1995

THE PARLIAMENT OF THE COMMONWEALTH OF

AUSTRALIA

THE SENATE

INDUSTRIAL RELATIONS AND OTHER LEGISLATION AMENDMENT BILL 1995

EXPLANATORY MEMORANDUM

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

74864 Cat No. 95 5345 2 ISBN 0644 341106

INDUSTRIAL RELATIONS AND OTHER LEGISLATION AMENDMENT BILL 1995

OUTLINE

This bill amends 6 Acts.

The bill amends the unfair dismissal provisions of the *Industrial Relations Act 1988* to make the handling of applications simpler, more effective and less legalistic:

- all applications will commence in the Australian Industrial Relations Commission (the Commission), rather than in the Industrial Relations Court of Australia;

- the option of binding arbitration by the Commission will be available where parties agree;

- the unfair dismissal provisions of the Act will not apply where there is an alternative available under another law that satisfies the requirements of the International Labour Organisation's Termination of Employment Convention that are relevant to wrongful dismissal; and

- the Industrial Relations Court will be required to consider all the circumstances of the case in deciding what remedy (if any) should be given.

The *Industrial Relations Act 1988* is also amended to clarify that the Industrial Relations Court of Australia can have jurisdiction to enforce coal industry awards made by the Australian Industrial Relations Commission in the combined exercise of Commonwealth and State powers. This amendment complements amendments made by the *Industrial Relations Legislation Amendment Act (No.2) 1994* to integrate into the mainstream industrial relations jurisdiction the jurisdiction previously exercised by the Coal Industry Tribunal .

Minor amendments are made to the *Safety, Rehabilitation and Compensation Act 1988* to improve the Act's operation.

The *Defence Act 1903* and the *Sex Discrimination Act 1984* are amended to provide for the Defence Force Remuneration Tribunal to review determinations referred to the Tribunal by the Sex Discrimination Commissioner. The Tribunal is to take appropriate action to remove discrimination. These amendments correspond to changes already made in respect of the Australian Industrial Relations Commission and the Remuneration Tribunal.

The *Industrial Relations Legislation Amendment Act (No.2) 1994* is amended to remove a provision that would have used the constitutional "trade and commerce" power to give the Australian Industrial Relations Commission a wider jurisdiction in coal industry matters. This was an aspect of transferring this jurisdiction from the

Coal Industry Tribunal to the Commission. The amendment is now unnecessary because New South Wales has enacted complementary legislation.

The bill includes formal amendments of the *Stevedoring Industry Levy Collection Act 1977*.

FINANCIAL IMPACT STATEMENT

The Australian Industrial Relations Commission has consulted employer groups and the ACTU about the best way to ensure that the new arrangements operate efficiently, effectively and quickly for all parties.

The Commission is proposing innovative methods to ensure the speedy listing and determination of applications under the amended provisions. To support this, the Commission is constructing some new hearing rooms and support facilities for the parties and their representatives, in Sydney and Melbourne, at an estimated one-off cost of $1 million. There will also be some additional staff required to advise and assist applicants and other parties. The cost of the additional staff over a full year is estimated to be $0.5 million.

A reduction in the resources required by the Court is expected. However, it is not possible to estimate with any certainty what that reduction will be before the new arrangements are better established and the Court has dealt with the balance of its caseload under the existing legislative arrangements.

NOTES ON CLAUSES

Clause 1

This is a formal provision specifying the short title.

Clause 2

This clause specifies when the various provisions of the bill are to commence.

Subclause 2(1) provides that sections 1 to 8, and Schedule 5, will commence on Royal Assent. Sections 1 to 8 are formal provisions; the substantive provisions of the bill are in Schedules to the bill. The amendments made by Schedule 5 are also only formal, clarifying references in legislation that is already in force.

Subclause 2(2) provides that the items set out in the Schedules, other than Schedule 5, are to commence on a day or days to be fixed by Proclamation. Subclause 2(3) provides that if any of the provisions contained in the Schedules are not proclaimed to commence within six months of the bill receiving Royal Assent, they will commence the day following that period of six months.

