** No employer may terminate the employment of any volunteer who has been posted overseas for full-time service.
- “(2)** It is not a contravention of **subsection (1)** for an employer to terminate the employment of a volunteer with the volunteer’s consent. 20
- “20 Special defences relating to dismissal**
- Where—
- “(a) it is alleged in any proceedings under this Act that an employer has, in contravention of **section 19**, terminated the employment of a volunteer; and 25
- “(b) it is proved in those proceedings that the employer terminated the volunteer’s employment during the volunteer’s absence on overseas service, the defences set out in **section 21** are available to the employer. 30

**Struck out (unanimous)**

**“21 Special defences relating to dismissal during overseas service**

Where the termination is proved to have taken place during the volunteer’s absence on overseas service, it is a defence for the employer to prove,—

5

“(a) that in the case of a period of overseas service leave to which this Act applies, on the ground of the occurrence of a redundancy situation that occurred in the employer’s business after the employer gave the volunteer notice, the employer was unable to keep the volunteer’s position open; or

10

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

15

“(c) that the employer had not, in the period commencing with the beginning of the volunteer’s overseas service leave and ending with the termination of the volunteer’s employment, prejudicially affected either the volunteer’s seniority or the volunteer’s superannuation rights.

20

**“22 Redundancy payments not affected**

Nothing in this Act affects any redundancy payment payable under the provisions of any Act or of any order or contract of employment.

25

**“23 Dismissal for cause not affected**

Nothing in this Act affects any right of an employer to dismiss a volunteer for a substantial reason not related to the volunteer’s rights under this Act.

30

**“24 Order of Employment Tribunal**

“(1) Where any volunteer alleges that the volunteer’s employer has, within the preceding 12 months and in contravention of **section 19**, terminated the volunteer’s employment or given

35

**Struck out (unanimous)**

the volunteer notice terminating the volunteer's employment, the volunteer may apply ex parte to the Employment Tribunal for an order reinstating the volunteer in the volunteer's position or cancelling the notice terminating the volunteer's employment.

5

“(2) An officer of the Employment Tribunal must send a copy of the order to the employer by registered letter.

**“25 Reinstatement**

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

10

**New (unanimous)****Part 1**

15

**Amendments to Volunteers Employment Protection Act 1973****2 Volunteers Employment Protection Act 1973 called principal Act in this Part**

In this Part and **Schedules 1 and 2**, the Volunteers Employment Protection Act 1973<sup>2</sup> is called “the principal Act”.

20

<sup>2</sup> 1973 No 25

**3 Commencement**

This Part and **Schedules 1 to 4** come into force on the day after the date on which this Act receives the Royal assent.

**4 Purpose**

25

The purpose of this **Part** is to amend the principal Act—

- (a) to provide protection for the employment of members of the territorial forces or the reserve forces—
  - (i) who, in time of war or other like emergency or during any state of emergency declared under the

30

**New (unanimous)**

- Civil Defence Emergency Management Act 2002, are, 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 5
- (ii) who were, at the time of the making of the Proclamation, employed by an employer:
- (b) to improve the protection that is provided under this Act for the employment of members of the territorial forces or the reserve forces— 10
- (i) who, in the event of an actual or imminent emergency involving the deployment of members of the Armed Forces outside New Zealand, are, as a consequence of a Proclamation made under section 39(3) or section 40(3) of the Defence Act 1950, called out for continuous service, either in New Zealand or elsewhere; and 15
- (ii) who were, at the time of the making of the Proclamation, employed by an employer:
- (c) to provide protection for the employment of members of the territorial forces or the reserve forces and other persons— 20
- (i) who undertake special service under section 50 of the Defence Act 1990; and
- (ii) whose obligation to undertake that service arises from the acceptance, during a period specified 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 25
- (iii) who were, at the beginning of the period specified in the order made under **section 50A** of the Defence Act 1990, employed by an employer: 30
- (d) to authorise the making of regulations providing for payments by way of compensation to be made to employers whose employees (being employees entitled under **section 14H** of the principal Act to take leave) take leave under **Part 3** of the principal Act during a period 35

