

Employment Relations Amendment Bill (No 4)

(Divided from the Judicature Modernisation Bill)

Government Bill

As reported from the committee of the whole House

This Bill was formerly part of the Judicature Modernisation Bill as reported from the Justice and Electoral Committee. The committee of the whole House has further amended the Bill and divided it into the following Bills:

- Senior Courts Bill comprising clauses 1 and 2, Part 1, and Schedules 1A to 4
- District Court Bill comprising Part 2 and Schedules 5 to 7
- Judicial Review Procedure Bill comprising Part 3 and Schedule 8
- Interest on Money Claims Bill comprising Part 4 and Schedules 9AAA, 9AA, and 9
- Electronic Courts and Tribunals Bill comprising Part 5
- Arbitration Amendment Bill comprising subpart 1 of Part 6
- Bills of Exchange Amendment Bill comprising subpart 2 of Part 6
- Building Societies Amendment Bill comprising subpart 3 of Part 6
- Children, Young Persons, and Their Families Amendment Bill comprising subpart 4 of Part 6
- Companies Amendment Bill (No 2) comprising subpart 5 of Part 6 and Schedule 10
- Contractual Remedies Amendment Bill comprising subpart 6 of Part 6
- Copyright Amendment Bill (No 2) comprising subpart 7 of Part 6
- Courts (Remote Participation) Amendment Bill comprising subpart 8 of Part 6
- Criminal Procedure Amendment Bill comprising subpart 9 of Part 6
- this Bill comprising subpart 10 of Part 6
- Family Courts Amendment Bill comprising subpart 11 of Part 6
- Insolvency Amendment Bill comprising subpart 12 of Part 6

- Local Government (Rating) Amendment Bill comprising subpart 13 of Part 6
- Property Law Amendment Bill comprising subpart 14 of Part 6
- Remuneration Authority Amendment Bill (No 2) comprising subpart 14A of Part 6
- Resource Management Amendment Bill comprising subpart 15 of Part 6
- Te Ture Whenua Maori Amendment Bill comprising subpart 16 of Part 6
- Trans-Tasman Proceedings Amendment Bill comprising subpart 17 of Part 6

Key to symbols used in reprinted bill

As reported from committee of the whole House

text inserted

~~text deleted~~

Hon Amy Adams

Employment Relations Amendment Bill (No 4)

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Employment Relations Amendment Act **(No 4) 2016**.

2 Commencement

This Act comes into force on **1 March 2017**.

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535 Principal Act

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

536 Section 5 amended (Interpretation)

(1) In section 5, definition of **Judge**, replace “a temporary” with “an acting”. 10

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

lawyer has the meaning given to it by section 6 of the Lawyers and Conveyancers Act 2006

537 Section 187 amended (Jurisdiction of court)

After section 187(1)(k), insert:

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(ka) to hear and determine any application for review of the type referred to in **section 237D**:

538 Section 196 replaced (Contempt of court or Authority)

Replace section 196 with:

196 Contempt of court or Authority

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(1) This section applies if any person—

- (a) wilfully insults a member of the Authority, a Judge, an officer of the Authority, a Registrar of the court, any other officer of the court, or any witness; during his or her sitting or attendance in the Authority or the court, or in going to or returning from the Authority or the court; or
 - (b) wilfully interrupts the proceedings of the Authority or the court or otherwise misbehaves in an investigation meeting or a hearing of the Authority or the court; or 5
 - (c) wilfully and without lawful excuse disobeys any order or direction of the Authority or the court in the course of an investigation meeting or the hearing of any proceedings. 10
- (2) If this section applies,—
- (a) any constable or officer of the court, with or without the assistance of any other person, may, by order of the Authority or ~~the court~~ a Judge, take the person into custody and detain him or her until the rising of the Authority or the court; and 15
 - (b) the Judge may, if he or she thinks fit, sentence the person to—
 - (i) imprisonment for a period not exceeding 3 months; or
 - (ii) a fine not exceeding \$5,000 for each offence; and
 - (c) in default of payment of any such fine, the Judge may direct that the offender be imprisoned for any period not exceeding 3 months, unless the fine is sooner paid. 20
- (3) Nothing in this section limits or affects any power or authority of the court to punish any person for contempt of court in any case to which this section does not apply. 25

Compare: 2011 No 81 s 365

539 New section 198A inserted (Registrar may take affidavit)

After section 198, insert:

198A Registrar may take affidavit

A Registrar may take an affidavit.

