

# **EMPLOYMENT RELATIONS ACT 2004**

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## **EXPLANATORY NOTES**

### **COMMENTARY**

#### **Part Three: Rights of Trade Union Members, Workers and Employees**

##### **New section 145A**

195. Subsection (1) of the new section gives a worker the right not to have an offer made to him by his employer where the employer's sole or main purpose is to induce the worker to do or not do certain things. The things are (1) not to be or seek to become a member of an independent trade union, (2) not to take part in the activities of an independent trade union at 'an appropriate time', (3) not to make use of the services of a trade union at 'an appropriate time', and (4) to be or become a member of a trade union.
196. All the limbs of this right are new but while the first, second and fourth limbs reflect the matters covered by the right not to be subjected to detriment already contained in section 146 of the 1992 Act, the third limb relating to making use of union services is entirely new.
197. Subsection (2) defines the term 'an appropriate time' for the purposes of the rights given by subsection (1). The effect of the definition, which is based on the definition used in the section 146(2) of the 1992 Act as amended by sections 30 and 31, is that the limbs of the right relating to taking part in union activities and making use of trade union services apply where the worker takes part in the activities or makes use of the services outside the worker's working hours, or during them at a time when, in accordance with arrangements agreed with the employer or consent given by the employer, it is permissible for him to do so.
198. Subsection (3) defines the term "working hours" used in the definition of "an appropriate time". Working hours means any time when the worker is required to be at work by the contract under which he works.
199. Subsection (4)(a) defines "trade union services" to mean services made available to a worker by an independent trade union by virtue of his membership of the union. Subsection (4)(b) states that references to a worker making use of trade union services include "consenting to the raising of a matter on his behalf by an independent trade union of which he is a member", so ensuring that a worker consenting to his union raising a matter is regarded as making use of union services.