

[AS REPORTED FROM THE LABOUR COMMITTEE]

House of Representatives, 31 May 1990.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE HOUSE]

House of Representatives, 12 July, 1990.

Words struck out are shown in italics within double bold round brackets; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

Right Hon. Helen Clark

EMPLOYMENT EQUITY

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No. 227—3

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A BILL INTITLED

An Act to establish procedures that have as their purposes the achievement of employment equity, and, in particular,—

(a) **The identification of those areas of paid employment in which—**

(i) **Inequality of opportunity for designated groups exists; or**

(ii) **Inequality of remuneration for women exists:**

(b) **The promotion of equal employment opportunities through the use of equal employment opportunities programmes and the elimination of inequality of opportunity for designated groups from all forms of paid employment in the public and private sectors:**

(c) The redress of the inequitable impact on women of any current or historical discrimination against women in respect of their remuneration

BE IT ENACTED by the Parliament of New Zealand as follows:

5 **1. Short Title and commencement**—(1) This Act may be cited as the Employment Equity Act **1989**.

(2) This Act shall come into force on the 1st day of October 1990.

10 **2. Interpretation**—In this Act, unless the context otherwise requires,—

“Agreement” has the meaning given to that term by section 2 of the Labour Relations Act 1987:

15 “Arbitration Commission” means the Arbitration Commission established under the Labour Relations Act 1987 and constituted as set out in **section 59** of this Act:

“Award” has the meaning given to that term by section 2 of the Labour Relations Act 1987:

20 “Commissioner” means the Employment Equity Commissioner appointed under **section 5** of this Act:

“Coverage”, in relation to any union, means the membership coverage of that union:

25 “Deputy Commissioner” means the Deputy Employment Equity Commissioner appointed under **section 6** of this Act:

“Designated group” means—

(a) Any group of women; or

(b) Any group of ~~(Maoris)~~ Maori; or

30 (c) Any group of ~~(Polynesians)~~ Pacific Island People;

or

Struck Out

(d) Any group of workers who have the same ethnic or national origins; or

35 (e) Any group of workers who have physical or mental disabilities; or

(f) Any group of workers designated by the Commissioner for the purposes of this definition:

“Employer” has the meaning given to that term by section 2 of the Labour Relations Act 1987:

- “Employers organisation” means a group of employers with related business interests; and includes an employers organisation registered under the Labour Relations Act 1987:
- “Employment equity” means the elimination from all forms of paid employment of—
- (a) Inequality of opportunity for designated groups; and
 - (b) Inequality of remuneration for women:
- “Equal employment opportunities programme” means a programme that is aimed at the identification and elimination of all aspects of policies, procedures, and other institutional barriers that cause or perpetuate, or tend to cause or perpetuate, inequality of opportunity in respect of the employment of any designated group of persons:
- “Female occupation” means an occupation in which 60 percent or more of the workers are female:
- “Male occupation” means an occupation in which 60 percent or more of the workers are male:
- “Maori” means a person of the Maori race of New Zealand; and includes any descendant of such a person:

New

- “Opportunity” includes an opportunity to be employed on merit in any position or occupation in which employment is available:
- “Pacific Island People” means Polynesian, Melanesian, or Micronesian people who are living in New Zealand and who are native of any island of the Pacific Ocean (other than New Zealand); and includes their descendants:
- “Partnership” has the meaning given to that term by sections 4 and 5 of the Partnership Act 1908:
- “Pay equity assessment” means *(an)* a gender neutral assessment made by the Commissioner in respect of a female occupation specified in that assessment:
- “Pay equity claim” means a claim—
- (a) Made under **section 54** of this Act; and
 - (b) Seeking, following the making of a pay equity assessment, the incorporation into an award or an

agreement of a schedule of supplementary pay equity payments:

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5 “Polynesian” means a member of the Polynesian race living in New Zealand who is a native of any island of the Pacific Ocean (other than New Zealand); and includes any descendant of any such member of the Polynesian race:

10 “Region” means—
(a) Each of the metropolitan areas of Auckland, Hamilton, Wellington, Christchurch, and Dunedin; and
(b) The whole of New Zealand excluding the metropolitan areas referred to in paragraph (a) of this
15 definition:

“Remuneration”—
(a) Includes—
(i) Salary, wages, and other payments whether
20 in the form of bonuses or otherwise in return for services; and
(ii) Benefits and other emoluments (whether in money or not) in return for services; but
(b) Does not include entitlement to maternity or parental leave:

25 “Subsequent”, in relation to an award or agreement, has the meaning given to that term by subsections (2) and (3) of section 2 of the Labour Relations Act 1987:

“Subsidiary” has the meaning given to that term by section 158 of the Companies Act 1955:

30 “Union” means a union registered under the Labour Relations Act 1987:

“Worker” has the meaning given to that term by section 2 of the Labour Relations Act 1987.

3. Act to bind the Crown—This Act shall bind the Crown.

35

PART I

EMPLOYMENT EQUITY COMMISSIONER

4. Objects—The objects of this Part of this Act are—

(a) To provide for the appointment of an Employment Equity Commissioner:

40 (b) To provide for effective enforcement of this Act:

- (c) To ensure that the procedures established by this Act can be efficiently carried out:
- (d) To ensure that the achievement of the purposes described in the Title to this Act are appropriately monitored.

5. Employment Equity Commissioner—(1) There shall be a Commissioner to be called the Employment Equity Commissioner. 5

(2) The Commissioner shall be appointed by the Governor-General on the recommendation of the Minister of Labour.

6. Deputy Employment Equity Commissioner— (1) There shall from time to time be appointed by the Governor-General, on the recommendation of the Minister of Labour, a Deputy Employment Equity Commissioner who, subject to the control of the Commissioner, shall have and may exercise all the powers, duties, and functions of the Commissioner under this Act or any other Act. 10 15

(2) On the occurrence from any cause of a vacancy in the office of Commissioner (whether by reason of death, resignation, or otherwise), and in the case of the absence from duty of the Commissioner (from whatever cause arising), and so long as any such vacancy or absence continues, the Deputy Commissioner shall have and may exercise all the powers, duties, and functions of the Commissioner. 20

(3) The fact that the Deputy Commissioner exercises any power, duty, or function of the Commissioner shall be conclusive evidence of the Deputy Commissioner's authority to do so. 25

7. Term of office—(1) Except as otherwise provided in section 8 of this Act, the Commissioner and the Deputy Commissioner shall each hold office for such term not exceeding 5 years as the Governor-General on the recommendation of the Minister of Labour shall specify in the instrument appointing the Commissioner or Deputy Commissioner. 30

(2) The Commissioner or Deputy Commissioner shall be eligible for reappointment from time to time. 35

(3) Where the term for which a person who has been appointed as Commissioner or Deputy Commissioner expires, that person, unless sooner vacating or removed from office under section 8 of this Act, shall continue to hold office, by virtue of the appointment for the term that has expired, until— 40

- (a) That person is reappointed; or

(b) A successor to the person is appointed.

8. Vacation of office—(1) The Commissioner or the Deputy Commissioner may at any time be removed from office by the Governor-General for *(disability)* inability to perform the duties of the office, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General.

(2) The Commissioner or the Deputy Commissioner may at any time resign the office of Commissioner or Deputy Commissioner by notice in writing addressed to the Minister of Labour.

9. Functions of Commissioner—The functions of the Commissioner shall be—

- (a) To designate, for the purposes of the definition of the term “designated group” in **section 2** of this Act, particular groups of workers whose situation should be addressed by equal employment opportunities programmes:
- (b) To establish from time to time, in relation to equal employment opportunities programmes, minimum requirements to be met by employers who are required to comply with **Part II** of this Act:
- (c) To advise and assist employers, unions, and workers in the development and implementation of equal employment opportunities programmes:
- (d) To monitor the lodging with the Commissioner of equal employment opportunities programmes by employers:
- (e) To approve equal employment opportunities programmes:
- (f) To evaluate and report to the Minister of Labour on the extent to which the equal employment opportunities programmes lodged with the Commissioner meet the minimum requirements established by the Commissioner:
- (g) To undertake research and educational programmes for the purpose of ensuring that equal employment opportunities programmes are effectively developed and implemented:
- (h) To initiate proceedings to require employers to comply with the requirements of **Part II** of this Act:
- (i) To conduct pay equity assessments:
- (j) To undertake research and educational programmes for the purpose of ensuring that the objects of **Part III** of

this Act in relation to pay equity can be effectively implemented:

- (k) To monitor, evaluate, and report to the Minister of Labour on the extent to which the provisions of **Part III** of this Act are effective and efficient in achieving the objects of that Part of this Act: 5
- (l) Such other functions in relation to employment equity as the Minister of Labour may from time to time direct.