Clause 3

The *Defence Act 1903* is to be amended as set out in **Schedule 1** to the bill.

Clause 4

The *Industrial Relations Act 1988* is to be amended as set out in **Schedule 2** to the bill.

The other item in Schedule 2 (which is a transitional provision) is also to take effect.

Clause 5

The *Safety, Rehabilitation and Compensation Act 1988* is to be amended as set out in **Schedule 3** to the bill.

Clause 6

The *Sex Discrimination Act 1984* is to be amended as set out in **Schedule 4** to the bill.

Clause 7

The *Stevedoring Industry Levy Collection Act 1977* is to be amended as set out in **Schedule 5** to the bill.

Clause 8

The *Industrial Relations Legislation Amendment Act (No.2) 1994* is to be amended as set out in **Schedule 6** to the bill.

SCHEDULE 1 - AMENDMENT OF THE *DEFENCE ACT 1903*

This Schedule deals with the Defence Force Remuneration Tribunal.

New sections relating to discriminatory determinations of the Tribunal are to be inserted. These will operate in conjunction with the new sections to be inserted in the *Sex Discrimination Act 1984* ("the SDA") by Schedule 4. These amendments are closely comparable to the amendments to the *Industrial Relations Act 1988* and the SDA made by the *Sex Discrimination and Other Legislation Amendment Act 1992*, as amended by the *Industrial Relations Reform Act 1993*, and to the amendments to the *Remuneration Act 1973* and the SDA made by the *Industrial Relations and Other Legislation Amendment Act 1993*.

New section 58HA - Hearings in relation to discriminatory determinations

This proposed section requires the Tribunal to hold a hearing to review a determination where it has been referred to the Tribunal under new section 50E of the SDA (that is, where a complaint has been lodged with the Human Rights and Equal Opportunity Commission alleging that a person has done a discriminatory act under the determination, and it appears to the Sex Discrimination Commissioner that the act is a discriminatory act). The proposed section provides for the conduct of the hearing; proposed subsection 58HA(5) provides that the Sex Discrimination Commissioner is entitled to be present at the hearing and make submissions to the Tribunal.

New section 58HB - Review of discriminatory determinations

This proposed section provides that where a determination has been referred under the new provisions and the Tribunal considers it to be discriminatory, it must take action to remove the discrimination.

Proposed subsection 58HB(2) defines "discriminatory determination" by reference to the new referral process under proposed section 50E of the SDA and by reference to other aspects of Part II of the SDA. To constitute a discriminatory determination,

the determination must require a person to do an act that would, except for the fact that the act would be done in direct compliance with the determination, be unlawful under the SDA (the SDA contains an exemption for acts done by a person in direct compliance with a determination). Proposed subsection 58HB(3) makes plain that the fact that an act is done in direct compliance with the determination does not of itself mean that the act is reasonable. The "reasonableness" issue arises because of the indirect discrimination test in the SDA (see for example subsection 5(2) of the SDA). This amendment will therefore facilitate the consideration of indirect discrimination issues in determinations.

SCHEDULE 2 - AMENDMENTS OF THE *INDUSTRIAL RELATIONS ACT 1988*

Item 1: Subsection 4(1) (definition of *award)*

Subsection 4(1) is the main provision that defines terms used in the *Industrial Relations Act 1988* (the IR Act).

This amendment will exclude, from the ordinary definition of "award" in that subsection, decisions ("awards") made by arbitration by the Australian Industrial Relations Commission (AIRC) by consent in termination of employment cases. These awards are made in a different context from the awards which are made to prevent or settle industrial disputes, and have a different operation, binding the parties to the unfair dismissal application by their consent to the arbitration of their case.

The amendment is consequential on item 5 of the Schedule which, among other things, will insert a process whereby the parties to an unfair dismissal application may choose to have the matter arbitrated by a member of the AIRC.

Item 2: Section 5

Section 5 of the IR Act adds to the jurisdiction of the AIRC in relation to a number of areas of industry by relying on powers other than the conciliation and arbitration power.