540 Section 200 amended (Appointment of Judges)

- (1) Replace section 200(2) with:
- (2) A person may be appointed a Judge only if—
 - (a) that person has for at least 7 years held a New Zealand practising certificate as a barrister or as a barrister and solicitor; or
 - (b) that person—
 - (i) holds a degree in law granted or issued by any university within New Zealand; and 35

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|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| <ul style="list-style-type: none"> (ii) has been admitted as a barrister and solicitor of the High Court; and (iii) has held a practising certificate in a jurisdiction specified by Order in Council— <ul style="list-style-type: none"> (A) for at least 7 years; or (B) for a lesser number of years but when that number of years is added to the number of years the person has held a New Zealand practising certificate the total number of years is at least 7. | 5 |
| (2) Replace section 200(4) with: | 10 |
| (4) The Attorney-General must publish information explaining his or her process for— <ul style="list-style-type: none"> (a) seeking expressions of interest for the appointment of Judges of the court; and (b) nominating persons <u>a person</u> for appointment as a Judge of the court. | 15 |
| (5) A Judge must not practise as a lawyer. | |

541 New sections 200AA and 200AB inserted

After section 200, insert:

200AA Judge not to undertake other employment or hold other office

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|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| (1) A Judge of the court must not undertake any other paid employment or hold any other office (whether paid or not) without the approval of the Chief Judge. | 20 |
| (2) An approval under subsection (1) may be given only if the Chief Judge is satisfied that undertaking the employment or holding the office is consistent with the Judge's judicial office. | |
| (3) However, subsection (1) does not apply to another office if an enactment permits or requires the office to be held by a Judge. | 25 |

200AB Protocol relating to activities of Judges

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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| (1) The Chief Justice must develop and publish a protocol containing guidance on— <ul style="list-style-type: none"> (a) the employment, or types of employment, that he or she considers may be undertaken consistent with being a Judge; and (b) the offices, or types of offices, that he or she considers may be held consistent with being a Judge. | 30 |
| (2) The Chief Justice may only develop and publish a protocol under subsection (1) <u>only</u> after consultation with the Chief Judge. | 35 |

542 Section 201 amended (Seniority)

In section 201(3), replace “temporary” with “acting”.

543 Section 207 amended (Appointment of temporary Judges)

- (1) In the heading to section 207, replace “**temporary**” with “**acting**”.
- (2) In section 207(1), replace “temporary Judges” with “acting Judges”.
- (3) Replace section 207(4) with:
- (4) A person may, subject to subsection (2), be appointed as an acting Judge under this section if he or she is a former Judge of the court or a current or former District Court Judge. 5
- (4A) A superannuation subsidy must not be paid to a person who is appointed as an acting Judge under this section.
- (4B) **Subsection (1)** does not apply to a compulsory employer contribution within the meaning of section 101A of the KiwiSaver Act 2006. 10
- ~~(4) A person holding office as a temporary Judge under section 207 of the principal Act immediately before the commencement of this section continues to hold office on the same terms and as if he or she were appointed as an acting Judge under section 207 of that Act. 15~~

544 New sections 222A to 222G inserted

After section 222, insert:

222A Information regarding reserved judgments

- (1) ~~The Chief Judge must, in consultation with the Chief Justice, publish information about— 20~~
 - ~~(a) the process by which parties to proceedings before the court may obtain information about the status of any reserved judgment in those proceedings; and~~
 - ~~(b) the number of judgments of the court that he or she considers to be outstanding beyond a reasonable time for delivery; and 25~~
 - ~~(c) any other information about reserved judgments that he or she wishes to publish.~~
- (2) ~~The information referred to in **subsection (1)(b)** must be published periodically or regularly. 30~~

The Chief Judge must, in consultation with the Chief Justice,—

 - (a) publish information about the process by which parties to proceedings before the court may obtain information about the status of any reserved judgment in those proceedings; and
 - (b) periodically publish information about the number of judgments of the court that he or she considers is outstanding beyond a reasonable time for delivery; and 35
 - (c) publish information about reserved judgments that he or she considers is useful.