10. Power to obtain information—(1) The Commissioner may from time to time, by notice in writing to an employer, require that employer to supply to the Commissioner, within a reasonable time to be specified in the notice, such information as is specified in the notice, being information— 10

- (a) Relating to the employment of workers by that employer; and 15
- (b) Relevant to the exercise by the Commissioner of the Commissioner's functions under this Act.

(2) All information required by a notice under **subsection (1)** of this section shall be furnished in such form as the Commissioner may require and, if the Commissioner so requires, shall be certified by the person supplying the same as being correct to the best of that person's knowledge and belief. 20

(3) No person shall be required to supply any information to the Commissioner in relation to any matter in any case where compliance with that requirement would be in breach of an obligation of secrecy or non-disclosure imposed on that person— 25

- (a) By the provisions of any Act or regulations, other than the Official Information Act 1982 or the State Sector Act 1988; or 30
- (b) By the provisions of the Official Information Act 1982 or of the State Sector Act 1988, if the Attorney-General certifies that the matter involves the national security of New Zealand.

(4) No person shall be liable to prosecution for an offence against any enactment, other than this Act, by reason of his or her compliance with any requirement of the Commissioner under this section. 35

11. Right of entry—(1) Where the Commissioner or an employee of the Department of Labour specifically or generally authorised in writing by the Commissioner for the purposes of this section believes on reasonable grounds that information relevant to the exercise of the Commissioner's functions and 40

- 5 duties under this Act is to be found on any premises (other than a dwellinghouse) that are under the control of an employer, the Commissioner or employee may, subject to **(subsections (2) to (4) of this section)** **subsections (1A) to (4)** of this section and to **section 11A of this Act**, enter upon those premises at any reasonable time during which the premises are open for business or during which work is being performed on the premises to do one or more of the following things:
- 10 (a) Interview any person on the premises:
- (b) Make such inspections, examinations, and inquiries as are necessary *(for the purpose of carrying out any of the functions or duties of the Commissioner under this Act)*:
- 15 (c) Require any person to produce any books, accounts, vouchers, records, or documents in that person's possession or under that person's control, and allow copies of or extracts from any such books, accounts, vouchers, records, or documents to be made or taken:
- (d) Require any person to furnish any information or particulars that may be required by the Commissioner.
- 20

New

(1A) The powers conferred by **subsection (1)** of this section may be used only for the purpose of carrying out any of the functions or duties of the Commissioner under this Act.

- 25 (2) Every person who enters any premises under the authority of **subsection (1)** of this section shall, on first entering those premises, and, if requested, at any subsequent time, produce to the employer or a representative of the employer evidence of—
- 30 (a) That person's identity; and
 (b) That person's authority to enter the premises.
- (3) Where any person enters any premises under the authority of **subsection (1)** of this section and is unable, despite reasonable efforts, to find on those premises the employer or any representative of the employer, that person shall, after the entry and inspection and before leaving those premises, leave on those premises a written notice addressed to the employer, which shall state—
- 35 (a) The identity of the person who entered the premises; and
 40 (b) The person's authority to enter the premises; and
 (c) The date and time of the entry; and
 (d) The reasons for the entry.

(4) Every person shall have the same privileges in relation to—

- (a) The production to any person of any books, accounts, vouchers, records, or documents; and
- (b) The furnishing to any person of any information or particulars; and
- (c) The answering of questions put by any person— under this section as witnesses have in Courts of law.

New

11A. Restriction on right of entry—(1) Notwithstanding anything in **section 11** of this Act, the Commission or any employee of the Department of Labour may be refused entry to any premises or to any part of any premises on the grounds that the exercise in respect of those premises or that part of those premises of the right of entry conferred by that section might prejudice—

- (a) The security or defence of New Zealand; or
- (b) The investigation or detection of offences.

(2) Where the Attorney-General certifies in respect of any premises or any part of any premises that the exercise of the right of entry conferred by **section 11** of this Act in respect of any premises might prejudice—

- (a) The security or defence of New Zealand; or
 - (b) The investigation or detection of offences,—
- that certificate shall be conclusive evidence that grounds exist under **subsection (1)** of this section for refusing entry to those premises or that part of those premises.

12. Provision of information by Government Statistician—(1) Subject to **subsection (2)** of this section, the Government Statistician shall in each year, supply to the Commissioner, not later than the 31st day of July, a list of the names and addresses of all employers who, as at the *(30th day of June in that year or, where practicable, as at)* close of the pay period in that year that includes the 20th day of February or such other date as the Commissioner specifies to the Government Statistician in respect of any particular class of employers, employed the specified number of workers or more.

(2) The list to be supplied under **subsection (1)** of this section shall,—

- (a) In the case of the list to be supplied in the year 1991, relate only to employers who employed, as at the

(30th day of June 1991) close of the pay period that includes the 20th day of February 1991 or other relevant date, 500 or more workers; and

5 (b) In the case of the list to be supplied in the year 1992, relate only to employers who employed, as at the (30th day of June 1992) close of the pay period that includes the 20th day of February 1992 or other relevant date, 100 or more workers.

10 (3) In this section, "specified number" has the same meaning as in section 22 of this Act.

13. Confidentiality—(1) The Commissioner, the Deputy Commissioner, and every person engaged or employed in connection with the work of the Commissioner shall be deemed for the purposes of sections 105 and 105A of the Crimes Act
15 1961 to be officials.

(2) The Commissioner, the Deputy Commissioner, and every person engaged or employed in connection with the work of the Commissioner shall maintain and aid in maintaining the secrecy of all matters which come to their knowledge when
20 carrying out their functions or duties under this Act, and shall not communicate any such matters to any person except for the purpose of giving effect to this Act.

(3) Every person commits an offence and shall be liable on summary conviction to imprisonment for a term not exceeding
25 3 months or to a fine not exceeding \$3,000 or to both who wilfully acts in contravention of subsection (2) of this section.

14. Delegation of functions or powers of Commissioner—(1) The Commissioner may from time to time, either generally or particularly, delegate to any other
30 person (being an employee of the Department of Labour or the State Services Commission or the Education Review Office or an agent of the Department, Commission, or Office or a person contracted to perform services for the Department, Commission or Office) all or any of the Commissioner's
35 functions and powers under this Act or any other Act.

(2) Every delegation under this section shall be in writing.

(3) No delegation under this section shall include—

(a) The power to delegate under this section; or

(b) The power to make a pay equity assessment.

40 (4) The power of the Commissioner to delegate under this section does not limit any power of delegation conferred on the Commissioner by any other Act.

(5) Subject to any general or special directions given or conditions imposed by the Commissioner, the person to whom any functions or powers are delegated under this section may exercise any functions or powers so delegated to that person in the same manner and with the same effect as if they had been conferred on that person directly by this section and not by delegation. 5

(6) Every person purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation. 10

(7) Any delegation under this section may be made to a specified person or to persons of a specified class, or to the holder or holders for the time being of a specified office or specified class of offices. 15

(8) No such delegation shall affect or prevent the exercise of any function or power by the Commissioner, nor shall any such delegation affect the responsibility of the Commissioner for the actions of any person acting under the delegation.

15. Revocation of delegations—(1) Every delegation under section 14 of this Act shall be revocable in writing at will. 20

(2) Any such delegation, until it is revoked, shall continue in force according to its tenor, notwithstanding that the Commissioner by whom it was made may have ceased to hold office, and shall continue to have effect as if made by the successor in office of the Commissioner. 25

16. Procedure—Subject to the provisions of this Act, the Commissioner may regulate his or her procedure in such manner as he or she thinks fit.

17. Proceedings privileged—(1) Subject to subsection (2) of this section,— 30

(a) No proceedings, civil or criminal, shall lie against the Commissioner, the Deputy Commissioner, or any person engaged or employed in connection with the work of the Commissioner, for anything he or she may do or report or say in the course of the exercise or intended exercise of his or her duties under this Act, unless it is shown that he or she acted in bad faith: 35

(b) The Commissioner, the Deputy Commissioner, and any such person as aforesaid, shall not be called to give evidence in any Court, or in any proceedings of a 40

judicial nature, in respect of any thing coming to his or her knowledge in the exercise of his or her functions.