The *Industrial Relations Legislation Amendment Act (No.2) 1994* provides for the insertion of subsection 5(6) of the IR Act. That subsection will, when it takes effect, provide for the AIRC to exercise powers conferred by the States of NSW and Queensland in relation to matters pertaining to the relationship between employers and employees in the coal mining industry in those States. This provision is part of the legislative arrangements relating to the abolition of the Coal Industry Tribunal, with the AIRC taking over its responsibility in relation to industrial matters in the coal mining industry.

Proposed subsection (7) makes it clear that the Industrial Relations Court of Australia may enforce awards made under those powers if the laws of NSW or Queensland so provide.[1]

Item 3: Subsection 170CD(4) (definition of *termination of employment)*

This is a formal amendment. It will clarify that a reference to applications that were made to the Court before 30 June 1994 means applications under section 170EA as then in force (not the new section 170EA being substituted by this bill).

Item 4: Subsection 170DE(2)

This item proposes an amendment to section 170DE of the IR Act.

Subsection 170DE(1) requires an employer to have a valid reason for dismissing an employee connected with the employee's capacity or conduct or based on the operational requirements of the employer's business. This gives effect to Article 4 of the *Termination of Employment Convention, 1982* (which is reproduced as Schedule 10 to the IR Act).

Subsection 170DE(2) provides that a reason is not valid if, having regard to the employee's capacity or conduct and those operational requirements, the termination is harsh, unjust or unreasonable.

The amendment will require all the circumstances of the particular case to be considered when determining whether a reason is not valid under subsection (2).

This requirement will mean that all the merits of the case will be weighed up in making such a decision.

Item 5: Repeal and replacement of sections 170EA, 170EB, 170EC and 170ED

These sections are part of the subdivision providing remedies in respect of unlawful termination.

They concern:

- how and by whom an application is made for relief in relation to termination of employment (section 170EA);
- the circumstances in which the Court must decline jurisdiction if another remedy is available (section 170EB);

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[1] NSW has so provided in the *Coal Industry Amendment Act 1995.*

- the referral of matters to the AIRC for conciliation (section 170EC);

- what the AIRC must do when conciliating a termination of employment case (section 170ED).

These sections will be repealed and replaced by new provisions giving effect to the revised legislative scheme for dealing with termination of employment.

New section 170EA: Application to the Commission for conciliation

This replaces the existing section 170EA.

Instead of applications for relief in respect of termination of employment being made in the first instance to the Court, applications will now commence in the AIRC.

There is no change to the provisions specifying who may apply (the employee concerned; a trade union whose rules entitle it to represent the employee's industrial interests, acting on the employee's behalf).

An application to the AIRC will be treated as an attempt to settle the matter by conciliation. The parties to the conciliation will be the employer and employee concerned, and, if a union is the applicant on behalf of the employee, the union.

Similarly, there is no change to the time in which an application must be made (ie, within 14 days after receipt of written notice of the termination) or such further period as (under the amendment) the Commission (rather than, as now, the Court) permits. As now, no time limit will be stipulated where written notice has not been given.

New section 170EB: The conciliation process

Existing section 170ED sets out the existing conciliation process where the Court refers an application to the AIRC for conciliation. This section is to be repealed.

New section 170EB provides that, when an application in relation to termination of employment is lodged with the AIRC, the AIRC must inquire into the matter and try by conciliation to help the parties to agree on terms for settling the matter.

If the AIRC decides that the matter cannot be settled by conciliation, or further conciliation, within a reasonable period, it must inform the parties and invite them to elect, by notice in writing, to have the matter dealt with by *consent arbitration* (which is provided for in new section 170EC).

If the parties do not choose to have the matter dealt with by consent arbitration by the AIRC, the matter will then be referred, under new section 170ED, to the Court

for adjudication.

New section 170EB will also permit the parties to conciliation to elect at any time during the conciliation process to move to consent arbitration.

