

**ANTI-DISCRIMINATION (COMPULSORY RETIREMENT)  
AMENDMENT BILL 1990**

NEW SOUTH WALES



**EXPLANATORY NOTE**

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The object of this Bill is to amend the Anti-Discrimination Act 1977 to make unlawful the retirement of an employee on the ground of the employee's age.

The amendments proposed by the Bill which make unlawful the compulsory retirement of employees are to have a staged commencement. The bulk of public sector employees will be covered from 1 January 1991, employees of county councils and local councils will be covered from 1 January 1992 and the balance of public sector employees (other than excepted categories) and all other employees in New South Wales will have the benefit of the amendments from 1 January 1993.

The amendments relating to compulsory retirement will not apply to judicial officers, police officers, the holders of certain public offices and persons prescribed by regulation.

The Anti-Discrimination Act 1977 is also to be amended to increase the size of the Anti-Discrimination Board and to omit retirement requirements in respect of the President of that Board.

The consequential amendments proposed by the Bill to the Public Sector Management Act 1988:

- \* remove provisions which require an officer to retire at a specified age
- \* remove provisions which enable the Governor to retire an officer after the officer has reached a specified age
- \* enable a retired officer to be appointed to a vacant position regardless of age
- \* enable certain officers to return to public sector employment in certain circumstances without age constituting a bar

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- \* enable certain officers who have no right of return to public sector employment to receive compensation in certain circumstances without reference to age

Other consequential amendments proposed by the Bill to certain superannuation legislation:

- \* remove provisions relating to the compulsory retirement of employees
- \* provide that employees of or above the age of 55 years whose salary is reduced by 20% or more may elect to defer or preserve their superannuation benefits

The Bill also proposes consequential amendments to certain superannuation

- \* to remove bars, which are based on age, on the appointment of persons to offices
- \* to amend or repeal provisions which require employees to retire from, or to vacate, office on or after attaining a specified age

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides that the proposed Act commences on 1 January 1991.

**Clauses 3, 4, 5 and 6** are formal provisions that give effect to the Schedules of amendments to the Anti-Discrimination Act 1977, the Public Sector Management Act 1988, superannuation legislation and other Acts.

**SCHEDULE 1 - AMENDMENT OF ANTI-DISCRIMINATION ACT 1977**

**Schedule 1 (1)** proposes the insertion of Part 4E (sections 49ZU-49ZX) dealing with compulsory retirement from employment on the ground of age.

Proposed section 49ZU makes provision with respect to the employees to be covered by Part 4E and the dates on and from which coverage of the various categories of employees commences. The Part is to apply despite any compulsory retirement age fixed by an award or agreement. The expression "award or agreement" is defined to mean a State award or agreement while "employed in the public sector" is defined as meaning employment in the Public Service, a Teaching Service, the Police Service (otherwise than as a police officer) or a public authority or as a statutory office holder. "Employee" is defined as including a commission agent and a contract worker. As the concept of retirement may vary in relation to different spheres of employment, regulations may be made under the Act to provide guidance as to circumstances which do, or do not, constitute retirement for the purposes of the Part.

Proposed section 49ZV provides that it is unlawful for a person to retire an employee, to require an employee to retire, to threaten an employee with retirement or to engage in conduct with a view to causing a person to retire from employment on the ground of the employee's age.

Proposed section 49ZW provides that provisions which require public sector employees to retire from, or to vacate office, on or after reaching a specified age are

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of no effect. Persons may be excepted from the application of the provision by regulation.

Proposed section 49ZX provides that Part 4E does not apply to judicial officers, police officers, holders of certain statutory offices and prescribed persons or office holders.

**Schedule 1 (2)** proposes that the number of part-time members of the Anti-Discrimination Board be increased from 2 to 4.

**Schedule 1 (3)** proposes the omission of a reference to the compulsory retirement of the President of the Anti-Discrimination Board on the ground of age.

**Schedule 1 (4)** proposes the repeal of a provision which enables the Governor to retire the President of the Anti-Discrimination Board after the President attains the age of 60 years.

### **SCHEDULE 2 - CONSEQUENTIAL AMENDMENT OF PUBLIC SECTOR MANAGEMENT ACT 1988**

**Schedule 2 (1)** proposes that an officer retired from the Public Service or whose services have been dispensed with may be appointed to a vacant position despite the officer having reached 65 years of age,

**Schedule 2 (2)** proposes the repeal of a provision dealing with the retirement of officers from the Public Service. At present, an officer may retire on reaching 60 years of age or may continue in employment. In the latter event, the officer may retire, or may be retired, at any time up to the age of 65 years. Once an officer attains 65 years, the officer must retire or be retired by the Governor unless the officer's retirement is deferred, with the officer's agreement, for a specified period which cannot exceed 12 months. Further deferrals, not exceeding 12 months, may be made but an officer whose retirement is so deferred may be retired at any time.