5 (2) Nothing in **subsection (1)** of this section applies in respect of proceedings for—

(a) An offence against section 78 or section 78A (1) or section 105 or section 105A of the Crimes Act 1961; or

10 (b) The offence of conspiring to commit an offence against section 78 or section 78A (1) or section 105 or section 105A of the Crimes Act 1961.

(3) Anything said or any information supplied or any document, paper, or thing produced by any person in the course of any inquiry by or proceedings before the Commissioner or the Deputy Commissioner under this Act shall be privileged in the same manner as if the inquiry or proceedings were proceedings in a Court.

15 (4) For the purposes of clause 5 of the First Schedule to the Defamation Act 1954, any report made by the Commissioner or the Deputy Commissioner under this Act shall be deemed to
20 be an official report made by a person holding an inquiry under the authority of the legislature of New Zealand.

18. Annual report—(1) As soon as practicable after the end of each year ending with the 30th day of June, the Commissioner shall furnish to the Minister of Labour a report
25 on the carrying out of the Commissioner's functions and duties during that year.

(2) A copy of the report shall be laid before the House of Representatives as soon as practicable after its receipt by the Minister of Labour.

30 **19. Remuneration and expenses of Commissioner and Deputy Commissioner**—(1) The Commissioner and the Deputy Commissioner shall be paid—

(a) Such remuneration as may from time to time be determined by the Higher Salaries Commission; and

35 (b) Such additional allowances, being travelling allowances, as may be determined from time to time by the Minister of Finance.

(2) Subject to the Higher Salaries Commission Act 1977, any determination made under **subsection (1)** of this section may be
40 made so as to come into force on a date to be specified for that purpose in the determination, being the date of the making of the determination, or any other date, whether before or after the date of the making of the determination.

(3) Every determination made under **subsection (1)** of this section in respect of which no date is specified as aforesaid shall come into force on the date of the making of the determination.

New

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19A. Superannuation or retiring allowances of Commissioner and Deputy Commissioner—(1) For the purpose of providing a superannuation fund or retiring allowance for the Commissioner or Deputy Commissioner, sums by way of subsidy may from time to time be paid into any scheme under the National Provident Fund Act 1950 containing provision for employer subsidy or into any other employer-subsidised scheme approved by the Minister of Finance for the purposes of this section. 10

(2) Notwithstanding anything in this Act, any person who immediately before becoming the Commissioner or Deputy Commissioner is a contributor to the Government Superannuation Fund under Part II or Part IIA shall be deemed to be, for the purposes of the Government Superannuation Fund Act 1956, employed in the Government service so long as that person continues to hold office as Commissioner or Deputy Commissioner, and that Act shall apply to that person in all respects as if that person's service as Commissioner or Deputy Commissioner were Government service. 15 20

(3) Subject to the Government Superannuation Fund Act 1956, nothing in **subsection (2)** of this section shall entitle any such person to become a contributor to the Government Superannuation Fund after that person has once ceased to be a contributor. 25

(4) For the purposes of applying the Government Superannuation Fund Act 1956, in accordance with subsection (2) of this section, to a person who is the Commissioner or the Deputy Commissioner, and is a contributor to the Government Superannuation Fund, the term "controlling authority", in relation to any such person, means the Secretary of Labour. 30 35

20. Services for Commissioner—The Department of Labour shall furnish such managerial, advisory, administrative, and other services as may be necessary to enable the Commissioner to exercise the Commissioner's functions and powers under this Act. 40

5 **21. Application of certain Acts to Commissioner or Deputy Commissioner**—No person shall be deemed to be employed in the service of Her Majesty for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 by reason of that person's appointment as the Commissioner or the Deputy Commissioner.

PART II

EQUAL EMPLOYMENT OPPORTUNITIES

10 **22. Application**—(1) Subject to sections 23 and 24 of this Act, this Part of the Act shall apply to every employer, being—

- (a) A chief executive of a Department specified in the First Schedule to the State Sector Act 1988:
- (b) A corporation named in the First Schedule to the State-Owned Enterprises Act 1986 or a subsidiary of such a corporation:
- 15 (c) A Board of Trustees constituted under Part IX of the Education Act 1989:
- (d) An area health board established under section 6 of the Area Health Boards Act 1983:
- 20 (e) A local authority within the meaning of the Local Government Act 1974:

New

25 (ea) A free kindergarten association by which any kindergarten recognised as a free kindergarten by the Minister of Education is controlled:

- (f) An employer who employs the specified number of workers or more.
- (2) In this Part of this Act,—
- 30 (a) The term “specified number” means 50 or such *(other)* lesser number as the Governor-General may from time to time specify by Order in Council as the specified number for the purposes of this section; and
- (b) The term “workers” includes, where the employer is a partnership, every partner.

35 **23. Application of Part II for year ending 30 June 1991**—Notwithstanding section 22 of this Act, this Part of this Act shall, in respect of the year ending on the *(30th day of June 1991)* 31st day of January 1992, apply only to—

- 40 (a) The employers specified in paragraphs (a) to ~~((e))~~ (ea) of subsection (1) of that section:

- (b) An employer who employs 500 workers or more.

24. Application of Part II for year ending 30 June 1992—Notwithstanding section 22 of this Act, this Part of this Act shall, in respect of the year ending on the ~~(30th day of June 1992)~~ 31st day of January 1993, apply only to—

- (a) The employers specified in paragraphs (a) to ~~((e))~~ (ea) of subsection (1) of that section: 5
- (b) An employer who employs 100 workers or more.

25. Date at which workers to be counted—Where, in any year, it is necessary, for the purposes of any provision of sections 22 to 24 of this Act, to count the number of workers employed by an employer, those workers shall be counted as at: 10

- (a) Such date in that year as the Commissioner shall, for the purposes of this section, specify from time to time, by notice in the *Gazette*, in relation to that employer or in relation to any class of employers to which that employer belongs; or 15
- (b) If no date is, for the purposes of this section, for the time being, specified by the Commissioner in relation to that employer or any class of employers to which that employer belongs, the ~~(30th day of June)~~ 31st day of January in that year. 20

26. Obligations of employers in relation to equal employment opportunities programmes—Every employer to whom this Part of this Act applies— 25

- (a) Shall develop, in accordance with the Schedule to this Act, the equal employment opportunities programmes required by that Schedule for the workers employed by that employer: 30
- (b) Shall, in developing an equal employment opportunities programme, consult with workers and appropriate unions about the development of that programme: 35
- (c) Shall ensure that each equal employment opportunities programme developed by that employer complies with the provisions of the Schedule to this Act, and complies with any minimum requirements established by the Commissioner in respect of equal employment opportunities programmes: 40
- (d) Shall lodge with the Commissioner, by the ~~(30th day of June)~~ 31st day of January in the relevant year or by such other date as the Commissioner determines in a particular case or class of cases, each equal

employment opportunities programme required by the Schedule to this Act to be developed by that employer:

- 5 (e) Shall, upon obtaining the approval of the Commissioner for an equal employment opportunities programme lodged with the Commissioner, implement that programme:
- 10 (f) Shall, where the Commissioner requires an employer to make amendments to any equal employment opportunities programme or to submit a new programme, comply with those requirements within any reasonable period required by the Commissioner:
- 15 (g) Shall, upon request, make copies of the equal employment opportunities programme that is currently in force following approval by the Commissioner available free of charge to—
 - (i) Workers employed by that employer; or
 - (ii) Any person who has applied for employment with that employer; or
 - 20 (iii) Any union with coverage of workers employed by that employer:
- (h) Shall, in consultation with workers and the appropriate unions, monitor the implementation of the equal employment opportunities programme in force from time to time and report on progress to the Commissioner on request:
- 25 (i) Shall comply with the requirements of **clause 5** of the Schedule to this Act.

27. Joint equal employment opportunities programmes—

30 (1) Where two or more companies that are employers to which this Part of this Act applies are related companies within the meaning of the Companies Act 1955, those companies may, with the approval in writing of the Commissioner, develop and lodge a single equal employment opportunities programme under **section 26** of this Act in respect of the workers employed by the companies; and **section 26** of, and the Schedule to, this Act shall apply accordingly in respect of those companies with all necessary modifications.

