

[AS REPORTED FROM THE JUSTICE AND LAW REFORM
COMMITTEE]

House of Representatives, 24 March 1992.

Clauses inserted are shown with single rule before first line and after last line.

[Pursuant to power granted to it by the House on 17 December 1991, the Justice and Law Reform Committee has divided from the Human Rights Commission Amendment Bill certain new clauses of that Bill and proposes that those clauses proceed as the Human Rights Commission Amendment Bill (No. 3). The Human Rights Commission Amendment Bill (No. 58-1) remains before the Justice and Law Reform Committee.]

Hon. D. A. M. Graham

HUMAN RIGHTS COMMISSION AMENDMENT (NO. 3)

ANALYSIS

| | |
|--|--|
| Title | 1M. Measures to ensure equality |
| 1. Short Title and commencement | 1N. Temporary exemption for advertisements |
| 1B. Interpretation | 1O. Damages |
| 1C. Employment | 1P. Jurisdiction of Employment Court |
| 1D. New sections inserted | 1Q. Superannuation schemes |
| 15A. Exceptions in relation to age | 1R. New sections inserted |
| 15B. Employment contracts in force on 1 April 1992 | 88A. Temporary exemption in relation to superannuation schemes |
| 15C. Special provisions in relation to written employment contracts in force on 1 April 1992 | 88B. Expiry of temporary exemption in relation to superannuation schemes |
| 1E. Armed Forces, Police, traffic officers, and officers of penal institutions | 1S. Charitable instruments |
| 1F. Pilots of aeroplanes | 1T. Other Acts not affected |
| 1G. Particulars of applicants for employment | <i>Amendment to Superannuation Schemes Act 1989</i> |
| 1H. Partnerships | 1U. Implied provisions as to deferred benefits |
| 1I. Industrial unions and professional and trade associations | <i>Amendments to Employment Contracts Act 1991</i> |
| 1J. Qualifying bodies | 1V. Discrimination |
| 1K. Vocational training bodies | |
| 1L. Discrimination by subterfuge | |

No. 58—2A

*Price
incl. GST \$2.30*

A BILL INTITULED

**An Act to amend the Human Rights Commission Act
1977**

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 Commission Amendment Act (No. 3) 1992, and shall be read together with and deemed part of the Human Rights Commission Act 1977* (hereinafter referred to as the principal Act). 10

(2) This Act shall come into force on the 1st day of April 1992.

New

1b. Interpretation—(1) Section 2 of the principal Act is hereby amended by repealing the definition of the term “Arbitration Court” (as inserted by section 6(2) of the Industrial Relations Amendment Act 1977). 15

(2) Section 2 of the principal Act is hereby amended by inserting, before the definition of the term “Commission”, the following definition: 20

“‘Age’, in relation to a person, means any age within the period beginning with the date on which that person ceases to be required to be enrolled in a registered school under section 20 (1) of the Education Act 1989 and ending with the date on which that person becomes entitled to national superannuation under section 3 of the Social Welfare (Transitional Provisions) Act 1990:” 25

(3) Section 2 of the principal Act is hereby amended by inserting, after the definition of the term “Commissioner”, the following definitions: 30

“‘Employment contract’ has the meaning given to that term by section 2 of the Employment Contracts Act 1991:

“‘Employment Court’ means the Employment Court constituted under the Employment Contracts Act 1991:” 35

New

1c. Employment—(1) Section 15 (1) of the principal Act is hereby amended by repealing paragraph (c), and substituting the following paragraphs:

- 5 “(c) To dismiss any person, or subject any person to any detriment, in circumstances in which other persons employed by that employer on work of that description are not or would not be dismissed or are not or would not be subjected to such detriment; or
- 10 “(d) To retire any person, or to require or cause any person to retire or resign—”.

(2) Section 15 of the principal Act is hereby further amended by omitting from subsection (1), and also from subsection (2), the words “or religious or ethical belief”, and inserting in each

15 case the words “religious or ethical belief, or age”.