The powers of the AIRC in relation to conciliation of these matters are primarily the relevant powers under s.111 of the Act.[2]

New section 170EC: Consent arbitration

This is an entirely new provision. It provides for the AIRC to undertake consent arbitration at the election of the parties to conciliation before the AIRC in relation to a termination of employment matter..

Under subsection 170EC(1), the election under new section 170EB by the parties to proceed to consent arbitration is to constitute an agreement to submit to the process of consent arbitration; to comply with any requirement of the AIRC for the purpose of the arbitration (this includes compliance with directions for the purpose of the proceedings and the AIRC's rules); to comply with any *award* made on the arbitration; and to comply with the outcome of any appeal (under new section 170ECA) to a Full Bench of the AIRC from the award concerned. Subject to any right of appeal, the award made by the AIRC in consent arbitration is final and binding as between the parties [subsection 170EC(6)].

Such arbitration can only occur with the consent of the parties and there is no provision for the withdrawal of the consent or the revocation of the election, once made.

Proposed subsection 170EC(2) allows the parties to agree to the conduct of the consent arbitration by the member of the AIRC who has carried out the conciliation. If they do not agree, the matter will be dealt with by another member of the AIRC.

The AIRC's procedures and powers in relation to the consent arbitration will be prescribed [subsection 170EC(3)]. This recognises that the process of consent arbitration is of a different nature from compulsory arbitration by the AIRC of industrial disputes and that specific powers and procedures will be necessary. It is expected that the procedures will be prescribed by the rules of the AIRC. The specific powers will be prescribed by regulations and will be the subject of tripartite consultation before they are made.

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[2] Subsection 111(1) enumerates various powers of the AIRC in relation to industrial disputes. Subsection 111(2) provides that the subsection applies to other proceedings under the Act. The scheme of the termination of employment provisions would not, however, permit the AIRC to decline to exercise its jurisdiction in reliance on s.111(1)(g).

These procedures and powers will be consistent with the terms of the *Termination of Employment Convention, 1982* so that the Convention is given effect to in an appropriate way [subsection 170EC(3)].

At the completion of a consent arbitration, the AIRC will be able to make an *award*. Such an award may provide for a remedy of the kind which the Court can grant under section 170EE (ie, reinstatement with the payment of lost remuneration or compensation, subject to the limits of that section).

Subject to the circumstances of the case (see the notes on items 9 and 10), the AIRC may in the award provide that there is no entitlement to a remedy.

An award made in these proceedings will be different from other awards made by the AIRC in its jurisdiction relating to the prevention and settlement of industrial disputes and related matters (see notes on item 1 to this Schedule).

New section 170ECA - Appeal to a Full Bench of the Commission

This proposed new provision concerns the circumstances in which an appeal to a Full Bench of the AIRC is available in relation to a consent arbitration award and the power of the Full Bench in relation to such appeals.

If regulations prescribe grounds for appeal, an appeal lies by leave to a Full Bench. The relevant regulations are to be those in force when the parties choose arbitration. Therefore these voluntary arbitrations will be governed by whatever grounds of appeal are in force when the parties choose arbitration. This will give the parties certainty about the basis on which any appeal will lie if they agree to a consent arbitration. It is consistent with the consensual basis of the AIRC's jurisdiction in this area.

The grounds of appeal are to be prescribed in the *Industrial Relations Regulations*. Those grounds, which will be the subject of tripartite consultation, are expected to be narrow to discourage speculative and inappropriate appeals.

On hearing an appeal, a Full Bench will be able to confirm or vary an award, or substitute a different award.

New section 170ECB - Enforcement of consent arbitration awards by the Court

This proposed new section gives the Court jurisdiction to enforce an award made by consent arbitration, upon application by a party to the award.

Proposed new subsection 170ECB(1) empowers the Court to take such action as it deems necessary to enforce the agreement of the parties to be bound by the outcome of consent arbitration.

This action may include an injunction to enforce the reinstatement of an employee (proposed new subsection (2)).

