

1994

THE PARLIAMENT OF THE COMMONWEALTH OF  
AUSTRALIA

HOUSE OF REPRESENTATIVES

INDUSTRIAL RELATIONS AMENDMENT BILL (No.2) 1994

EXPLANATORY MEMORANDUM

(Circulated by authority of the  
Minister for Industrial Relations,  
the Honourable Laurie Brereton MP)



## **INDUSTRIAL RELATIONS AMENDMENT BILL (No.2) 1994**

### **OUTLINE**

This bill will amend the *Industrial Relations Act 1988* to partially postpone provisions of that Act that prevent age discrimination in awards and agreements.

The postponement will be confined to wage rates which discriminate because an employee has not reached a particular age.

The postponement will be until 22 June 1997. This is the date by which the Australian Industrial Relations Commission is required to complete its first three-year cycle of reviewing all awards. The postponement will exclude junior wage rates from this first full cycle of the review of all awards.

The postponement will also allow agreements containing junior wage rates to continue to be certified or approved by the Australian Industrial Relations Commission before 22 June 1997.

The purpose of the bill is to allow another three years for the transition from junior wage rates to wage rates that are based on skill and competency rather than on age.

### **FINANCIAL IMPACT STATEMENT**

The bill will have no significant impact on Commonwealth expenditure.

**INDUSTRIAL RELATIONS AMENDMENT BILL (No.2) 1994****Clause 1: Short title, etc**

This is a formal provision.

**Clause 2: Commencement**

The bill will commence on the day on which it receives Royal Assent.

The only exception to this is a formal provision – subclause 2(2) – which recognises that the bill amends a section added to the *Industrial Relations Act 1988* (the IR Act) by an earlier provision that has not yet itself commenced. As a drafting formality, the amendment cannot commence until the section being amended has actually been inserted in the IR Act. This drafting formality does not alter the substantive effect that this bill will automatically take effect from Royal Assent. Subclause 2(2) is drafted to reflect other legislation, as explained in the remainder of this paragraph.

Clause 4 of the bill amends section 150A of the IR Act. Section 150A will be added to the IR Act, on 22 June 1994, by section 17 of the *Industrial Relations Reform Act 1993* (the Reform Act). Section 17 of the Reform Act will commence on 22 June 1994 because it will not be proclaimed earlier (the effect of subsection 2(7) of the Reform Act is that section 17 of that Act commences six months after that Act received Royal Assent, unless it is proclaimed to commence earlier : the Reform Act received Royal Assent on 22 December 1993).

**Clause 3: Insertion of new section 90AB : Discrimination because of age**

Clause 3 will insert a new section 90AB in the IR Act. This new section will qualify the effect of existing sections 90 and 90AA of the IR Act. The relevant effect of sections 90 and 90AA is that they require the Australian Industrial Relations Commission (the Commission) to perform its functions in a way that furthers the objects of the IR Act. Because of paragraph 3(g) of the IR Act, part of one object of that Act is to help prevent and eliminate discrimination on the basis of age. The new section 90AB will ensure that this will not prevent the Commission prescribing junior wage rates before 22 June 1997. No other aspect of the "anti-discrimination" object of the IR Act will be affected.

**Clause 4: Commission to review awards**

This clause amends section 150A of the IR Act. Section 150A will be added to the IR Act on 22 June 1994. It will require the Commission to review all awards every 3 years. Paragraph 150A(2)(b) requires that, as one aspect of this review, the

Commission take steps to remedy award provisions which discriminate against an employee because of age. This amendment to section 150A will exclude from this review process any provision relating to rates of wages that discriminates because the employee has not reached a particular age. This exclusion will only apply until 22 June 1997 (ie, the end of the first 3-year cycle during which awards are to be reviewed).

**Clause 5: When Commission to refuse to certify agreements**

Clause 5 amends section 170MD of the IR Act. Section 170MD specifies the circumstances in which the Commission is to certify an agreement made under Division 2 of Part VIB of the IR Act (this Division is the "certified agreements" Division of the "bargaining" Part of the Act). Subsection 170MD(5) requires that the Commission refuse to certify an agreement if it thinks that a provision of the agreement discriminates against an employee because of age. Clause 5 will qualify this. Before 22 June 1997, the Commission will not be required to refuse to certify merely because the agreement relates to rates of wages that discriminate because an employee has not reached any particular age.

**Clause 6: When Commission to refuse to approve implementation of agreement**

This clause makes, to the "enterprise flexibility agreement" Division, the same change that clause 5 makes for the "certified agreement" Division. The effect of this is explained in the note above on clause 5. Clause 6 refers to subsection 170ND(10) of the IR Act : the explanation above of subsection 170MD(5) applies equally to subsection 170ND(10) – except that subsection 170ND(10) applies to enterprise flexibility agreements rather than certified agreements.