1d. New sections inserted—(1) The principal Act is hereby amended by inserting, after section 15, the following sections:

20 “15A. **Exceptions in relation to age**—(1) Nothing in section 15 of this Act shall apply to preferential treatment based on age where—

“(a) The position is one of domestic employment in a private household:

“(b) The duties of the position in respect of which that treatment is accorded—

25 “(i) Are to be performed wholly or mainly outside New Zealand; and

“(ii) Are such that, because of the law of the country in which those duties are to be performed, they can be carried out effectively only by a person

30 of a particular age.

“2) Nothing in section 15 (1) (a) or section 15 (1) (d) of this Act shall apply in relation to any position or employment where being of a particular age or in a particular age group is a bona fide occupational qualification for that position or employment,

35 whether for reasons of safety or for any other reason.

“3) Nothing in section 15 (1) (b) of this Act shall apply to the payment of an employee at a lower rate than another employee employed in the same or substantially similar circumstances where the lower rate is paid on the basis that the first-mentioned employee has not attained a particular age, not

40 exceeding 20 years of age.

New

“(4) Nothing in section 15 (1) (a) of this Act shall apply to the employment of employees who are to be paid in accordance with **subsection (3)** of this section.

“**15B. Employment contracts in force on 1 April 1992—** 5
Subject to **section 15c** of this Act, where an employee is a party to an employment contract that is in force on the 1st day of April 1992, it shall be unlawful for the employer of that employee, or any person acting or purporting to act on behalf of the employer of that employee, to retire that employee, or 10
to require or cause that employee to retire or resign, by reason of reaching the retirement age that applies in relation to that employment contract or is specified in the employer’s policy on the retirement ages of the employer’s employees or any of them. 15

“**15c. Special provisions in relation to written employment contracts in force on 1 April 1992—**(1) This section applies to every employment contract (whether a collective employment contract or an individual employment contract) that— 20

“(a) Is in writing; and

“(b) Is in force on the 1st day of April 1992; and

“(c) Specifies an age at which an employee is required to retire.

“(2) Where the parties to an employment contract to which this section applies agree in writing to confirm or vary the age specified in the employment contract, the age, as so confirmed or varied, shall have effect notwithstanding sections 15 and **15B** of this Act. 25

“(3) Where the parties to an employment contract to which this section applies do not agree in writing to confirm or vary the age specified in the employment contract, sections 15 and **15B** of this Act shall continue to apply in relation to that employment contract. 30

“(4) Where, as at the 1st day of April 1992, the age at which an employee is required to retire, under a term of that employee’s employment contract, is specified only in a document that sets out the employer’s policy on the retirement ages of the employer’s employees or any of them, this section shall not apply in relation to that employee’s employment contract.” 35 40

New

1E. Armed Forces, Police, traffic officers, and officers of penal institutions—(1) Section 16 of the principal Act is hereby amended by inserting in subsection (1), and also in subsection (3), before the words “members of the Police”, the word “sworn”.

(2) Section 16 of the principal Act is hereby further amended by inserting, after subsection (3), the following subsection:
“(3A) Nothing in section 15 or section 15B of this Act shall apply to age requirements relating to recruitment, terms of service, or retirement in respect of service in the Armed Forces or as sworn members of the Police or as traffic officers.”

1F. Pilots of aeroplanes—The principal Act is hereby amended by inserting, after section 16, the following section:
“16A. Nothing in section 15 or section 15B of this Act shall apply to age requirements relating to recruitment, terms of service, or retirement of pilots of aeroplanes.”

1G. Particulars of applicants for employment—Section 18 (2) of the principal Act is hereby amended by omitting the words “sex or marital status”, and substituting the words “sex, marital status, or age”.

1H. Partnerships—(1) Section 19 of the principal Act is hereby amended by omitting from subsection (1), and also from subsection (2), the words “or religious or ethical belief”, and substituting in each case the words “religious or ethical belief, or age”.

