

# **EMPLOYMENT RELATIONS ACT 2004**

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## **EXPLANATORY NOTES**

### **COMMENTARY**

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

##### **New section 145B**

200. In general terms, new section 145B gives a new right to a worker who is a member of an independent trade union seeking recognition from or recognised by the employer not to have an offer made to him where similar offers are made to other workers and the sole or main purpose of the employer in making the offers is to secure that the terms of the workers will not, or will no longer, be determined by a collective agreement negotiated with the union.
201. Subsections (1) and (2) of the new section 145B have the effect that a worker who is a member of an independent trade union recognised by, or seeking recognition from, his employer for the purpose of collective bargaining has the right not to have an offer made to him by his employer if (1) his acceptance of the offer, together with the acceptance by other workers of similar offers, would have the result ('the prohibited result') that the workers terms and conditions will not, or no longer, be determined by collective agreement negotiated by or on behalf of the union, and (2) the employer's sole or main purpose in making the offers is to achieve that result.
202. Subsection (3) has the effect that it is immaterial to the operation of the new right whether the offers are made to the workers simultaneously.
203. Subsection (4) provides that having terms of employment determined by collective agreement is not to be regarded as making use of a trade union service for the purposes of the new section 145A, or sections 146 or 152 in their form as amended by the Act. This removes the possibility of conflict between new sections 145A and 145B and ensures consistency in the interpretation of new section 145A and sections 146 and 152.