**Schedule 2 (3)** proposes that section 42O, dealing with vacation of executive positions, be amended by deletion of reference to an executive officer king retired from office.

**Schedule 2 (4)** proposes the repeal of a provision dealing with the retirement of executive officers. At present, there is no compulsory retiring age for an executive officer. However, an executive officer may retire at 60 years or may be retired at any time after the officer has reached that age despite the fact that the officer's contract term has not expired.

**Schedule 2 (5)** proposes that the right of an executive officer to return to employment in the public sector should not be barred because the officer is over 60 years of age.

**Schedule 2 (6)** proposes that the provision dealing with the payment of compensation to an executive officer who is removed or retired from office and has no right of return to the public sector be amended to omit references to an executive officer's being retired. The maximum compensation payable to such an officer is not to exceed one year's remuneration.

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**Schedule 2 (7)** proposes that the right of a term appointee to re-appointment in the public sector should not be barred because the person is over 60 years of age.

**Schedule 2 (8)** proposes that the provision which deals with the payment of compensation to a term appointee who is removed or retired from office and has no right of return to the public sector be amended to omit references to an office holder's being retired. The maximum compensation payable to such an office holder is not to exceed one year's remuneration or remuneration for a period beginning with the person's removal from office and ending when the person's term would have expired had the person not been removed, whichever is the shorter.

**Schedule 2 (9) (a)** enables regulations to be made of a savings or transitional nature consequent on enactment of the proposed Act.

**Schedule 2 (9) (b)** enacts a transitional provision which provides that the amendments to the Public Sector Management Act 1988 do not apply to fire fighters or employees of State coal mines before 1 January 1993.

**SCHEDULE 3 - CONSEQUENTIAL AMENDMENT OF  
SUPERANNUATION LEGISLATION**

**Amendment of Superannuation Act 1916**

**Schedule 3 (1)** proposes the repeal of a provision which provides that every contributor who has served at least 10 years with any one or more employers may be compulsorily retired on pension by his or her employer on or after reaching 60 years of age.

**Schedule 3 (2)** proposes that a new Division, Division 3B (sections 52L-52V), be inserted in Part 4. The Division contains provisions which enable an employee who is aged 55 years or over and who accepts a position at a salary 20% or more below his or her previous salary, to elect to defer or preserve his or her benefit under the Act.

Proposed section 52L states in what circumstances contributors are eligible for the purposes of the Division.

Proposed section 52M defines "exit day" for the purposes of the Division as the day immediately preceding the day on which the salary reduction occurred.

Proposed section 52N covers the circumstances in which a contributor may defer or preserve a benefit.

Proposed section 52O provides that the benefit is deferred or preserved from the exit day.

Proposed sections 52P-52T deal with the manner in which the value of a deferred benefit is to be calculated, commutation of a deferred benefit, adjustment of a deferred benefit and when and how a deferred benefit is payable. (Preserved benefits are to be dealt with in accordance with existing provisions of the Act relating to such benefits.)

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Proposed section 52U provides that the provision of the Act that requires the apportionment of a benefit between the contributors' reserve and the appropriate employer reserve is to apply to deferred benefits under the Division.

Proposed section 52V provides that the provision of the Act which permits a contributor to resume payment of contributions after a break in service does not apply in relation to the Division.

**Schedule 3 (3)** proposes the repeal of a provision which will have no operation following repeal of section 21 (2) of the Act relating to the compulsory retirement age of 60 years.

**Amendment of State Authorities Superannuation Act 1987 and State Authorities Non-contributory Superannuation Act 1987**

The amendments to these Acts propose that provisions, similar to those described above in respect of the Superannuation Act 1916, be inserted to enable employees, of or above the age of 55 years who undergo a salary reduction of 20% or more, to elect to preserve their benefits under those Acts.

**SCHEDULE 4 - CONSEQUENTIAL AMENDMENT OF OTHER ACTS**

**Schedule 4** proposes that various Acts be amended by removal

- (a) the bars, based on age, on the appointment of persons to certain offices in the public sector; and
  - (b) provisions imposing compulsory retirement requirements.
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