(2) Section 19 of the principal Act is hereby further amended by adding the following subsection:

“(3) Nothing in subsection (1) or subsection (2) of this section shall prevent the fixing of reasonable terms and conditions in relation to a partner or prospective partner who, by reason of age,—

“(a) Has a restricted capacity to participate or to continue to participate in the partnership; or

“(b) Requires special conditions if he or she is to participate or to continue to participate in the partnership.”

1I. Industrial unions and professional and trade associations—Section 20 (1) of the principal Act is hereby

New

amended by omitting the words “or religious or ethical belief”, and substituting the words “religious or ethical belief, or age”.

1J. Qualifying bodies—(1) Section 21 (1) of the principal Act is hereby amended by omitting the words “or religious or ethical belief”, and substituting the words “religious or ethical belief, or age”. 5

(2) Section 21 of the principal Act is hereby further amended by inserting, after subsection (2), the following subsection:

“(2A) Nothing in subsection (1) of this section shall apply where— 10

“(a) The authority or body imposes a reasonable and appropriate minimum age under which the approval, authorisation, or qualification will not be conferred; or 15

“(b) The authority or body imposes reasonable and appropriate terms and conditions on the grant or retention of the approval, authorisation, or qualification by reason of the age of the person seeking or holding it.” 20

1K. Vocational training bodies—(1) Section 22 (1) of the principal Act is hereby amended by omitting the words “or religious or ethical belief”, and substituting the words “religious or ethical belief, or age”. 25

(2) Section 22 (2) of the principal Act is hereby amended by omitting the words “or religious belief” in both places where they appear, and substituting in each case the words “religious belief, or age”. 30

(3) Section 22 of the principal Act is hereby further amended by adding the following subsections: 35

“(4) Nothing in subsection (1) of this section shall prevent an organisation or association from providing training, or facilities or opportunities for training (including facilities or opportunities by way of financial grants), only for persons above a particular age or in a particular age group. 35

“(5) Nothing in subsection (1) of this section applies in respect of the making of financial grants by an organisation or association only to persons above a particular age or in a particular age group.

New

“(6) Nothing in subsection (1) of this section applies in respect of the charging by an organisation or association of different fees to persons in different age groups.”

5 **1L. Discrimination by subterfuge**—Section 27 of the principal Act is hereby amended by omitting the words “or religious or ethical belief”, and substituting the words “religious or ethical belief, or age”.

10 **1M. Measures to ensure equality**—(1) The principal Act is hereby amended by repealing section 29 (as amended by section 10 of the Human Rights Commission Amendment Act 1983), and substituting the following section:

15 “29. (1) Anything done or omitted which would otherwise constitute a breach of any of the provisions of this Part of this Act shall not constitute such a breach if—

20 “(a) It is done or omitted in good faith for the purpose of assisting or advancing persons or groups of persons, being in each case persons of a particular colour, race, ethnic or national origin, sex, marital status, religious or ethical belief, or age; and

 “(b) Those persons or groups need or may reasonably be supposed to need assistance or advancement in order to achieve an equal place with other members of the community.

25 “(2) Nothing in Part II of this Act—

 “(a) Limits the power of the Crown to establish or arrange work or training schemes intended for persons in a particular age group; or

30 “(b) Makes it unlawful for employers to recruit persons for employment or training on work or training schemes established or arranged by the Crown and intended for persons in a particular age group.”

(2) Section 10 of the Human Rights Commission Amendment Act 1983 is hereby consequentially repealed.

35 **1N. Temporary exemption for advertisements**—The principal Act is hereby amended by inserting, after section 32, the following section:

“32A. Nothing in section 32 of this Act shall apply to any advertisement or notice which indicates, or could reasonably be

New

understood as indicating, an intention to commit a breach of section 15 of this Act in relation to age, where that advertisement or notice is published or displayed before the 1st day of June 1992.”

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1o. Damages—(1) Section 40 (1) of the principal Act is hereby amended by repealing the proviso (as amended by section 14 (1) of the Human Rights Commission Amendment Act 1983).

(2) Section 14 (1) of the Human Rights Commission Amendment Act 1983 is hereby consequentially repealed.