35 (2) Employers of the type described in **paragraphs (a) to (e) of section 22 (1)** of this Act may, with the approval in writing of the Commissioner, develop and lodge a joint equal employment opportunities programme under **section 26** of this Act in respect of the workers employed by them; and **section 26** of, and the

Schedule to, this Act shall apply accordingly in respect of those employers with all necessary modifications.

- 28. Powers and duties of Commissioner in relation to approval of equal employment opportunities programmes**—(1) When an equal employment opportunities programme is lodged with the Commissioner, the Commissioner shall decide, in his or her discretion, whether or not to approve that programme. 5
- (2) The Commissioner shall, in making a decision under **subsection (1)** of this section, have regard to— 10
- (a) The provisions of the Schedule to this Act; and
 - (b) Any minimum requirements established by the Commissioner.
- (3) Where the Commissioner does not approve an equal employment opportunities programme lodged with the Commissioner under **section 26 (d)** of this Act, the Commissioner may do one or more of the following things: 15
- (a) Make suggestions or give advice to the employer as to amendments that might be made to the programme:
 - (b) Outline the deficiencies in the programme and require the employer to amend the programme and to then submit the amended programme to the Commissioner for approval: 20
 - (c) Outline the deficiencies in the programme and require the employer to submit a new programme to the Commissioner for approval. 25
- (4) Where the Commissioner, acting under **paragraph (b)** or **paragraph (c) of subsection (3)** of this section, imposes requirements on an employer, the Commissioner may specify the time within which the employer must comply with those requirements. 30

29. Power to review programmes and require changes—(1) The Commissioner may, at any time while an equal employment opportunities programme is in force, review the programme and its implementation by the employer and decide whether the employer has complied with **clause 5** of the Schedule to this Act. 35

(2) Where an equal employment opportunities programme has been in force for a period of at least 2 years after the date of its approval by the Commissioner, the Commissioner may, at any time after the expiration of that period and at intervals of not less than 2 years thereafter, after reviewing the content of the equal employment opportunities programme and the 40

manner and extent of its implementation, decide that the programme should be replaced or amended.

5 (3) Where the Commissioner decides, under **subsection (2)** of this section, that the equal employment opportunities programme of any employer should be replaced or amended, the Commissioner may require the employer to submit a new or amended programme under **section 30** of this Act.

10 (4) In imposing a requirement under **subsection (3)** of this section, the Commissioner shall specify those areas of the existing equal employment opportunities programme that, in the Commissioner's opinion, are unsatisfactory and shall give reasons for the Commissioner's opinion.

30. Power of employer to submit new or amended equal employment opportunities programme for approval—(1) Where an equal employment opportunities programme has been in force for at least 6 months from the date on which it was approved by the Commissioner, the employer of the workers to which it relates may lodge with the Commissioner for approval a new or amended equal employment opportunities programme that supersedes the first-mentioned equal employment opportunities programme.

20 (2) **Section 28** of this Act shall, with all necessary modifications, apply in relation to a programme lodged with the Commissioner under **subsection (1)** of this section as if it had been lodged with the Commissioner under **section 26 (d)** of this Act.

31. Currency of equal employment opportunities programme—Every equal employment opportunities programme approved under **section 28** of this Act shall continue in force from the date on which it is approved by the Commissioner until an equal employment opportunities programme that supersedes the first-mentioned equal employment opportunities programme is approved under that section.

35 **32. Assistance in developing equal employment opportunities programme**—~~(An employer)~~ Any employer, union, or worker may seek from the Commissioner assistance or advice or both about the development or implementation of an equal employment opportunities programme.

Compliance Order

33. Power to order compliance—(1) Where any person has not observed or not complied with—

- (a) Any provision of **sections 11 and 26 (d)** of this Act or of **clause 5 (a) or clause 5 (b)** of the Schedule to this Act; or 5
- (b) The provisions of **section 26 (e)** of this Act; or
- (c) Any order, determination, direction, or requirement made or given under this Act by the Commissioner or by a person acting under delegated authority from the Commissioner,— 10

the Labour Court by order may require that person to do any specified thing, or to cease any specified activity, for the purpose of preventing further non-observance of or non-compliance with that provision, order, determination, direction, or requirement, and shall specify a time within which that order is to be obeyed. 15

(2) Where the Commissioner alleges that there has been a non-observance or non-compliance of the kind described in **subsection (1) (a) or subsection (1) (c)** of this section, the Commissioner may commence proceedings against any person in respect of the non-observance or non-compliance by applying to the Labour Court for an order of the kind described in **subsection (1)** of this section. 20

(3) Where it is alleged that there has been, on the part of an employer, a non-observance or non-compliance of the kind described in **subsection (1) (b)** of this section, the Commissioner or any union that represents workers employed by that employer may commence proceedings against that employer in respect of the non-observance or non-compliance by applying to the Labour Court for an order of the kind described in **subsection (1)** of this section. 25 30

(4) Any time specified by the Court under **subsection (1)** of this section may from time to time be extended by the Court on the application of the person who is required to obey the order.

(5) Where the Labour Court makes an order of the kind described in **subsection (1)** of this section, that order— 35

- (a) May be subject to such terms and conditions as the Court thinks fit (including conditions as to the actions of the applicant); and
- (b) May be expressed to continue in force until a specified time or the happening of a specified event. 40

(6) Where the Labour Court makes an order of the kind described in **subsection (1)** of this section, it may then adjourn the

proceedings to enable the order of the Court to be complied with while the proceedings are adjourned.

(7) Where any person fails to comply with a compliance order made under this section, the Labour Court may order
5 that the person in default be fined a sum not exceeding \$5,000.

(8) The jurisdiction conferred on the Labour Court by this section shall be exercised by a Judge sitting alone.

(9) Nothing in this section affects section 207 of the Labour Relations Act 1987.

10 **34. Enforcement of order**—Any order made under section 33 (7) of this Act may be filed in any District Court, and shall then be enforceable in the same manner as an order made or judgment given by the last-mentioned Court.

PART III

15 PAY EQUITY

35. Objects—The objects of this Part of this Act are—

- (a) To provide a system whereby gender-based discrimination against female employees in respect of their remuneration can be identified and removed; and
- 20 (b) To make provision for supplementary pay equity payments to be incorporated into awards and agreements; and
- (c) To enable pay equity to be implemented over a period of time that makes allowance for the economic impact
25 on New Zealand and employers' ability to pay.

Pay Equity Assessments

36. Requests for pay equity assessments—A request for a pay equity assessment in respect of any female occupation may be made to the Commissioner—

- 30 (a) By any union that has coverage of workers in the female occupation or by two or more of those unions jointly; or
- (b) By an employers organisation whose members employ workers in the female occupation or by two or more
35 of those employers organisations jointly; or
- (c) By 20 or more female workers in the female occupation if they are members of a union that could make a request under paragraph (a) of this section in respect of that female occupation and members of that union
40 have asked that union to make such a request in respect of that female occupation and that union has

either failed to do so or has failed to do so promptly;
or

- (d) By 20 or more female workers in the female occupation if no union has coverage in respect of female workers in the female occupation. 5

37. Contents of requests—Every request to the Commissioner for a pay equity assessment—

- (a) Shall be in writing; and
- (b) Shall contain a definition of the female occupation to which the request relates, which definition may, among other things, use New Zealand Standard Classification of Occupations digit levels 2, 3, 4, or 5, and any work descriptions or position designations in awards or agreements; and 10
- (c) Shall contain, or be accompanied by, evidence or information that the occupation to which the request relates is a female occupation; and 15
- (d) Shall—
- (i) In the case of each union making the request, show that the union has coverage of workers in the female occupation; or 20
- (ii) In the case of each employers organisation making the request, show that the employers organisation has members who employ workers in the female occupation; or 25
- (iii) In the case of a request made pursuant to section 36 (c) or section 36 (d) of this Act, show that the persons making the request are female workers in the female occupation and set out the other facts on which those persons base their claim to be entitled under section 36 (c) or section 36 (d) of this Act to make the request; and 30
- (e) Shall contain proposed definitions of two male occupations, being occupations suggested as comparator occupations for the purposes of the pay equity assessment. 35

38. Preliminary consideration of request—(1) The Commissioner, on receiving a request for a pay equity assessment, shall first decide whether or not to carry out a pay equity assessment. 40

(2) The Commissioner may decide not to carry out a pay equity assessment—

- 5 (a) If a pay equity assessment covering the female occupation to which the request relates or any part of that female occupation has been completed at any time in the 5 years immediately preceding the receipt of the request:
- (b) If the Commissioner is not satisfied that the occupation to which the request relates is a female occupation:
- (c) If the Commissioner has reason to believe that the request is frivolous or vexatious:
- 10 (d) If the person making the request is not entitled under **section 36** of this Act to request a pay equity assessment:
- (e) If for any reason the Commissioner is of the opinion that a pay equity assessment (*would be impracticable*) is not technically feasible.
- 15

39. Female occupations and male occupations—(1) The Commissioner shall determine, for the purposes of any request under **section 36** of this Act, whether or not a particular occupation is a female occupation or a male occupation or
20 neither.