222B Final written judgments to be published on Internet

- (1) Every final written judgment of the court must be published on the Internet as soon as practicable unless there is good reason not to publish the complete judgment.
- (2) A final written judgment may be published on the Internet in part if there are good reasons for not publishing the other parts of the judgment. 5
- (3) Good reason not to publish a judgment or part of it includes the following:
- (a) non-publication is necessary because of a suppression order or statutory requirement that affects publication or continued publication;
 - (b) the judgment falls into a category of judgments that are of limited public value; 10
 - (c) taking into account the presumption in **subsection (1)** in favour of publication, a Judge nevertheless determines that the judgment or any part of it should not be published because publication or the effect of publication would be contrary to the interests of justice. 15
- (4) In this section, **final written judgment** means a written decision that determines or substantially determines the outcome of any proceedings and that is either—
- (a) a written reserved judgment; or
 - (b) an oral judgment transcribed by an official transcription service. 20

222C Recusal guidelines

The Chief Judge must, in consultation with the Chief Justice, develop and publish guidelines to assist Judges to decide if they should recuse themselves from a proceeding.

222D Judge may make order restricting commencement or continuation of proceeding 25

- (1) A Judge may make an order (a **section 222D order**) restricting a person from commencing or continuing civil proceedings in the Employment Court.
- (2) The order may have—
- (a) a limited effect (a **limited order**); or 30
 - (b) an extended effect (an **extended order**).
- (3) A limited order restrains a party from ~~continuing or~~ commencing or continuing civil proceedings on a particular matter in the Employment Court.
- (4) An extended order restrains a party from ~~continuing or~~ commencing or continuing civil proceedings on a particular or related matter in the Employment Court. 35
- (5) Nothing in this section limits the court's inherent power to control its own proceedings.

222E Grounds for making section 222D order

- (1) A Judge may make a limited order under **section 222D** if, ~~in at least 2 civil proceedings about the same matter in the court, the Judge considers that at least 2 or more of the proceedings are or were totally without merit.~~
- (2) A Judge may make an extended order under **section 222D** if, in at least 2 proceedings about any matter considered by the court, the Judge considers that the proceedings are or were totally without merit. 5
- (3) In determining whether the proceedings are or were totally without merit, the Judge may take into account the nature of any other interlocutory application, ~~appeals, or criminal prosecutions or appeal~~ involving the party to be restrained, but is not limited to those considerations. 10
- (4) The proceedings concerned must be ~~proceedings instituted or conducted commenced or continued~~ by the party to be restrained, whether against the same person or different persons.
- (5) For the purpose of this section and **sections 222F and 222G**, an appeal in a civil proceeding must be treated as part of that proceeding and not as a distinct proceeding. 15

222F Terms of section 222D order

- (1) ~~A~~ An order made under **section 222D** ~~order~~ may restrain a party from ~~instituting commencing or continuing~~ any civil proceeding (whether generally or against any particular person or persons) of any type specified in the order without first obtaining the leave of the court. 20
- (2) ~~A~~ An order made under **section 222D** ~~order~~, whether limited or extended, has effect for a period of up to 3 years as specified by the Judge, but the Judge making it may specify a longer period (which must not exceed 5 years) if he or she is satisfied that there are exceptional circumstances justifying the longer period. 25

222G Procedure and appeals relating to section 222D orders

- (1) A party to any proceeding may apply for a limited order or an extended order.
- (1A) A Judge may make an order under **section 222D** (a **section 222D order**) either on an application under **subsection (1)** or on his or her own initiative. 30
- (2) An application for leave to continue ~~or issue~~ commence a civil proceeding by a party subject to a **section 222D** order may be made without notice, but the court may direct that the application for leave be served on any specified person. 35
- (2A) An application for leave must be determined on the papers, unless the Judge considers that an oral hearing should be conducted because there are exceptional circumstances and it is appropriate to do so in the interests of justice. ~~The Judge's determination of the application for leave is final.~~
- (2B) A Judge's determination of an application for leave is final. 40

- (3) ~~A **section 222D** order does not prevent or affect the commencement of a criminal prosecution in any case.~~
- (4) The party against whom a **section 222D** order is made may appeal against the order to the Court of Appeal.
- (5) The appellant in an appeal under **subsection (4)** or the applicant for the **section 222D** order concerned may, with the leave of the Supreme Court, appeal against the determination of that appeal to the Supreme Court. 5
- (6) A court determining an appeal under this section has the same powers as the court appealed from has to determine an application or appeal, as the case may be. 10

546 Section 237 amended (Regulations)

After section 237(f), insert:

