

# INTRODUCTION COPY

*Mr Anderton*

## EMPLOYMENT EQUITY (NO. 2)

### ANALYSIS

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### A BILL INTITULED

**An Act to establish, promote and enforce the principles and practice of employment equity, pay equity and equal employment opportunities and, to this end, to—**

- 5       **(a) Establish the Employment Equity Office, the Pay Equity Bureau, and the Equal Employment Opportunities Unit; and**
- (b) Make provision incidental thereto**

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

- 10       **1. Short Title and commencement—**(1) This Act may be cited as the Employment Equity Act (No. 2) 1990.

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

**2. Objects of Act**—The objects of this Act are:

- (a) To establish, promote and enforce the principle and practice of employment equity, through the establishment of an Employment Equity Office: 5
- (b) To establish, promote and enforce the principle and practice of pay equity:
- (c) To provide procedures for the implementation of pay equity: 10
- (d) To inform and assist employers, employees, and their respective representative organisations of the principles and methods of implementing pay equity and, where required, to establish a process for the independent initiation of pay equity claims through the establishment of a Pay Equity Bureau within the Employment Equity Office: 15
- (e) To establish, promote and enforce the principle and practice of equal employment opportunities in both the public and private sectors: 20
- (f) To provide procedures for the implementation of equal employment opportunities:
- (g) To inform and assist employers, employees and their respective organisations of the principles and methods of implementing equal employment opportunities programmes through the establishment of an Equal Employment Opportunities Unit within the Employment Equity Office. 25

**3. Interpretation**—In this Act, unless the context otherwise requires,— 30

“Arbitration Commission” means the Arbitration Commission constituted under the Labour Relations Act 1987:

“Bureau” means the Pay Equity Bureau established under section 8 of this Act: 35

“Equal employment opportunities” means a systematic, results-oriented, set of actions 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 in respect to the employment of any persons or group of persons: 40

“Female occupational class” means a class of persons working in an occupation in which 55 percent or more of the employees are female:

5 “Labour Court” means the Labour Court constituted under the Labour Relations Act 1987:

“Male occupational class” means a class of persons working in an occupation in which 75 percent or more of the employees are male:

“Minister” means the Minister of Labour:

10 “Office” means the Employment Equity Office constituted under section 5 of this Act:

“Paid rates” includes hourly rates, and also includes bonus payments, superannuation schemes, credit facilities, expense accounts, cars, travel concessions and other fringe benefits:

15 “Unit” means the Equal Employment Opportunities Unit constituted under section 8 of this Act:

**4. Act to bind the Crown**—This Act shall bind the Crown.

PART I

20 **EMPLOYMENT EQUITY OFFICE, PAY EQUITY BUREAU AND EQUAL  
EMPLOYMENT OPPORTUNITIES UNIT**

**5. Establishment of Employment Equity Office—**

(1) There is hereby established an office to be known as the Employment Equity Office.

25 (2) The Office shall be a body corporate with perpetual succession and a common seal, and, subject to this Act and to any other Act or rule of law, shall be capable of acquiring, holding, and disposing of real and personal property, of entering into contracts, of suing and being sued, and of doing  
30 and suffering all such acts and things as bodies corporate may do and suffer.

**6. Functions of Office**—The functions of the Office shall be to establish, promote and enforce the principles and practice of employment equity, pay equity and equal employment  
35 opportunities.

**7. Powers of Office**—(1) The Office shall have all such powers as are reasonably necessary or expedient to enable it to carry out its functions.

40 (2) Without limiting the generality of its powers under subsection (1) of this section, for the purposes of carrying out its functions, the Office may—

- (a) Make grants or advances of money, on such terms and conditions as it thinks fit, to any organisation, public body, sector group, or person engaging in research into or the promotion of the principles and practice of employment equity, pay equity and equal employment opportunities: 5
- (b) Co-operate with any person, association, or organisation inside or outside New Zealand having similar functions or objects with a view to furthering the objects of this Act and the functions of the Office: 10
- (c) Solicit and accept for the purposes of the Office any money, land, or other property from any public body, sector group, or person by way of grant, subsidy, donation, gift, fee, subscription, or otherwise: 15
- (d) Conduct research and investigation into, and collect and disseminate information relating to, the principles of employment equity, pay equity and equal employment opportunities, including the publication of reports, magazines, pamphlets, booklets, journals, and of any other publications: 20
- (e) Commission any person, who possesses expert knowledge or is otherwise able to assist the Office in connection with the exercise of its functions, to make such enquiries, conduct such research, make such reports and undertake such other duties as may be necessary for the efficient carrying out of any of the Office's functions; and may otherwise invite any such person to advise the Office on any matters with which the Office is concerned. 25

**8. Pay Equity Bureau and Equal Employment Opportunities Unit—**(1) There shall be established within the Employment Equity Office two divisions to be known as the Pay Equity Bureau and the Equal Employment Opportunities Unit. 30

(2) Nothing in subsection (1) of this section shall prevent the establishment of such other divisions within the Office as the Minister may from time to time approve. 35

(3) Notwithstanding subsections (1) and (2) of this section, there may be established within the Office, from time to time, advisory committees, technical committees, and committees to deal with the problems of particular industries or occupations, and to advise on such matters as may be referred to them. 40

**9. Functions of Pay Equity Bureau**—Subject to **section 6** and **section 7** of this Act, the functions of the Bureau shall include:

- 5 (a) Research and production of reports concerning any aspect of pay equity and related subjects, and the making of recommendations to the Minister in connection therewith; and
- (b) The conduct of public education programmes and the provision of information concerning any aspect of pay equity and related subjects; and
- 10 (c) The conduct of any studies and reports required by the Office or the Minister; and
- (d) The provision of pay equity mediators to assist with disputes under **section 18 (1)** of this Act; and
- 15 (e) The provision of pay equity officers to chair disputes committees established under **section 22** of this Act; and
- (f) The selection, training, and contracting of job evaluation experts to ensure that they are familiar with gender-neutral methods of establishing equal value; which experts may be drawn from employers organisations, unions or professional agencies; and
- 20 (g) The investigation and evaluation of jobs upon complaint by any person, or by its own initiative where it decides such a need exist; and
- 25 (h) The monitoring, upon complaint or by its own initiative, of pay equity agreements concluded without its involvement.