(2) In determining whether or not a particular occupation is a female occupation or a male occupation or neither, the Commissioner shall count all workers whether employed full-time, part-time, or otherwise.

25 **40. Notice of decision to carry out pay equity assessment**—(1) Where the Commissioner decides in accordance with **section 38** of this Act to carry out a pay equity assessment, the Commissioner—

- 30 (a) Shall give public notice of the Commissioner’s decision to carry out the assessment; and
- (b) Shall give written notice of the Commissioner’s intention to carry out the assessment to—

New

35 (ia) The person who made the request for the pay equity assessment; and

- (i) The central organisation of workers; and
- (ii) The central organisation of employers; and
- (iii) Any union that the Commissioner considers covers workers in the female occupation; and

(iv) Any employers organisation whose members the Commissioner considers employ workers in the female occupation.

- (2) The notice given under **subsection (1) (b)** of this section shall set out, among other things,— 5
- (a) The definition of the female occupation that was provided by the person making the request for the pay equity assessment: 5
 - (b) The Commissioner's preliminary views as to the appropriateness of the definition of the female occupation that was provided by the person making the request for the pay equity assessment: 10
 - (c) Any suggestions the Commissioner has as to how the female occupation might be defined for the purposes of the pay equity assessment: 15
 - (d) The definitions of the two male occupations suggested as comparator occupations by the person making the request for the pay equity assessment: 15
 - (e) The Commissioner's preliminary views on the use as comparator occupations of the two male occupations suggested by the person making the request for the pay equity assessment: 20
 - (f) Any suggestions the Commissioner has as to which male occupations might be used as comparator occupations for the purposes of the assessment and as to how they might be defined: 25
 - (g) The fact that the union or employers organisation may be accepted as an interested party in relation to the pay equity assessment if, within 14 days after a date specified for the purpose in the notice, it informs the Commissioner in writing that it wishes to be so accepted. 30
- (3) The Commissioner shall take all reasonable steps to give to bodies specified in **subsections (1) (b) (iii) and (1) (b) (iv)** of this section the notice required by **subsection (1) (b)** of this section but no pay equity assessment shall be challenged on the grounds that any such body was not so notified. 35

41. Order in which pay equity assessments carried out—The Commissioner may, in the Commissioner's discretion, determine the order in which pay equity assessments are to be carried out. 40

42. Interested parties—The interested parties, in relation to any pay equity assessment, shall comprise—

- (a) The person who made the request for the pay equity assessment:
- (b) The central organisation of workers:
- (c) The central organisation of employers:
- 5 (d) Any union or organisation, being either—
- (i) A union that has coverage of workers in the female occupation; or
- (ii) An employers organisation whose members employ workers in the female occupation,—
- 10 which, within 14 days after the date specified for the purpose in the notice served on the union or organisation under **section 40** of this Act or within 14 days of the date of the giving of public notice under **section 40 (1) (a)** of this Act, informs the Commissioner
- 15 in writing that it wishes to be accepted as an interested party in relation to the pay equity assessment.

43. Submissions—(1) The Commissioner shall, in relation to each pay equity assessment, invite submissions from the

20 interested parties on the following issues:

- (a) How should the female occupation be defined?
- (b) Which male occupations should be chosen as comparator occupations?
- 25 (c) How should the male occupations that are chosen as comparator occupations be defined?
- (d) How should a research programme that will help with the making of the assessment be formulated?
- (2) The Commissioner shall fix a date by which, or a time within which, submissions must be lodged with the
- 30 Commissioner.

44. Decision whether to proceed with assessment—

- (1) The Commissioner shall, after considering the submissions from the interested parties, decide whether or not to proceed with the proposed pay equity assessment.
- 35 (2) A decision not to proceed may be based on any of the grounds set out in **section 38 (2)** of this Act.

Struck Out

- (3) Where the Commissioner decides not to proceed, the Commissioner shall advise the interested parties of the decision and shall give the reasons for the decision.
- 40

New

(3) Where the Commissioner decides not to proceed, the Commissioner—

- (a) Shall give the reasons for the decision; and
- (b) Shall give public notice of the decision; and
- (c) Shall advise the interested parties of the decision and of the Commissioner's reasons for the decision.

5

45. Definition of female occupation—(1) If the Commissioner decides to proceed with a pay equity assessment, the Commissioner shall, as a first step, define the female occupation or each of the female occupations to which the assessment is to relate.

10

(2) Each definition shall be of an occupation that encompasses job types or job designations or both that involve work of a common or substantially similar nature.

15

(3) In defining a female occupation, the Commissioner—

(a) Shall have regard to, and may make use of,—

(i) Where appropriate, New Zealand Standard Classification of Occupations digit levels 2, 3, 4, or 5; and

20

(ii) Where appropriate, any work descriptions or position designations in awards or agreements covering members of the proposed female occupation; and

(iii) Any other method of description that the Commissioner considers appropriate; and

25

(iv) The views of the interested parties; but

(b) Shall not be obliged to keep within the definition provided by the person who made the request for the pay equity assessment nor to cover the whole of the occupation defined by the person who made the request for the pay equity assessment.

30

46. Selection and definition of comparator male occupations—(1) If the Commissioner decides to proceed with a pay equity assessment, the Commissioner shall, as a second step, select two or more male occupations to be used as comparator occupations for the purposes of the pay equity assessment.

35

(2) The Commissioner shall, in making the selection, ensure—

40

- (a) That at least one of the male occupations selected is, where practicable,—
- 5 (i) An occupation (*whose members are*) with members employed in the same work places, or the same types of work places, as those in which most of the female occupation, or a significant number of members of the female occupation, are employed; and
- 10 (ii) An occupation that requires of its members that they have, in an overall sense, broadly similar levels of (*physical, mental, and interpersonal skills and of knowledge and experience*) skills, effort, and responsibility as the female occupation requires of its members; and
- 15 (b) That the other male occupation is one that requires of its members that they have, in an overall sense, broadly similar levels of (*physical, mental, and interpersonal skills and of knowledge, and experience*) skills, effort, and responsibility as the female occupation requires of its members.
- 20 (3) Where it is not practicable to select a male occupation to which **subsection (2) (a)** of this section applies, the Commissioner shall ensure that both male occupations selected under **subsection (1)** of this section are occupations to which **subsection (2) (b)** of this section applies.
- 25 (4) In defining a male occupation, the Commissioner—
- (a) Shall have regard to, and may make use of,—
- (i) Where appropriate, New Zealand Standard Classification of Occupations digit levels 2, 3, 4, or 5; and
- 30 (ii) Where appropriate, any work descriptions or position designations in awards or agreements covering members of the male occupation; and
- (iii) Any other method of description that the Commissioner considers appropriate; and
- 35 (iv) The views of the interested parties; but
- (b) Shall not be obliged to keep within the definition provided by the person who made the request for the pay equity assessment nor to cover the whole of the occupation defined by the person who made the request for the pay equity assessment.
- 40

47. Notice to interested parties of decision to proceed with pay equity assessment—(1) If the Commissioner decides to proceed with a pay equity assessment, the

Commissioner shall, as a third step, give to the interested parties—

- (a) Notice of the decision; and
- (b) Copies of the Commissioner's definitions of—
 - (i) The female occupation; and 5
 - (ii) The two male occupations to be used as comparator occupations for the purposes of the assessment.

