

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

INDUSTRIAL RELATIONS AMENDMENT BILL 1994

EXPLANATORY MEMORANDUM

(Circulated on the authority of the Minister for Industrial Relations,
the Hon Laurie Brereton MP)

OUTLINE

The amendments to the *Industrial Relations Act 1988* (the Act) are designed to:

- expressly provide that a Judge of a Court created by the Parliament can hold the office of President of the Australian Industrial Relations Commission (the Commission) and concurrently hold office as a Judge;
- provide for the next President of the Commission to be appointed for a fixed term, rather than to the age of 65 years.

FINANCIAL IMPACT STATEMENT

There will be no net effect on outlays.

NOTES ON CLAUSES

Clause 1 – short title etc

This is a formal provision.

Clause 2 – Commencement

The Act will commence on Assent.

Clause 3 – Qualifications for appointment

Section 10 of the Act sets out the qualifications for appointment as a member of the Commission.

Paragraph 10(1)(a) is to be amended to make it clear that a person who is a Judge of a court created by the Parliament may hold that office concurrently with the office of President of the Commission. The other requirements for appointment are unchanged.

Clause 4 – Insertion of new section

Section 15A is to be inserted.

The new section makes it clear that the appointment of a Judge as President does not affect the Judge's holding of judicial office, including entitlement to judicial salary. Service as President is taken for all purposes as service as a Judge.

Clause 5 – Tenure of Commission members

Section 16 of the Act concerns the tenure of members of the Commission. Members hold office until the member resigns, is removed from office or attains the age of 65 years.

Subsection 16(1A) is to be inserted which will allow the next President of the Commission to be appointed for a fixed term. The provision will only operate in relation to that person. All other members and succeeding Presidents will be covered by the usual tenure provisions.

Clause 6 – Remuneration and allowances of Presidential Members, etc

Section 21 of the Act concerns the salary and allowances of Presidential Members.

New subsections 21(1A) and (1B) are to be inserted. The subsection is consequential upon the other amendments which allow a Judge of a court created by the Parliament to hold office as President.

Under new subsection 21(1A), such a person is only to receive remuneration as President as provided by subsection 21(1B). That subsection provides for the

President's salary as a Judge to be topped up with an allowance equivalent to the difference between the Judge's salary and the President's salary.

These provisions (and other amendments¹ to be made by the bill) take account of section 72 of the Constitution which precludes any diminution of a Judge's remuneration.

The subsections are not intended to affect entitlements to allowances which are not in the nature of salary, eg, travelling allowance.



9 780644 298124

¹ Section 72 of the Constitution provides that, among other things, Judges of courts created by the Parliament ". . . shall receive such remuneration as the Parliament may fix; but the remuneration shall not be diminished during their continuance in office."