## New (unanimous)

- specified in the national interest in an order made under **section 50A** of the Defence Act 1990:
- (e) to revise the employment protection provisions of the principal Act so that they are based on the employment protection provisions of the Parental Leave and Employment Protection Act 1987. 5
- 5 New section 2 substituted**  
The principal Act is amended by repealing section 2, and substituting the following section:
- “2 Interpretation 10**
- “(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 15**
- “(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 20**
- “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 25**
- “Employment Court means the Employment Court constituted under the Employment Relations Act 2000 30**
- “Employment Relations Authority means the Employment Relations Authority established under the Employment Relations Act 2000**



**New (unanimous)**

- “**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 one 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 State Sector Act 1988:
- “(b) every person whose rate of remuneration is determined under any of the provisions of sections 67, 67A, 75, and 76 of the Police Act 1958:

## New (unanimous)

- “(c) every person employed in the State services whose remuneration is determined by the Higher Salaries Commission
- “**State services** has the meaning given to that term by section 2 of the State Sector Act 1988 5
- “**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 10
- “**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 15
- “**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— 20
- “(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**,— 25
- “(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,— 30
- the provisions of that schedule apply.”
- 6 References to worker changed to references to employee**
- (1) The provisions of the principal Act specified in **Part 1 of Schedule 1** are amended by omitting the word “worker” wherever it occurs and substituting in each case the word “employee”. 35

**New (unanimous)**

- (2) The provisions of the principal Act specified in **Part 2 of Schedule 1** are amended by omitting the word “worker’s” wherever it occurs and substituting in each case the word “employee’s”.
- 7 New section 3A inserted** 5  
The principal Act is amended by inserting, after section 3, the following section:
- “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— 10
- “(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 15
- “(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**: 20
- “(b) the duration of volunteers leave under **Part 1** and volunteers leave under **Part 2** and volunteers leave under **Part 3**: 25
- “(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: 30
- “(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.** 35

## New (unanimous)

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

Compare: 1987 No 129 s 4”

**8 Part 1 created**

The principal Act is amended by inserting, before section 4, the following headings:

5

“**Part 1**

“**Protected voluntary service or training**”

**9 Repeal of sections 6 and 7**

Sections 6 and 7 of the principal Act are repealed.

**10 New sections 7A and 7B inserted**

10

The principal Act is amended by inserting, before section 8, the following sections:

“**7A Continuity of employment**

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

15

“(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—

20

“(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.

25

Compare: 1987 No 129 s 43

“**7B Contributions to superannuation schemes**

Nothing in **section 7A(b)(ii)**—

30

“(a) entitles an employee to have any period counted as service for the purposes of a superannuation scheme if

**New (unanimous)**

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. 5

Compare: 1987 No 129 s 44”

**11 Repeal of sections 10 and 13**

Sections 10 and 13 of the principal Act are repealed.

**12 Applications for postponement of service or training 10**

Section 12 of the principal Act is amended—

- (a) by omitting the word “Secretary” in both places where it appears, and substituting in each case the words “chief executive”; and
- (b) by omitting from subsection (2) the words “Department of Labour”, and substituting the word “department”. 15

**13 New Parts 2 to 7 inserted**

The principal Act is amended by inserting, after section 14, the following Parts:

**“Part 2 20**

**“Service in time of war or emergency**

**“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 25
  - “(ii) who, in time of war or other like emergency or during any state of emergency declared under the Civil Defence Emergency Management Act 2002, 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 30

**New (unanimous)**

“(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	5
“(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	10
“(iii) who was, at the time of the making of the Proclamation, employed by an employer.	
“14B <b>Entitlement to leave</b>	15
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.	20
Compare: 1987 No 129 s 7	
“14C <b>Date of commencement of leave</b>	25
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 1950; or	30
“(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	

**New (unanimous)**

- “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. 5
- “(2) The notice must state, in addition, whether or not the employee wishes to take leave under this Part. 10
- “(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 15
- “(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. 20
- “(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. 25
- “(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. 30 35

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

## New (unanimous)

**“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— 5
- “(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 10
- “(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 15
- “(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 20
- “(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 25
- “(e) informing the employee of the substance of **sections 14A, 14B, 14C, and 14S.** 30
- “(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)



**New (unanimous)**

**“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—

5

“(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

10

“(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

15

20

“(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

25

“(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

30

“(ii) the employee’s rights under **section 14U**.