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1p. Jurisdiction of Employment Court—Section 71 (3) (a) of the principal Act (as substituted by section 17 of the Human Rights Commission Amendment Act 1983) is hereby amended by omitting the word “Arbitration”, and substituting the word “Employment”.

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1q. Superannuation schemes—Section 88 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) Notwithstanding anything in section 15 (1) or section 24 (1) of this Act, where any superannuation scheme is in existence at the commencement of this Act or is a scheme to which subsection (1) of this section applies, that scheme, whether or not it has been registered by the Government Actuary under the Superannuation Schemes Act 1989 or approved by the Government Actuary under any former enactment, may, subject to subsection (3) of this section, continue to have effect as if this Act had not come into force.”

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1r. New sections inserted—The principal Act is hereby amended by inserting, after section 88, the following sections:

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“88A. Temporary exemption in relation to superannuation schemes—Notwithstanding anything to the contrary in section 88 of this Act, nothing in section 15 (1) of this Act relating to differential treatment on the ground of age shall apply to a superannuation scheme, except that it shall be unlawful, on or after the 1st day of January 1993, to require an applicant for membership of a superannuation scheme to have attained a minimum age.

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New

5 “88B. **Expiry of temporary exemption in relation to superannuation schemes**—Section 88A of this Act, unless sooner repealed, shall expire with the close of the 31st day of December 1994.”

10 **1s. Charitable instruments**—Section 91 (1) of the principal Act (as substituted by section 18 (1) of the Human Rights Commission Amendment Act 1983) is hereby amended by adding to paragraph (a) the following subparagraph:
“(vii) A particular age; or”

15 **1t. Other Acts not affected**—Section 92 of the principal Act is hereby amended by adding the following subsection:
“(3) For the purposes of subsection (2) of this section, the term ‘Act’ where it last appears in that subsection means any provision of any Act or regulations.”

Amendment to Superannuation Schemes Act 1989

20 **1u. Implied provisions as to deferred benefits**—The Superannuation Schemes Act 1989 is hereby amended by inserting, after section 9B (as inserted by section 2 of the Superannuation Schemes Amendment Act (No. 2) 1990), the following section:

25 “9c. (1) Notwithstanding anything contained in the trust deed of any registered superannuation scheme, there shall be implied in every such trust deed a provision that a beneficiary who continues to be employed by an employer after that beneficiary’s expected age or date of retirement (as defined in the trust deed of that registered superannuation scheme) may elect to defer the receipt of any benefit which the beneficiary is eligible to receive under that superannuation scheme until the
30 date upon which the beneficiary ceases to be employed by that employer.

35 “(2) Nothing in subsection (1) of this section or in the Human Rights Commission Act 1977 has the effect of requiring either an employer or a beneficiary to continue to contribute, or to cease to contribute, to a registered superannuation scheme after the beneficiary’s expected age or date of retirement, as defined in the trust deed of that registered superannuation scheme.

New

“(3) Where a beneficiary has the right, under the provision described in **subsection (1)** of this section, to elect to defer receipt of any benefit which the beneficiary is eligible to receive under the superannuation scheme, the trustees of the scheme shall inform the beneficiary in writing of that right.” 5

Amendments to Employment Contracts Act 1991

Iv. Discrimination—(1) Section 28 (1) of the Employment Contracts Act 1991 is hereby amended by repealing paragraph (b), and substituting the following paragraphs: 10

“(b) Dismisses that employee or 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 dismissed or subjected to such detriment; or 15

“(c) Retires that employee, or requires or causes that employee to retire or resign—”.

(2) Section 28 (1) of the Employment Contracts Act 1991 is hereby further amended by repealing the words “or religious or ethical belief”, and substituting the words “religious or ethical belief, or age”. 20

(3) Section 28 (3) of the Employment Contracts Act 1991 is hereby amended by inserting, after the word “section,”, the word “‘age,’ ”.

(4) Section 28 of the Employment Contracts Act 1991 is hereby further amended by adding the following subsection: 25

“(4) Subsection (1) of this section shall be read subject to the provisions of **sections 15, 15A, 15B, and 16** of the Human Rights Commission Act 1977.”

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