Proposed new subsection (3) makes clear that these enforcement provisions extend to an award as confirmed, varied or substituted on appeal.

New section 170ED - Referral to the Court

This proposed section sets out the circumstances in which the Court may consider an application relating to an alleged unlawful termination of employment.

If the parties do not agree to have a matter determined by consent arbitration and the AIRC decides that the matter cannot be settled by conciliation within a reasonable period, it must certify accordingly and refer the matter to the Registrar of the Court [proposed subsection (1)]. Such a referral is taken to amount to lodgement of the application with the Court [proposed subsection (2)].

Proposed subsection (3) clarifies that the Court must not consider the merits of an application unless it has been so referred.

Proposed subsection (4) requires the Court to decline to deal with a matter if the employee has access to an alternative remedy under a law of the Commonwealth, a State or Territory which satisfies the requirements of Articles 4 to 11 of the *Termination of Employment Convention, 1982*.

Subsection (5) sets out specific circumstances in which a law will be so regarded. This will not limit any other circumstances in which a law will be such an alternative remedy.

This requirement applies only to adjudication by the Court, not to proceedings before the AIRC. If, for example, an employer wished to argue that an application had been brought in the wrong jurisdiction, it would be necessary for the case to proceed to the Court.

Subsection (6) provides that an employee does not cease to be entitled to apply under an alternative law merely because the employee requires an extension of time, provided that the law provides for such an extension.

Proposed subsection (7) specifies that the word "law", in this section, is not limited to written law, but extends to associated practices. This is intended to prevent an overly restrictive interpretation of whether a law is an alternative remedy for the purposes of the section.

Subsection (8) provides that the parties to the application are the same as those to the conciliation, unless the Court orders otherwise.

Items 6 and 7: Subsections 170EDA(1) and (2)

These are consequential amendments. The effect of the amendments is that the provision which the Act already makes as to the onus of proof, in termination of employment matters, will apply to proceedings in the Court and to the new "consent arbitration" proceedings in the AIRC.

Item 8: Subsection 170EDA(3) (definition of *termination of employment)*

This is a formal amendment. It will clarify that a reference to applications that were made to the Court before 30 June 1994 means applications under section 170EA as then in force (not the new section 170EA being substituted by this bill).

Items 9: Subsection 170EE(1)

Section 170EE provides for the kinds of relief which the Court may grant in a termination of employment application.

The effect of items 9 and 10 is to provide that the Court is not obliged to give a remedy (of either reinstatement or compensation) under the section for a contravention of the provisions about termination of employment. For example, the circumstances of a procedural defect might not alter the substantive justification for a dismissal, so the Court may not consider any remedy appropriate. Or the employee may have already received from the employer a termination payment (in addition to accrued entitlements) that would make it inappropriate for the Court to order payment of compensation. Under this new test, there will be a remedy when the Court considers it appropriate - in all the circumstances of the case - to grant a remedy.

The amendments preserve the existing provisions making reinstatement the preferred remedy. This is why there are 2 items to give effect to the one change - item 9 amends the provision for reinstatement and item 10 amends the provision for compensation instead of reinstatement.

The Commission, in its voluntary arbitration jurisdiction, will have the same discretion as to whether to award a remedy.

Item 10: Subsection 170EE(2)

This item is explained in the notes above on item 9.

Item 11: Subsection 170EE(6)

This item makes two formal amendments.

Paragraph (a) omits a reference to a section (170EC) that is being omitted from the Act by item 5 of this Schedule. The replacement section 170EC is not relevant in this context and should not be referred to in the subsection.

Paragraph (b) recognises that one consequence of providing that unfair dismissal applications are now to be lodged in the Commission rather than in the Court is that the Court will not have jurisdiction in these applications until (and unless) the application is referred to the Court by the Commission.

Item 12: Subsection 376(1)

This amendment will allow the Court to delegate to Judicial Registrars its jurisdiction to enforce the voluntary arbitration decisions of the Commission. The amendment will add this new subject-matter to the existing list (in subsection 376(1)) of jurisdictions that can be delegated to Judicial Registrars by Rules of Court.

