

HUMAN RIGHTS AMENDMENT BILL (NO. 2)

EXPLANATORY NOTE

General Policy Statement

This Bill amends the Human Rights Act 1993 to defer the expiry date for section 151; preserves age-linked retirement benefits contained in employment contracts in force on 31 December 1998; requires the Minister of Justice to report to Parliament at 6-monthly intervals on progress being made in remedying significant areas of inconsistency between existing Acts and regulations and the Human Rights Act; and enables the Human Rights Commission to comment on the Minister's reports prior to their presentation to Parliament.

Background

In 1993 the Human Rights Commission Act 1977 and the Race Relations Act 1971 were consolidated by the inclusion of their provisions in the Human Rights Act 1993. A number of "new" prohibited grounds of discrimination were added.

Because of the wide coverage of the new grounds in relation to Government activity, section 151 of the Act provided a temporary exemption for all "activities done by or on behalf of the Government of New Zealand" in relation to these grounds. Section 151 also continued the position that the Human Rights Act 1993 would not override other Acts or regulations. However, a sunset clause anticipated that the Government would identify conflicts with the Human Rights Act 1993, both in Acts and regulations and in Government policies and practices, and resolve them to ensure consistency with the Human Rights Act 1993 by the year 2000.

Section 5 (1) (i)-(k) of the Act required the Human Rights Commission to examine all current Acts, regulations, and Government policies and practices for consistency with Part II of the Act and the spirit and intention of the Act, and report the results of this examination to the Minister of Justice by 31 December 1998.

The audit review carried out by the Human Rights Commission and Government departments was called *Consistency 2000*, and involved an initial self-audit by each Government department followed by an examination and final determination by the Human Rights Commission. In 1997 the Government decided to review the *Consistency 2000* project in light of the significant resources committed to the project, and preliminary indications of the main areas of inconsistency with the Human Rights Act 1993 that might have to be addressed.

On 19 August 1998 a Human Rights Amendment Bill (the “1998 Bill”) was introduced. Among other things, it provided that—

- The Human Rights Commission would be relieved of its statutory duty under section 5 (1) (i)–(k) of the Act to report on inconsistencies with the Act:
- Various exemptions or clarifications in relation to Government-provided services in the areas of social welfare, health, and defence would be inserted:
- Age-linked retirement benefits would be preserved.

The 1998 Bill has not progressed. Following consultation with other political parties, the Government has decided to introduce this new Bill which largely preserves the status quo so that further consideration can be given to the issues before final decisions are taken on the question of Government compliance with the principal Act.

Major Reforms

The expiry date for section 151 is to be deferred from 31 December 1999 to 31 December 2001 in order to preserve the Government’s current position in relation to the Human Rights Act 1993 for a further 2 years. This 2-year period is intended to provide a reasonable amount of time in which to consider the complex issues relating to the extent and scope of Government compliance with the Act.

A provision is to be added to the Human Rights Act 1993 that preserves an employee’s right to a monetary benefit if the employee has an existing entitlement to an age-linked retirement benefit in a public or private sector employment contract in force on 31 December 1998.

A reporting process is established whereby—

- (a) The Minister of Justice is required to report to Parliament on a 6-monthly basis on progress across Government in remedying significant areas of inconsistency between existing Acts and regulations and the Human Rights Act 1993; and
- (b) The Human Rights Commission is required to consider and comment on the Minister’s draft report, and the Minister is obliged to include such comment in his or her report.

Clause by Clause Analysis

Clause 1 contains the commencement provision. The Bill comes into force on 1 October 1999.

PART 1

AMENDMENTS AFFECTING PRINCIPAL ACT

Clause 2 inserts *new section 30A* into the principal Act. It creates an exception from section 22 of the principal Act for employment-related retirement benefits. As proposed, it will not be a breach of section 22 to pay a retirement benefit to an employee if the following requirements are met:

- The employee’s entitlement to the benefit, or the calculation of that benefit, is determined in whole or in part by the employee’s age or length of service, or both:
- The benefit is a term of a written employment contract that was in force on 31 December 1998:
- The employee was, on 31 December 1998, a party to that employment contract.

The exception will also apply if the employment contract is renewed or the employer becomes a different employer because of a restructure or reorganisation.

Clause 3 amends section 152 of the principal Act by changing the date specified as the date on which section 151 of the principal Act expires from the close of the 31st day of December 1999 to the close of 31 December 2001.

Clause 4 requires the Minister of Justice, before each of the dates specified in *subclause (4)*, to present a report on changes made by legislation that either ameliorate or remove an inconsistency between any legislation and Part II of the principal Act, or introduce or maintain such an inconsistency. The Minister is not required to include in any report presented under *subclause (1)* any information about changes that relate to an inconsistency with Part II of the principal Act that is, in the opinion of the Minister, of a technical nature or of minor importance. Section 151 is to be disregarded in assessing whether there is an inconsistency between any legislation and Part II of the principal Act. (Section 151 of the principal Act provides, in effect, that other Acts and regulations prevail over the principal Act unless there is express provision to the contrary, and exempts actions done by or on behalf of the Government of New Zealand from the requirement to comply with certain provisions in Part II of the principal Act.)

The dates before which the Minister must present a report are 30 June 2000, 31 December 2000, 30 June 2001, and 31 December 2001. In the case of a report required to be presented before 30 June 2000, the Minister must provide information on changes made by legislation passed or made during the period beginning on 1 October 1999 and ending with the close of 30 April 2000. The report required to be presented before 31 December 2000 must likewise provide the same information on changes made between 1 May 2000 and 31 October 2000. The reports required to be presented before 30 June 2001 and 31 December 2001 must provide the same information on changes made between 1 November 2000 and 30 April 2001, and 1 May 2001 and 31 October 2001, respectively.