Compare: 1987 No 129 s 38

## New (unanimous)

**“Part 3****“Service in situation of national interest****“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 5
- “(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 10
- “(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.

**“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. 20

Compare: 1987 No 129 s 7 25

**“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)

**“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

**New (unanimous)**

- “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. 5
- “(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. 10
- Compare: 1987 No 129 s 31
- “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— 15
- “(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 20
- “(c) stating that, until the end of the employee’s leave under this Part, the employee’s position in the employment of the employer— 25
- “(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— 30
- “(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 35

## New (unanimous)

- 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**. 5
- Compare: 1987 No 129 s 36(1), (3)
- “14M **Employer’s notice in relation to return to work and preference for appointment** 10
- 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 15
- “(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 20
- “(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 30
- “(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 35
- “(iii) the employee’s rights under **section 14U**; and

**New (unanimous)**

- “(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**. 5

Compare: 1987 No 129 s 38

**“Part 4**

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

- “14N **Employee’s notice in relation to return to work** 10
- “(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. 15
- “(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. 20
- “(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. 25
- “(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 employer must co-operate in good faith for the purpose of agreeing on arrangements for the employee’s return to work; but 30
  - “(b) if the employee and the employer cannot agree on arrangements for the employee’s return to work, the employer must give to the employee’s 35

## New (unanimous)

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)

**“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)

**“14P Employer’s obligations in respect of remuneration and holiday pay**

- “**(1)** Subject to **subsections (2) and (3)**, 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)** Where an employee becomes entitled to any annual holiday on pay during—

New (unanimous)

- “(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 16(4) of the Holidays Act 1981, entitled to holiday pay for that holiday only at the rate of the employee’s average weekly earnings (as that term is defined in section 2 of the Holidays Act 1981) during the year in respect of which the employee has become entitled to the holiday.

- “(3) Where an employee is absent on leave under **Part 2 or Part 3** at any time during the fortnight ending on the day on which any of the whole holidays referred to in section 7A(2) of the Holidays Act 1981 occurs, the employee is, despite anything in section 25 or section 30 of that Act, entitled to holiday pay for that holiday at an amount equal to one-tenth of the employee’s wages for an ordinary working day multiplied by the figure obtained by adding together—

- “(a) the number of ordinary working days during the fortnight actually worked by the employee;
- “(b) the number of ordinary working days during the fortnight on which the employee was absent from employment due to any reason other than the taking of leave under **Part 2 or Part 3** or being absent during a period of preference in obtaining employment under this Act.

Compare: 1987 No 129 s 42

- “14Q **Power to increase entitlement to holiday pay**  
Despite the provisions of section 33 of the Holidays Act 1981, 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—

- “(a) in respect of annual holidays, at the same rate as, or at a higher rate than, the rate referred to in **section 14P(2)** of this Act:

## New (unanimous)

“(b) in respect of public holidays, of the same amount as, or of a greater amount than, the amount referred to in **section 14P(3)** of this Act.

Compare: 1987 No 129 s 72(4)

“14R **Continuity of employment**

5

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,—

10

“(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

15

“(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—

20

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

25

“(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

30

“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

35



**New (unanimous)**

“(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. 5

Compare: 1987 No 129 s 44

**“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,— 10

“(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 15

“(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,— 20

“(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,— 25

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. 30

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

## New (unanimous)

“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.

5

“(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.

10

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

“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—

15

“(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,—

20

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.

25

Compare: 1987 No 129 s 46

“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

30

35

**New (unanimous)**

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

**“14X Employees employed to replace employees on leave under Part 2 or Part 3** 5

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 10

“(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**. 15

Compare: 1987 No 129 s 48

**“Part 5**

**“Protection of employment**

**“14Y Termination of employment and discrimination prohibited** 20

“(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 25

“(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 30

“(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— 35

## New (unanimous)

“(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 (Commonwealth of Australia) s 16 (1)(c), (2)

5

“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

10

“(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,—

15

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

Compare: 1987 No 129 s 50

20

“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—

25

“(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

30

“(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

**New (unanimous)**

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. 5

Compare: 1987 No 129 s 51 10

**“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— 15

- “(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. 20 25

Compare: 1987 No 129 s 52

**“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. 30

Compare: 1987 No 129 s 53

## New (unanimous)

**“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)**,— 5
- “(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 10
- “(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. 15
- “(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 20
- “(b) does not include termination of the employee’s employment. 25