Item 13: Application

this item specifies how existing cases will be affected by the amendments to the provisions of the IR Act about termination of employment. This is different for items 9 and 10 than for the other amendments. Item 2 is excluded altogether from this provision because item 2 does not alter the provisions about termination of employment.

Applications already lodged will not be affected by any amendment coming into force after the day on which the application is lodged. There is one exception to this rule. The amendments made by items 9 and 10 (which provide for the Court to grant a remedy only if the Court considers it appropriate in all the circumstances) will extend to any case in which the Court has not pronounced final judgment before the day on which items 9 and 10 commence.

SCHEDULE 3 - AMENDMENTS OF THE *SAFETY, REHABILITATION AND COMPENSATION ACT 1988* (SRC Act)

Item 1: New Subsections 6(1A) and 6(1B)

Amongst other things, existing subsection 6(1) of the SRC Act provides that if an employee sustains an injury travelling between his or her place of residence and place of work (or place of education in certain circumstances) that injury will be treated as having arisen, out of, or in the course of the employee's employment.

New subsection 6(1A) provides that a journey from an employee's place of residence commences at the boundary of the land on which the residence is situated, and similarly, a journey to that residence terminates at that boundary. If an employee is travelling to or from work, an injury sustained within the boundary of that land will not be compensable. The boundary will normally encompass any

common property where an employee owns or occupies a unit of a strata title.

New subsection 6(1B) makes it clear that where an employee owns or occupies a parcel of land adjoining with the land on which the residence is situated, the boundary referred to in proposed subsection 6(1A) is the external boundary of the adjoining land if treated as a single parcel.

Item 2: New Subsection 134(2)

Existing sections 131, 132 and 132A set the level of compensation payable under the SRC Act to those former employees who were injured prior to the commencement of the SRC Act (1 December 1988), who were not aged 65 at that date and who were in receipt of superannuation and/or of compensation under the *Compensation (Commonwealth Government Employees) Act 1971*. Section 134 discounts the amount of compensation payable under the SRC Act under sections 131, 132 and 132A when the former employee turns 65 by 5 per cent for each year since the commencement of the Act. This formula ensures that after 2008, a former employee will not receive compensation after they turn 65, and will be in the same position as those who were injured after 1 December 1988.

New subsection 134(2) clarifies that neither section 8 nor section 13 apply to the reduced amount of compensation calculated in accordance with section 134. This will freeze the compensation payments at the reduced rate.

Section 8 provides for the calculation (and indexation) of normal weekly earnings which are used in the calculation of incapacitation compensation entitlements. Section 13 provides for the indexation of certain compensation benefits by reference to movements in the consumer prices index.

SCHEDULE 4 - AMENDMENTS OF THE *SEX DISCRIMINATION ACT 1984*

This Schedule amends the *Sex Discrimination Act 1984* ("the SDA"), in conjunction with the Bill's amendments to the *Defence Act 1903*, so as to provide a new complaint mechanism in respect of discriminatory acts under determinations of the Defence Force Remuneration Tribunal: see also notes on Schedule 1 to the Bill.

These amendments are closely comparable to the amendments effected by the *Sex Discrimination and other Legislation Amendment Act 1992*, which provided a complaint mechanism in respect of discriminatory acts under awards of the Australian Industrial Relations Commission, and to the amendments effected by the *Industrial Relations and Other Legislation Amendment Act 1993*, which provided a complaint mechanism in respect of discriminatory acts under determinations of the Remuneration Tribunal.