- (~~f~~f~~a~~a) in relation to a service performed by a Registrar of the court under this Act and specified in regulations made under **paragraph (fb) (fab)**, authorising a Registrar of the court to charge a reasonable fee calculated on the actual expense incurred in performing the service: 15
- (~~f~~f~~b~~b) specifying the services (other than services for which a fee is already prescribed under this Act) performed by a Registrar of the court under this Act for which that person may charge a fee:
- (~~f~~f~~e~~e~~f~~a~~c~~c) making provision in relation to the postponement, under the regulations, of the payment of any fee, which provision may (without limitation) include provision— 20
- (i) for the recovery of the fee after the expiry of the period of postponement; and
- (ii) for restrictions to apply (after the expiry of the period of postponement and so long as the fee remains unpaid) on the steps that may be taken in the proceedings in respect of which the fee is payable: 25
- (~~f~~f~~d~~d) providing for the manner in which an application for the exercise of a power specified in **section 237B(1) or 237C(1)** is to be made, including, without limitation, requiring the application to be in a form approved for the purpose by the chief executive: 30
- (~~f~~f~~e~~e~~f~~a~~e~~e) providing for the refund of fees paid for a review of a decision of a Registrar of the court, if the decision is overturned in its entirety by a Judge: 35

547 New sections 237B to 237D inserted

~~After~~ Before section ~~237A~~ 238, insert:

237B Regulations providing for waiver, etc, of fees

- (1) In order to promote access to justice, the Governor-General may, by Order in Council, make regulations authorising a Registrar of the court to waive, reduce, or postpone the payment of a fee required in connection with a proceeding or an intended proceeding, or to refund in whole or in part a fee that has already been paid. 5
- (2) Regulations made under **subsection (1)** must provide that a Registrar of the court may exercise a power under the regulations only if he or she is satisfied on the basis of prescribed criteria that— 10
- (a) the person responsible for payment of the fee is unable to pay or absorb the fee in whole or in part; or
- (b) unless 1 or more of those powers are exercised in respect of a proceeding that concerns a matter of genuine public interest, the proceeding is unlikely to be commenced or continued.
- (3) For the purposes of **subsection (2)**, regulations may prescribe criteria— 15
- (a) for assessing a person's ability to pay a fee; and
- (b) for identifying proceedings that concern matters of genuine public interest.
- (4) No fee is payable for an application for the exercise of a power specified in **subsection (1)**. 20
- Compare: 1947 No 16 s 123(1)(ba), (bb), (2)

237C Postponement of fees

- (1) The Governor-General may, by Order in Council, make regulations authorising a Registrar of the court to postpone the payment of a fee pending the determination of— 25
- (a) an application for the exercise of a power specified in **section 237B(1)**; or
- (b) an application for review under **section 237D**.
- (2) No fee is payable for an application for the exercise of a power specified in **subsection (1)**. 30
- Compare: 1947 No 16 s 123(1)(bc), (2)

237D Reviews of decisions of Registrars concerning fees

- (1) A person who disagrees with a decision of a Registrar of the court under regulations made under **section 237B(1)** may apply to a Judge for a review of that decision. 35
- (2) The application must be made within—
- (a) 20 working days after the date on which the applicant is notified of the decision; or

- (b) any further time that the Judge allows on application, which may be made either before or after the expiry of that period.
- (3) The application may be made informally.
- (4) A review is—
- (a) conducted by way of rehearing of the matter in respect of which the Registrar of the court made the decision; and 5
- (b) dealt with on the papers, unless the Judge directs otherwise.
- (5) The Judge may confirm, modify, or reverse the decision of the Registrar of the court.
- (6) No fee is payable on the application. 10
- Compare: 1947 No 16 s 123A

547A Section 253 amended (Existing appointments)

In section 253(2), replace “temporary Judges” with “acting Judges”.

547B Schedule 1AA amended

- (1) In Schedule 1AA, replace clause 1 with: 15

1 Interpretation

In this schedule,—

2014 Act means the Employment Relations Amendment Act 2014

2016 Act means the Employment Relations Amendment Act 2016

2016 (No 2) Act means the **Employment Relations Amendment Act (No 2) 2016**. 20

- (2) In Schedule 1AA, after clause 3, insert:

4 Application, savings, and transitional provision arising from 2016 (No 2) Act

A person holding office as a temporary Judge under section 207 immediately before the commencement of this clause continues to hold office on the same terms as if he or she were appointed as an acting Judge under section 207. 25

Legislative history

14 September 2016

Divided from Judicature Modernisation Bill (Bill 178–2) as Bill 178–30