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

**“Part 6****“Remedies available to employees****“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(1)**, 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. 30 35

**New (unanimous)**

- “(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

**“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—

## New (unanimous)

- “(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. 5
- “(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. 10  
Compare: 1987 No 129 s 56
- “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**. 15
- “(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. 20
- “(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— 25
- “(a) notify a duly authorised representative of any union to which the employee belongs or could belong; or 30
- “(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. 35



**New (unanimous)**

- “(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. 5 10
- Compare: 1987 No 129 s 57

**“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. 15
- “(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 20
- “(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. 25
- Compare: 1987 No 129 s 58

**“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. 30

Compare: 1987 No 129 s 59

## New (unanimous)

**“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.

5

Compare: 1987 No 129 s 64

**“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 one or more of the following:

10

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

15

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

20

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

Compare: 1987 No 129 s 65

**“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.

25

30

Compare: 1987 No 129 s 66

**New (unanimous)**

**“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. 5
- “(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 10
  - “(c) otherwise doing anything irregularly in matter or 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. 15
- “(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— 20
- “(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. 25
- “(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. 30
- “(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 35

## New (unanimous)

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

5

## “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 any District Court, and, subject to **subsection (2)**, is then enforceable in the same manner as a judgment given by a District Court in an action for the recovery of a debt.

10

15

“(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

20

## “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:

25

“(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 142P**; or

30

“(c) serve a demand notice as provided in **section 142Q**; or

35

**New (unanimous)**

- “(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. 5
- “(3) The consequences of a determination are that it is prima facie evidence of the matter determined.
- Compare: 1987 No 129 s 70A
- “14ZP Eligibility criteria based on average hours of work and allowing for periods of authorised leave 10**
- “(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 15
- “(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 having been being absent from work, if the employee would normally have been at work for that employer for that hour but was either— 20
- “(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 25
- “(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 30
- “(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. 35

## New (unanimous)

- “(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. 5
- “(4) **Week** means the employee’s ordinary working week. 10
- Compare: 1987 No 129 s 72A
- “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 15 20
    - “(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 25
  - “(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 30
  - “(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. 35
- “(2) A demand notice must be served—
- “(a) by giving it to the employer concerned; or

**New (unanimous)**

“(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

**“14ZR Objections to determination or demand notice** 5

“(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. 10

“(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 15

“(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

**“14ZS Consequences of demand notice** 20

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 25

“(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

**“14ZT Authority to determine entitlement to volunteers leave on objection** 30

The function of the Employment Relations Authority in respect of an objection is to determine whether or not the

**New (unanimous)**

employee has the entitlement specified in the determination or demand notice.

Compare: 1987 No 129 s 70E

**“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

5

**“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

10

**“Part 7****“Miscellaneous provisions****“14ZW Regulations**

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.

20

25

**“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.

30



**New (unanimous)**

- “(2) The amount of the compensation that is payable to an employer, in respect of any one 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— 5
- “(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 10
- “(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. 15
- “(3) Compensation is not to be payable in respect of any period of leave that is 28 days or less.”

**14 Priority in bankruptcy or winding up of compensation ordered to be paid by employer 20**

- Section 15 of the principal Act is amended—
- (a) by omitting the words “to be paid under section 6 of this Act as” in both places where they appear, and substituting in each case the words “under **section 14ZK** of this Act to be paid by way of reimbursement or”; and 25
- (b) by inserting, after the words “judgment for” in both places where they appear, the words “reimbursement or”.

**15 New Schedule 2 added 30**

The principal Act is amended by adding the **Schedule 2** set out in **Schedule 2** of this Act.

**16 Consequential amendments**

The Acts specified in **Schedule 3** are consequentially amended in the manner indicated in that schedule.

## New (unanimous)

**17 Repeals**

The enactments specified in **Schedule 4** are repealed.

**Part 2****Amendments to Defence Act 1990****18 Defence Act 1990 called principal Act in this Part** 5

In this Part, the Defence Act 1990<sup>3</sup> is called “the principal Act”.

<sup>3</sup> 1990 No 28

**19 Commencement**

This Part comes into force on the day after the date on which this Act receives the Royal assent.