New

- | | |
|---|----|
| (2) The notice of the decision shall contain— | 10 |
| (a) The Commissioner's reasons for the Commissioner's definition of the female occupation; and | |
| (b) The Commissioner's reasons for the selection of the male occupations to be used as comparator occupations for the purposes of the assessment; and | 15 |
| (c) The Commissioner's reasons for the Commissioner's definitions of the comparator occupations. | |

Struck Out

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|---|----|
| 48. Object of pay equity assessment —The object of a pay equity assessment is to determine the extent of gender bias in levels of remuneration by assessing the difference between— | 20 |
| (a) The remuneration paid within the female occupation; and | |
| (b) The remuneration that, in the opinion of the Commissioner, would be paid within a male occupation that required of its members that they— | 25 |
| (i) Work in and under similar conditions; and | |
| (ii) Carry out work requiring, in an overall sense, the same physical, mental, and interpersonal skills and the same knowledge and experience as the female occupation requires of its members. | 30 |

New

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|--|
| 48. Objects of pay equity assessment —(1) The objects of a pay equity assessment are— |
|--|

New

- (a) To obtain the data that will enable the Commissioner to determine whether gender bias exists in levels of remuneration; and
- 5 (b) Where the Commissioner determines that gender bias in levels of remuneration exists, the extent of that gender bias.
- (2) In making a pay equity assessment, the Commissioner shall assess the difference between—
- 10 (a) The remuneration paid within the female occupation; and
- (b) The remuneration that, in the opinion of the Commissioner, would be paid within a male occupation that required of its members that they—
- 15 (i) Work in and under similar conditions; and
- (ii) Carry out work requiring, in an overall sense, the same skills, effort, and responsibility as the female occupation requires of its members.

- 49. Basis of assessment**—(1) Subject to subsections (2) to (5) of this section, the Commissioner shall make the assessment on
- 20 the basis of actual remuneration.
- (2) In making the assessment, the Commissioner—
- (a) Shall have regard to—
 - 25 (i) Any minimum rates of remuneration contained in any award or agreement; and
 - (ii) Where appropriate, to any differences in remuneration between regions; and
 - (b) May have regard to such statistical and other information as the Commissioner thinks fit; and
 - 30 (c) May rely on representative samples or other research methods.
 - (3) The Commissioner, in forming his or her opinion under **(section 45) section 48 (2) (b)** of this Act,—
 - (a) Shall use the relevant male comparator occupations as a guide; and
 - 35 (b) May, in the case of any particular assessment, have regard also to any extraordinary working conditions that apply in either—
 - (i) The female occupation; or
 - (ii) The male occupations used as comparators; and

- (c) Shall recognise differences in remuneration levels which can properly be attributed to recruitment and retention differences.

(4) (*Subject to subsection (5) of this section,*) where a pay equity assessment has been made in relation to a female occupation, the Commissioner shall make any second or subsequent pay equity assessment in relation to that female occupation or part thereof by taking into account only factors that have arisen since the immediately preceding pay equity assessment was made.

50. Content of pay equity assessment—The pay equity assessment—

- (a) Shall consist of a general conclusion on the application; and
- (b) Shall, in particular, express any gender bias in respect of the female occupation—
 - (i) As a percentage, or range of percentages, of the monetary remuneration then payable within the female occupation; or
 - (ii) As a dollar amount or a range of dollar amounts; and
- (c) Shall note, where appropriate, any differences then existing in remuneration in each region; and
- (d) Shall include, where appropriate, separate assessed percentages or dollar amounts in respect of remuneration in each region.

51. Powers of Commissioner—The Commissioner may, at any time in the course of making a pay equity assessment, do one or more of the following things:

- (a) Consult with the interested parties or any of them;
- (b) In accordance with the Commissioner's powers under this Act, seek information from such persons as the Commissioner thinks fit;
- (c) After consulting the interested parties, redefine the female occupation or any of the male occupations or all of the occupations if the Commissioner is satisfied it is necessary to do so in order to be able to make an accurate pay equity assessment:

New

(d) Stop the assessment on any ground set out in **section 38 (2)** of this Act.

5 **52. Pay equity report**—(1) At the conclusion of any pay equity assessment, the Commissioner—

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10 (a) Shall issue a pay equity report—
(i) Describing the research conducted by the Commissioner or on the Commissioner’s behalf and the methodology used in that research; and
(ii) Containing the pay equity assessment; and

New

15 (a) Shall issue a pay equity report containing the pay equity assessment and describing—
(i) The research conducted; and
(ii) The process followed; and
(iii) The reasons for the general conclusion contained in the pay equity assessment; and

20 (b) Shall give public notice of the issue of the pay equity report.

Struck Out

25 (2) The Commissioner shall provide a copy of the pay equity report free of charge to
(a) The person who ;made the request for the pay equity assessment; and
(b) The central organisation of workers; and
(c) The central organisation of employers; and
(d) Any other interested party.

New

(2) The Commissioner shall provide a copy of the pay equity report free of charge to each of the interested parties.

(3) If any other person requests a copy of the pay equity report, the Commissioner shall provide that copy to that person on payment of an amount that, in the opinion of the Commissioner, covers the costs of producing that copy of the report. 5

*Pay Equity Claims***53. Jurisdiction in relation to pay equity claims—** 10

(1) Subject to section 64 of this Act, where a pay equity assessment has been made in respect of a female occupation, a pay equity claim may, in negotiations under Part VII of the Labour Relations Act 1987 for an award or agreement, be made in respect of some or all of the workers in that occupation. 15

(2) The workers to whom the pay equity claim relates—

- (a) Must be covered by the whole or part of the coverage clause of the proposed award or agreement; and
- (b) Must be within the definition of the female occupation that was the subject of the pay equity assessment. 20

(3) A pay equity claim in respect of some or all of the workers in a female occupation may be made at any time after the making of the pay equity assessment in respect of that female occupation. 25

54. Making of pay equity claim—(1) A pay equity claim—

- (a) May be made by the union party or employer party to negotiations for an award or an agreement;
- (b) May be made as part of the claims that create the dispute of interest or as part of the claims or counter claims that are made during the course of the negotiations. 30

(2) A pay equity claim must be a separate identifiable claim within the overall negotiations, but in all other respects (and subject to the provisions of sections 55 to 66 of this Act (which deal with arbitration)) Part VII of the Labour Relations Act 1987 shall apply. 35

(3) A pay equity claim must be in the form of proposed supplementary pay equity payments that will form a schedule to the proposed award or agreement.

(4) Subject to **subsection (5)** of this section, nothing in this Act prevents any parties from negotiating about pay equity at any time in the ordinary course of negotiations, even if there is no relevant pay equity assessment.

- 5 (5) The making of a pay equity assessment in respect of a female occupation is a prerequisite to the making of a pay equity claim under **subsection (1)** of this section in respect of some or all of the members of that female occupation.

55. Reference of claim to Arbitration Commission—

- 10 (1) Where a pay equity claim made in accordance with **section 54** of this Act is not settled within 60 days of the making of that claim, either party may give the other party written notice that it intends to refer the pay equity claim to the Arbitration Commission for determination by way of final offer arbitration.

- 15 (2) Where 7 days have elapsed from the date of service of the written notice under **subsection (1)** of this section, the party who gave that notice may refer the pay equity claim to the Arbitration Commission at any time.

- 20 (3) Where a party refers a pay equity claim to the Arbitration Commission under **subsection (2)** of this section, that party shall set out in writing the details of that party's claim and shall supply a copy of those details to both the Arbitration Commission and the other party.

- 25 (4) The details shall include full particulars of the final offer being made by the party in respect of the pay equity claim.

- (5) Neither the giving of a notice under **subsection (1)** of this section in relation to a pay equity claim nor the reference of a pay equity claim to the Arbitration Commission shall prevent the parties from continuing to negotiate over the pay equity claim or from settling it.

- 30 (6) The reference of a pay equity claim to the Arbitration Commission shall not prevent the application of the Labour Relations Act 1987 in relation to the negotiation, settlement, and registration of an award or agreement in settlement of
35 other claims.

56. Procedure following reference to Arbitration Commission—

- (1) Where a party is supplied under **section 55 (3)** of this Act with details of a pay equity claim, that party, within **(14 days) 28 days** after the date on which that party was supplied with those details, shall set out in writing the details of that party's response to the pay equity claim and shall supply a copy of those details to both the Arbitration Commission and

the party that referred the pay equity claim to the Arbitration Commission.