Clause 5 requires the Minister of Justice, before presenting a report to the House of Representatives, to give a copy of the report in draft form to the Commission. Within 14 days of the date on which it receives a report in draft form, or within such other period as may be agreed between the Minister and the Commission, the Commission must consider the draft report and provide such written comment on it to the Minister as the Commission considers appropriate. The Minister must include in each report presented to the House of Representatives any comment received by the Minister from the Commission provided in accordance with *subclause (2)*, in an unedited form.

PART 2

RELATED AMENDMENTS TO OTHER ENACTMENTS

Clause 6 amends section 126B of the Social Security Act 1964 by altering the reference in the section to 31 December 1999 to 31 December 2001. Section 126B exempts certain actions done in relation to the granting of a benefit or assistance from the application of section 24 of the Human Rights Commission Act 1977 and section 44 of the Human Rights Act 1993. The effect of the amendment is to extend the exemption for a period of 2 years.

Hon Tony Ryall

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ANALYSIS

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A BILL INTITULED

An Act to amend the Human Rights Act 1993

BE IT ENACTED by the Parliament of New Zealand as follows:

- 5 **1. Short Title and commencement**—(1) This Act may be cited as the Human Rights Amendment Act (**No. 2**) 1999, and is part of the Human Rights Act 1993* (“the principal Act”).
(2) This Act comes into force on **1 October 1999**.

PART 1

AMENDMENTS AFFECTING PRINCIPAL ACT

- 10 **2. Exception in relation to employment-related retirement benefits**—The principal Act is amended by inserting, after section 30, the following section:
“30A. (1) Section 22 (1) (b) does not prevent an employer from paying a benefit to an employee on the retirement of that
15 employee if—
“(a) The employee’s entitlement to that benefit (‘the retirement benefit’), or the calculation of that

*1993, No. 82
Amendments: 1994, Nos. 138, 151

retirement benefit, is determined in whole or in part by the employee's age or length of service, or both; and

“(b) The retirement benefit is a term of a written employment contract that was in force on **31 December 1998**; and 5

“(c) The employee was, on **31 December 1998**, a party to that employment contract.

“(2) If a retirement benefit was a term of an employee's written employment contract on **31 December 1998**, **subsection (1)** continues to apply in relation to the payment of that retirement benefit even if either or both of the following things occur after that date: 10

“(a) The employee and the employer enter into a new written employment contract under which the employee remains entitled to that retirement benefit: 15

“(b) A different person becomes the employee's employer as a result of a merger, takeover, restructuring, or reorganisation, but the employee remains entitled to that retirement benefit by virtue of any enactment or agreement. 20

“(3) This section does not limit section 149.”

3. Expiry of section 151—Section 152 of the principal Act is amended by omitting the expression “the 31st day of December 1999”, and substituting the expression “**31 December 2001**”. 25

4. Ministerial reports on changes to enactments—

(1) The Minister must, before each of the dates specified in **subsection (4)**, present a report to the House of Representatives on changes made by legislation that— 30

(a) Ameliorate or remove an inconsistency between any legislation and Part II of the principal Act (which relates to unlawful discrimination); or

(b) Introduce or maintain an inconsistency between any legislation and Part II of the principal Act. 35

(2) The Minister is not required to include in any report presented under **subsection (1)** any information about changes made by any legislation that relate to an inconsistency with Part II of the principal Act that is, in the opinion of the Minister, of a technical nature or of minor importance. 40

(3) For the purposes of this section, section 151 of the principal Act must be disregarded in assessing whether there is

an inconsistency between any legislation and Part II of the principal Act.

(4) The dates referred to in **subsection (1)** are—

(a) 30 June 2000:

5 (b) 31 December 2000:

(c) 30 June 2001:

(d) 31 December 2001.

(5) The Minister must,—

10 (a) In the case of the report required to be presented before 30 June 2000, provide information on changes made by any legislation to which **subsection (1)** applies that is passed or is made during the period beginning on 1 October 1999 and ending with the close of 30 April 2000:

15 (b) In the case of the report required to be presented before 31 December 2000, provide information on changes made by any legislation to which **subsection (1)** applies that is passed or is made during the period beginning on 1 May 2000 and ending with the close of
20 31 October 2000:

(c) In the case of the report required to be presented before 30 June 2001, provide information on changes made by any legislation to which **subsection (1)** applies that is passed or is made during the period beginning on
25 1 November 2000 and ending with the close of 30 April 2001:

(d) In the case of the report required to be presented before 31 December 2001, provide information on changes made by any legislation to which **subsection (1)** applies that is passed or is made during the period beginning
30 on 1 May 2001 and ending with the close of 31 October 2001.

(6) In this section, “legislation” means any Act or regulations.

35 **5. Minister to consult with Commission**—(1) Before presenting a report to the House of Representatives under **section 4 (1)**, the Minister must give a copy of the report in draft form to the Commission.

(2) Within 14 days of the date on which it receives a report in draft form, or within such other period as may be agreed
40 between the Minister and the Commission, the Commission must consider the draft report and provide such written comment on it to the Minister as the Commission considers appropriate.

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(3) The Minister must include in each report presented to the House of Representatives under **section 4 (1)** any comment received by the Minister from the Commission that is provided, in accordance with **subsection (2)**, in an unedited form.

PART 2

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RELATED AMENDMENTS TO OTHER ENACTMENTS

6. Amendments to Social Security Act 1964—Section 126B of the Social Security Act 1964 is amended by omitting the expression “31 December 1999”, and substituting the expression “**31 December 2001**”.

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