10

**20 Purpose**

The purpose of this **Part** is to amend the principal Act—

(a) to provide for protection under the Volunteers Employment Protection Act 1973 for the employment of members of the territorial forces or the reserve forces— 15

(i) who, in time of war or other like emergency or during any state of emergency declared under the Civil Defence Emergency Management Act 2002, are, 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 20

(ii) who were, at the time of the making of the Proclamation, employed by an employer:

(b) to improve the protection that is provided under this Act and the Volunteers Employment Protection Act 1973 for the employment of members of the territorial forces or the reserve forces— 25

(i) who, in the event of an actual or imminent emergency involving the deployment of members of the Armed Forces outside New Zealand, are, as a consequence of a Proclamation made under section 39(3) or section 40(3) of the Defence Act 30

**New (unanimous)**

	1950, called out for continuous service, either in New Zealand or elsewhere; and	
	(ii) who were, at the time of the making of the Proclamation, employed by an employer:	
(c)	to authorise the Governor-General to make in the national interest an Order in Council that will enable any member of the territorial forces or the reserve forces and any other person to receive protection under the Volunteers Employment Protection Act 1973 where, under section 50 of this Act, they volunteer for special service, either in New Zealand or elsewhere, and the member's or person's offer of service is accepted during the period specified in the order:	5 10
(d)	to require the Minister to appoint a Territorial Forces Employer Support Council.	15
<b>21</b>	<b>New section 42 substituted</b>	
(1)	The principal Act is amended by repealing section 42, and substituting the following section:	
<b>“42</b>	<b>Protection of employment when Proclamation made</b>	
<b>“(1)</b>	<b>Part 2</b> of the Volunteers Employment Protection Act 1973 applies to—	20
	“(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 Civil Defence Emergency Management Act 2002, is, as a consequence of a Proclamation made under section 39(2) or section 40(2) of this Act, called out for continuous service, either in New Zealand or elsewhere; and	25 30
	“(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	35

## New (unanimous)

- “(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 this Act, called out for continuous service, either in New Zealand or elsewhere; and 5
- “(iii) who was, at the time of the making of the Proclamation, employed by an employer.”
- (2) Section 6 of the Defence Amendment Act 1997 is consequentially repealed. 10
- 22 Special service**  
Section 50 of the principal Act is amended by adding the following subsections:
- “(3) The Governor-General may, from time to time, by writing under the Governor-General’s hand, delegate to the Chief of Defence Force the power that the Governor-General has, under subsection (1), to accept an offer of the kind described in that subsection. 15
- “(4) Section 30(4) to (9), with any necessary modifications, applies to a delegation made under **subsection (3)**.” 20
- 23 New sections 50A and 50B inserted**  
The principal Act is amended by inserting, after section 50, the following sections:
- “**50A Power to declare situation of national interest in relation to special service** 25  
The Governor-General may from time to time, by Order in Council published in the *Gazette*, declare that the need for members of the territorial forces or reserve forces or others persons to offer themselves, under section 50, for special service is such that it is in the national interest that, for such period as is specified in the order, protection under the Volunteers Employment Protection Act 1973 be given to any such member or other person— 30
- “(a) who undertakes special service under section 50; and 35

**New (unanimous)**

- “(b) whose obligation to undertake that service under section 50 arises from the acceptance, during the period specified in the order, of an offer that was made by the member or other person under section 50; and
- “(c) who was, at the time of the making of the order, employed by an employer. 5

**“50B Protection of employment when situation of national interest declared**

**Part 3** of the Volunteers Employment Protection Act 1973 applies to— 10

- “(a) every employee—
  - “(i) who is a member of the territorial forces or the reserve forces or other person; and
  - “(ii) who undertakes special service under section 50 of this Act; and 15
  - “(iii) whose obligation to undertake that service under section 50 of this Act arises from the acceptance, during a period specified in an order made under **section 50A** of this Act, of an offer that was made by the member or other person under section 50 of this Act; and 20
- “(b) who was, at the beginning of the period specified in the order made under **section 50A** of this Act, employed by an employer.”