(2) The response shall include full particulars of the final offer being made by the responding party in respect of the pay equity claim. 5

(3) If the responding party fails to respond under **subsection (1)** of this section within the time prescribed by that subsection, the Arbitration Commission may determine the pay equity claim as if the responding party had supplied a nil final offer.

57. Final offer—(1) The final offer shall not in either case be expressed on a total package basis. 10

(2) For the purpose of ensuring that a final offer in relation to each substantive provision of the pay equity determination is available for consideration under **section 60** of this Act, the final offer shall, in each case, be broken down into final offers in relation to— 15

- (a) Each relevant work description or position designation in the proposed award or the proposed agreement; and
- (b) Where applicable, each region.

58. Hearing on merits before Arbitration Commission—(1) The Arbitration Commission shall, as soon as is practicable, have a hearing to determine the dispute over the pay equity claim. 20

(2) At the hearing, the parties and the Commissioner may appear and present such evidence and make such submissions as they think fit. 25

59. Constitution of Arbitration Commission—(1) For the purposes of determining a pay equity claim, the Arbitration Commission shall consist of—

- (a) The Chief Commissioner or a Commissioner appointed by the Chief Commissioner to act as presiding officer for the purposes of the pay equity claim; and 30

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- (b) Two other persons appointed by the Chief Commissioner under section 261 (1) (b) of the Labour Relations Act 1987 for the purposes of the pay equity claim. 35

New

5 (b) Two Commissioners, additional to the three provided for in section 261 (1) (a) of the Labour Relations Act 1987, who shall be appointed under that section solely for the purpose of determining pay equity claims.

(2) The two persons appointed under **subsection (1) (b)** of this section shall be chosen because of their expertise in pay equity.

10 **60. Pay equity determination**—(1) The Arbitration Commission shall determine the dispute between the parties concerning the pay equity claim by making a pay equity determination.

15 (2) Each substantive provision of the pay equity determination shall result from the adoption in full by the Arbitration Commission of one or the other of the final offers made in relation to that substantive provision.

(3) In making the pay equity determination, the Arbitration Commission—

20 (a) Shall take into account the object of removing gender-based discrimination against female employees in respect of their remuneration; and

(b) Shall consider—

25 (i) The relevant pay equity report; and
(ii) The date on which the relevant pay equity report was made; and

(iii) The evidence presented, and the submissions made, by the parties and the Commissioner.

30 **61. Determination on implementation**—(1) After the Arbitration Commission has made a pay equity determination and has advised the parties of its decision, it shall decide both—

(a) The time within which the pay equity determination is to be implemented; and

(b) The relationship that is to exist between—

35 (i) The provisions of the award or agreement; and
(ii) The schedule of supplementary payments.

(2) Subject to **subsection (3)** of this section, the decision on the implementation of the pay equity determination may, at the Arbitration Commission's discretion, be made—

40 (a) At the hearing at which the Commission's decision to make the pay equity determination is delivered; or

- (b) At a subsequent hearing.
- (3) The Arbitration Commission—
 - (a) Shall give each party and the Commissioner the opportunity to be heard in relation to the implementation arrangements; and 5
 - (b) Shall also allow the Minister of Labour to be represented and to be heard in relation to the way in which the implementation arrangements may affect the overall economic and fiscal impact of the pay equity determination. 10

62. Implementation—(1) The contents of the pay equity determination shall be incorporated, in accordance with this section, into the award or agreement which is in force at the time of the making of the Arbitration Commission's decision on the implementation of the pay equity determination. 15

(2) The contents of the pay equity determination shall be so incorporated as from the later of—

- (a) The date of the Arbitration Commission's decision on the implementation of the pay equity determination; or
 - (b) The date of expiry of the award or agreement that was in force at the time when the pay equity claim was made. 20
- (3) The Arbitration Commission shall, of its own volition,—
- (a) Incorporate the contents of the pay equity determination into the award or agreement by including in the award or agreement a schedule of supplementary pay equity payments; and 25
 - (b) Incorporate into the award or agreement, as part of the schedule of supplementary pay equity payments, details of— 30
 - (i) The date by which and the extent to which the supplementary pay equity payments are to take effect; and
 - (ii) The relationship between the provisions of the award or agreement and the schedule of supplementary pay equity payments. 35

(4) The Arbitration Commission shall provide for the supplementary pay equity payments to be implemented over a period of 3 years unless the Arbitration Commission determines that either a shorter or longer period is warranted. 40

(5) In deciding whether to reduce or extend the period of 3 years, the Arbitration Commission shall balance the need to achieve pay equity as expeditiously as is practicable against the impact of the costs of the pay equity adjustment—

- (a) On the overall costs of the employers and the Government of New Zealand; and
- (b) On the New Zealand economy.
- 5 (6) The Arbitration Commission shall decide on the implementation arrangements as quickly as is practicable.

63. Effect on subsequent awards and agreements—

- (1) Where an award or agreement contains a schedule of supplementary pay equity payments as a result of a pay equity claim then, so long as the period for the implementation of those supplementary pay equity payments is running, that schedule shall, when the award or agreement is superseded, be included also, upon notice or application to the Arbitration Commission, in any subsequent award or agreement (to the extent that it is relevant to that award or agreement) and so on
- 10
- 15 until that period has expired.

- (2) At the end of the implementation period, the Arbitration Commission shall, *(of its own volition)* upon application by any party to the award or agreement, incorporate the effect of the schedule of supplementary pay equity payments into the relevant rates in the award or agreement and revoke the schedule accordingly.
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- 64. Restrictions on pay equity claims—**Where a pay equity claim in respect of a female occupation or part thereof has been made in relation to a particular award or agreement,
- 25 no further pay equity claim in respect of that female occupation or part thereto may be made in relation to that award or agreement or any subsequent award or agreement—

- (a) Within 5 years after the date on which the pay equity claim was settled or decided; or
- 30 (b) Before the end of the implementation period,—
whichever is the later.

- 65. Subsequent pay equity claims—***(1) Subject to subsection (2) of this section,* where a further pay equity claim is validly made in relation to a female occupation and the contents of a pay equity settlement or determination in relation to that female occupation have, as the result of an earlier pay equity claim, been incorporated into the award or agreement, the Arbitration Commission shall, if the further claim proceeds to final offer arbitration, decide the issue of pay equity in relation to that award or agreement by taking into account only factors that have arisen since the previous claim was settled by the parties or determined by the Arbitration Commission.
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66. Salary bars—Where a pay equity adjustment is made in respect of an award or agreement, whether by decision of the Arbitration Commission or by agreement between the parties, the schedule of supplementary pay equity payments shall also contain a formula for adjusting any salary bar contained in the award or agreement, to the extent that such a salary bar is applicable to the work descriptions or position designations covered by the pay equity adjustment.

PART IV

MISCELLANEOUS PROVISIONS

67. Jurisdiction of Labour Court in respect of applications for review—(1) If any person wishes to apply for review under Part I of the Judicature Amendment Act 1972, or bring proceedings seeking a writ or order of, or in the nature of mandamus, prohibition, or certiorari, or a declaration or injunction, in relation to the exercise, refusal, or proposed or purported exercise by the Arbitration Commission or the Employment Equity Commission or the Employment Equity Commissioner of a statutory power or statutory power of decision (as defined in section 3 of the Judicature Amendment Act 1972) conferred by or under this Act, then, subject to subsections (2) and (3) of this section, the provisions of subsections (3) to (6) of section 280 of the Labour Relations Act 1987 shall apply with the necessary modifications.

(2) No decision or order or act of the Employment Equity Commissioner under Part III of this Act shall, except on the ground of lack of jurisdiction or on the ground that no reasonable Commissioner could have made or done it, be removable to any Court by certiorari or otherwise or be liable to be challenged, appealed against, reviewed, quashed, or called in question in any Court.

(3) For the purposes of subsection (2) of this section, the Employment Equity Commissioner suffers from lack of jurisdiction only where—

- (a) In the narrow and original sense of the term jurisdiction, the Commissioner has no entitlement to do the thing in question; or
- (b) The decision, order, or act is outside the classes of decisions, orders, or acts which the Commissioner is authorised to make; or
- (c) The Commissioner acts in bad faith.