New section 50E - Referral of discriminatory determinations to the Defence Force Remuneration Tribunal

Proposed subsection 50E(1) provides that a complaint alleging that a person has done a discriminatory act under a determination may be lodged with the Human Rights and Equal Opportunity Commission ("HREOC") and specifies that a complaint may be lodged by one or more persons on their own behalf, as representatives of a group of persons, or as members of a class of persons. Under proposed subsections 50E(2) and 50E(3), if such a complaint is received HREOC must notify the Sex Discrimination Commissioner ("the Commissioner"), who must refer the determination to the Tribunal if it appears to the Commissioner that the act is discriminatory, unless the Commissioner is of the opinion that the complaint is frivolous, vexatious, misconceived or lacking in substance. (Upon referral of a determination, the Tribunal is required to review the determination, under proposed sections 58HA and 58HB of the *Defence Act 1903*: see notes on Schedule 1 to the Bill.)

Proposed subsection 50E(4) requires the Commissioner to give written notice to the complainant if the Commissioner decides not to refer the determination. The notice must specify the reasons for the decision. Proposed subsection 50E(5) enables the complainant, having received such a notice, to require the Commissioner to refer the decision to the President of HREOC under proposed subsection 50E(6), for review by the President under proposed section 50F.

Proposed subsection 50E(7) requires the Commissioner to notify the complainant of the outcome of a referral to the Tribunal. This provision is needed because the complainant will not be a party to the hearing in the Tribunal.

Proposed subsection 50E(8) will enable the Commissioner to obtain documents or information under section 54 of the SDA, for the purposes of new section 50E.

Proposed subsection 50E(9) defines the terms "determination" and "discriminatory act under a determination".

Proposed subsection 50E(10) makes plain that the fact that an act is done in direct compliance with the determination does not of itself mean that the act is reasonable.

New section 50F - President may review a decision of the Commissioner not to refer a determination to the Defence Force Remuneration Tribunal

Proposed section 50F provides details of the review procedure to be followed by the President of HREOC where the Commissioner decides not to refer a determination to the Tribunal. This review procedure will arise where a complainant gives notice to the Commissioner requiring review by the President, under proposed subsection 50E(5), and the Commissioner then refers the decision to the President as required

by proposed subsection 50E(6).

Proposed subsection 50F(3) has the effect that the President may seek relevant information from the complainant, and may refuse to review the Commissioner's decision unless the information is provided. Otherwise, the President must review the Commissioner's decision, and must decide either to confirm it or to set it aside, by proposed subsection 50F(2). If the Commissioner's decision is set aside the Commissioner must also be directed to refer the determination to the Remuneration Tribunal in accordance with proposed section 50E.

Proposed subsection 50F(4) requires the President to give written notice of a decision under proposed subsection 50F(2), setting out the reasons for the decision, to the complainant and to the Commissioner.

SCHEDULE 5 - AMENDMENTS TO THE *STEVEDORING INDUSTRY LEVY COLLECTION ACT 1977*

This Schedule makes formal amendments to the *Stevedoring Industry Levy Collection Act 1977*.

A definition of "stevedoring employee" was substituted for "waterside worker" by the *Industrial Relations Legislation Amendment Act 1994*.

These proposed amendments will make changes consequent upon this amendment to replace the terms "waterside worker" and "waterside workers" with "stevedoring employee" and "stevedoring employees" (respectively) wherever these terms occur in the Act; namely: subsection 3(1), subsection 4(3), subparagraph 4(4)(a)(ii), subparagraph 4(4)(b)(ii), subparagraph 4(4)(c)(ii), paragraph 4(10)(a), section 5, paragraph 6(1)(c), subsection 6(2), subsection 10(2), paragraph 10(3)(a), subsection 10(7), paragraph 11(c) and paragraph 11(d).

This change reflects current usage, and is in line with the *Stevedoring Industry Award 1991*.

SCHEDULE 6 - AMENDMENT OF THE *INDUSTRIAL RELATIONS LEGISLATION AMENDMENT ACT (NO.2) 1994*

This Schedule deletes item 7 of Schedule 1 to the Act. Item 7 would have added to the Industrial Relations Act a provision giving the AIRC a jurisdiction, in coal industry matters, based on the constitutional "trade and commerce power". The enactment of complementary legislation by New South Wales has now made it unnecessary for the Commonwealth to use the "trade and commerce power" for this purpose.

Printed by Authority by the Commonwealth Government Printer

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