**24 New section 91A inserted 25**

The principal Act is amended by inserting, after section 91, the following section:

**“91A Territorial Forces Employer Support Council**

- “(1) The Minister must appoint a council to be called the Territorial Forces Employer Support Council. 30
- “(2) The Council has—
  - “(a) the role of promoting service in the territorial forces; and
  - “(b) the duty of advising the Minister on such matters in relation to the territorial forces as are referred to the Council by the Minister; and 35

**New (unanimous)**

- “(c) such other functions as are from time to time determined by the Minister.
- “(3) The Council is a statutory Board for the purposes of the Fees and Travelling Allowances Act 1951.
- “(4) There may be paid out of public money to the members of the Council remuneration by way of fees, salaries, or allowances and travelling allowances and travelling expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act apply accordingly. 5
- “(5) Subject to the provisions of this Act and of any regulations made under this Act, the Council may regulate its own procedure.” 10

**New (unanimous)**

**Schedule 1**

s 6

**References to worker changed to references to  
employee**

**Part 1**

Provisions of principal Act amended by omitting the word “worker” and substituting the word “employee”.  
Sections 4, 5, 8, 9, 11, and 12. 5

**Part 2**

Provisions of principal Act amended by omitting the word “worker’s” and substituting the word “employee’s”.  
Sections 4, 8, and 12. 10

## New (unanimous)

s 15

**Schedule 2**  
**New Schedule 2 added to principal Act**

s 2(2)

**Schedule 2**  
**Change of employer**

- |   |  |    |
|---|--|----|
| 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 one person to another (whether before or after the date of the commencement of this Act),—                   | 5  |
|   | (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  | 10 |
|   | (b) the transfer does not break the continuity of the period of employment of any employee in the trade or business or undertaking; and  | 15 |
|   | (c) any employer who employed any employee in the trade or business or undertaking at any time before the transfer and the transferee is 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 this Act, an employment agreement between any body corporate and an employee is modified and some other body corporate is substituted as the employer,— | 20 |
|   | (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  | 25 |
|   | (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.   | 30 |
| 3 | If on the death of an employer an employee is taken into the employment of the personal representatives or trustees of the   |    |



**New (unanimous)**

**Schedule 2**—continued

deceased (whether before or after the commencement of this Act),—

- (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 5
  - (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. 10
- 4 If there is a change (whether before or after the commencement of this Act) 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 15
  - (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. 20
- 5 If (whether before or after the commencement of this Act) 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,— 25
- (a) the employee's period of employment at that time counts as a period of employment with the associated employer; and 30
  - (b) the taking of the employee into the employment of the associated employer does not break the continuity of the period of employment; and 35

**New (unanimous)**

**Schedule 2**—continued

(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 of this schedule, 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. 5

New (unanimous)

**Schedule 3**  
**Consequential amendments**

s 16

**Companies Act 1993** (1993 No 105)

Repeal clause 2(i) of the Seventh Schedule and substitute:

- “(i) subject to clause 8 of this schedule, any sum ordered or  
adjudged to be paid by a company under **section 14ZK** of  
the Volunteers Employment Protection Act 1973 as  
compensation in respect of a default or contravention  
occurring before the commencement of the liquidation,  
whether or not the order or judgment for compensation  
was made or given before that date and time:”.

**Holidays Act 1981** (1981 No 15)

Omit from the proviso to the definition of **average weekly earnings**  
in section 2(1) the words “protected voluntary service or training”  
and substitute the words “volunteers leave”.

Omit from section 3(2) the words “protected voluntary service or  
training” and substitute the words “volunteers leave”.

**Parental Leave and Employment Protection Act 1987**

(1987 No 129)

Repeal section 72A(2)(d) and substitute:

- “(d) on volunteers leave (within the meaning of the  
Volunteers Employment Protection Act 1973) for that  
hour; or”.

**New (unanimous)**

s 17

**Schedule 4  
Enactments repealed****Companies Amendment Act 1999** (1999 No 19)  
Section 17.**Employment Relations Act 2000** (2000 No 24) 5  
So much of Schedule 5 as relates to the Volunteers Employment  
Protection Act 1973.**Volunteers Employment Protection Amendment Act 1985**  
(1985 No 46)**Volunteers Employment Protection Amendment Act 1987** 10  
(1987 No 59)**Volunteers Employment Protection Amendment Act 1990**  
(1990 No 114)**Legislative history**17 August 2000  
20 September 2000Introduction (Bill 58-1)  
First reading and referral to Foreign Affairs, Defence  
and Trade Committee