68. Service of notices—(1) Any notice or other document required or authorised to be served on or given to any person

for the purposes of this Act may be served or given by delivering it to that person, and may be delivered to that person either personally or by leaving it at that person's usual or last known place of abode or business or at the address specified by that person in any application or other document received from that person or by posting it in a letter addressed to that person at that place of abode or business or at that address.

(2) If any such notice or other document is sent to any person by registered letter, it shall be deemed to have been delivered to that person on the fourth day after the day on which it was posted, and in proving the delivery it shall be sufficient to prove that the letter was properly addressed and posted.

(3) If the person is absent from New Zealand, the notice or other document may be delivered as aforesaid to that person's agent in New Zealand. If that person is deceased, the notice or other document may be delivered as aforesaid to that person's personal representatives.

(4) If the person is not known, or is absent from New Zealand and has no known agent in New Zealand, or is deceased and has no known personal representatives, or if for any other reason it is not practicable to deliver the notice or other document personally the notice or other document shall be delivered in such manner as may be directed by the Commissioner or the Arbitration Commission.

(5) Notwithstanding anything in the foregoing provisions of this section, the Commissioner or the Arbitration Commission may in any case direct the manner in which any notice or other document is to be served or given, or dispense with the service or giving thereof.

69. Offence—(1) Every person commits an offence against this Act and is liable on summary conviction to a fine not exceeding \$5,000 who, either alone or in combination with any other person or group or body of persons, does any act with the intention of defeating any provision of this Act.

(2) No prosecution for an offence against this section shall be commenced except on the information of—

- (a) An officer of a union or employers organisation; or
- (b) An employee of the Department of Labour.

(3) For the purposes of this section, "officer" means the president, vice-president, or secretary of the union or employers organisation.

70. Regulations—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Prescribing forms and fees for the purposes of this Act: 5
- (b) Exempting or providing for the exemption of any person or class of person from liability to pay any fees prescribed under this section:
- (c) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration. 10

71. No reduction in remuneration—Nothing in this Act or resulting from it shall be construed as reducing the remuneration of any worker or as requiring the remuneration of any worker to be reduced.

New

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71A. Review of operation of Act—(1) As soon as practicable after the expiry of the period of 3 years beginning on the commencement of this Act, and then at intervals of not more than 5 years, the Commissioner and the Secretary of Labour shall each—

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- (a) Review the operation of the Act since—
 - (i) The date of its commencement (in the case of the first review carried out under this paragraph); or
 - (ii) The date of the last review carried out under this paragraph by the Commissioner (in the case of every subsequent review carried out by the Commissioner); or 25
 - (iii) The date of the last review carried out under this paragraph by the Secretary of Labour (in the case of every subsequent review carried out by the Secretary of Labour); and 30
- (b) Consider—
 - (i) Whether the office of Commissioner should be retained or abolished; and
 - (ii) Whether any amendments to this Act are necessary or desirable; and 35
- (c) Report their findings to the Minister of Labour.

(2) As soon as practicable after receiving a report from the Commissioner or Secretary of Labour under **subsection (1) (c)** of this section, the Minister of Labour shall lay a copy of that report before the House of Representatives. 40

Amendments to Labour Relations Act 1987

72. Discrimination—(1) Section 211 (2) of the Labour Relations Act 1987 is hereby amended by adding the following paragraphs:

- 5 “(g) Had made or caused to be made any claim or claimed any remedy under the Employment Equity Act 1989; or
- “(h) Had made or was a party to the making of a request under the Employment Equity Act 1989 for a pay equity assessment.”
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(2) Section 211 (2) (f) of the Labour Relations Act 1987 is hereby consequentially amended by adding the expression “; or”.

73. Unlawful strikes and lockouts—(1) Section 234 (1) of the Labour Relations Act 1987 is hereby amended by adding the following subsection:

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“(6) A strike by, or a lockout of, workers in a female occupation (within the meaning of the Employment Equity Act 1989) shall be unlawful if—

- 20 “(a) It relates to a dispute of interest that includes a pay equity claim under that Act in respect of that female occupation; and
- “(b) It takes place at a time when the pay equity claim mentioned in paragraph (a) of this subsection is before the Arbitration Commission for determination.”
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(2) Section 233 (1) of the Labour Relations Act 1987 is hereby consequentially amended by omitting the expression “section 234 (3)”, and substituting the expression “subsections (3) and (6) of section 234”.

SCHEDULE

Sections 26 (1) (c) (i), 28 (2) (a)

PROVISIONS APPLYING IN RESPECT OF EQUAL EMPLOYMENT OPPORTUNITIES PROGRAMMES

Preliminary Programme in First Year (being a year ending on (30 June) 31 January)

1. Each employer to which Part II of this Act applies shall, in the first year in which that employer is bound by that Part of this Act, lodge under section 26 of this Act a preliminary equal employment opportunities programme.

2. The preliminary equal employment opportunities programme shall set out, among other things,—

- (a) The name of the person appointed to be responsible for overseeing the development and implementation of the equal employment opportunities programme, which person must have the skill and authority necessary for the discharge of the responsibility;
- (b) An outline of the consultation that is to be undertaken with unions and workers in relation to the development and implementation of—
 - (i) The equal employment opportunities programme over a reasonable period of time; and
 - (ii) Systems for the collection of data on the employment of members of designated groups (being data necessary for the purpose of monitoring the effects of the equal employment opportunities programme);
- (c) Details of the consultation that has taken place, before the lodging of the equal opportunities programme, with unions and workers in relation to the matters specified in paragraph (b) of this clause.

Programme in Second Year (being a year ending on (30 June) 31 January)

3. Each employer to which Part II of this Act applies shall, after the preliminary equal employment opportunities programme lodged by that employer has been in force after approval by the Commissioner under section 28 of this Act for a period of 1 year, lodge a second equal employment opportunities programme.

4. The second equal employment opportunities programme shall set out, among other things,—

- (a) A review of the implementation of the preliminary equal employment opportunities programme; and
- (b) A statement of any changes proposed to the equal employment opportunities programme in the light of—
 - (i) Changing conditions; and
 - (ii) Consultations with unions and workers; and
- (c) The action to be taken in relation to—
 - (i) The identification and elimination of all aspects of policies, procedures, and other institutional barriers that cause or perpetuate, or tend to cause or perpetuate, inequality in respect of the employment of any designated group of persons; and
 - (ii) The establishment of systems for the collection of data on the employment of members of designated groups (being data necessary for the purpose of monitoring the effects of the equal employment opportunities programme); and

SCHEDULE—*continued*

PROVISIONS APPLYING IN RESPECT OF EQUAL EMPLOYMENT OPPORTUNITIES PROGRAMMES—*continued*

Programme in Second Year (being a year ending on (30 June) 31 January)—continued

- (iii) The need to consult with unions and workers in relation to the development and implementation of the equal employment opportunities programme over a reasonable period of time; and
 - (iv) The need to educate all workers, including managers, in relation to the identification and elimination of all aspects of policies, procedures, and other institutional barriers that cause or perpetuate, or tend to cause or perpetuate, inequality in respect of the employment of any designated group of persons; and
 - (v) The need to link the equal employment opportunities programme into personnel policies, the organisation of work, workplace design, the budget cycle, and business planning generally; and
- (d) A timetable for the implementation, within a reasonable period of time, of the equal employment opportunities programme; and
- (e) Realistic numerical and other targets that the employer will endeavour to attain—
- (i) During the first year to which the equal employment opportunities programme relates and the immediately following year; and
 - (ii) At specified intervals beyond the 2 years mentioned in subparagraph (i) of this paragraph; and
- (f) Details of the consultation that has taken place, before the lodging of the equal employment opportunities programme, with unions and workers in relation to the matters specified in paragraphs (c) to (e) of this clause.

Review of Equal Employment Opportunities Programmes

5. Each employer to which Part II of this Act applies shall, at the end of the period of 2 years specified in clause 4 (e) (i) of this Schedule and thereafter at 1 year intervals,—

- (a) Review the implementation of the equal employment opportunities programme for the immediately preceding 1 year period; and
- (b) Determine any changes necessary to the equal employment opportunities programme in the light of—
 - (i) Any failure to meet targets; and
 - (ii) Changing conditions; and
 - (iii) Consultations with unions and workers; and
- (c) Where changes are thereby shown to be necessary to the equal employment opportunities programme, submit a new or amended equal employment opportunities programme to the Commissioner under section 30 of this Act.