**10. Functions of Equal Employment Opportunities Unit**—Subject to **section 6** and **section 7** of this Act, the functions of the Unit shall include:

- (a) Undertaking research, educational programmes and other programmes which have the purpose of promoting equal employment opportunities programmes; and
- 35 (b) Advising and assisting employers in the development, introduction and implementation of equal employment opportunities programmes; and
- (c) Issuing guidelines to assist employers to achieve the objects of this Act; and
- 40 (d) Monitoring and evaluating the effectiveness of programmes of employers implemented pursuant to **section 22** of this Act, and reviewing those programmes in achieving the objects of this Act; and
- (e) Promoting understanding and acceptance, and public equal employments opportunities; and

- (f) Reporting to the Minister on such matters in relation to equal employment opportunities as it thinks fit.

**11. Annual Report**—(1) The Office shall in each year make a report to the Minister on the work of the Office during that year.

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(2) As soon as practicable after receiving a report from the Office under subsection (1) of this section, the Minister shall lay a copy of the report before Parliament.

**12. Annual reports of Bureau and Unit**—(1) Both the Bureau and Unit shall produce an annual report to be incorporated into the annual report of the Office.

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(2) The report of the Bureau shall review the progress made towards achieving pay equity and what, if any, changes need to be made to achieve that object, and may make recommendations accordingly.

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(3) The report of the Unit shall review the progress made towards achieving equal employment opportunities and what, if any changes need to be made to achieve that object, and may make recommendations accordingly.

(4) The report of the Unit shall also contain a list of the names of employers who, in the opinion of the Unit, have failed to comply with the provisions of this Act.

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## PART II

### PAY EQUITY CLAIMS

**13. Pay Equity Claims**—(1) Subject to the provisions of this Part of this Act, a pay equity claim may be made at any time by any person in a female occupational class employed either part or full time.

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(2) For the purposes of this Act, an “equal value exercise” is an exercise whereby the value of two or more types of work is compared through the use of a gender-neutral job evaluation scheme, and according to criteria determined from time to time by the Bureau.

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(3) The criteria of value determined by the Bureau shall be a composite of the skill, effort, and responsibility normally required in the performance of a persons work and the conditions under which that work is performed, including a work environment that is either unpleasant or stressful or both.

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**14. Types of claims which may be lodged**—Subject to the provisions in sections 14, 15 and 16 of this Act, a pay equity claim may be made:

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- 5 (a) Where a person or a group of persons who are part of a female occupational class and employed by the same employer claim that the work performed by that person or those persons is of equal value to the work performed by a particular male occupational class; or
- (b) Where a union claims on behalf of its members covered by the same award or agreement that the award or agreement contains one or more identifiable female occupational classes; or
- 10 (c) By the Bureau upon complaint or by its own initiative.

**15. Claim to which section 14 (a) relates—**(1) A claim to which paragraph (a) of section 14 of this Act relates shall be lodged with the Arbitration Commission and a duplicate of the claim lodged with the Bureau.

- 15 (2) A claim under this section may relate to a male occupational class that is employed by the same employer or by a different employer.

(3) A claim under this section may relate to paid rates only.

- 20 (4) Subject to subsection (5) of this section, upon receipt of the claim, the Bureau shall appoint a job evaluation expert who shall undertake an equal value exercise.

- (5) Upon completion of the equal value exercise pursuant to subsection (4) of this section, the findings shall be advised to the parties, to the Bureau and to the Arbitration Commission and the Commission shall give effect to the findings in a determination.
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- (6) Where the work compared is found to be of equal value to that of the male occupational class, the rate of pay of the claimant or claimants, as the case may be, shall be adjusted to equal that paid to the male occupational class. Where a difference in value is found, the rate of pay for the claimant or claimants shall, where lesser than that paid to the male occupational class be adjusted so that the percentage difference in rates of pay equates to the percentage difference in value found.
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**16. Claims to which section 14 (b) relates—**(1) A claim to which paragraph (b) of section 14 of this Act relates shall be lodged with the Arbitration Commission and a duplicate of the claim lodged with the Bureau.

- 40 (2) Any claim under this section shall identify the female occupational class or classes concerned and the male occupational class or classes against which the equal value claim is made. The male occupational class or classes may be

covered by the same award or agreement, or award or agreement of the same nature. A representative group of employers employing members of the male occupational class shall be determined in the same way as for a dispute of interest under the Labour Relations Act 1987.

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(3) A claim under this section may relate to rates in the relevant award or agreement only.

(4) Upon receipt of the claim, the Bureau shall appoint a job evaluation expert who shall undertake an equal value exercise.

(5) Upon completion of the equal value exercise pursuant to subsection (4) of this section, the findings shall be advised to the parties, to the Bureau and to the Arbitration Commission and the Commission shall give effect to the findings in a determination.

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(6) Where the work compared is found to be of equal value to that of the male occupational class, the rate of pay of the claimant or claimants, as the case may be, shall be adjusted to equal that paid to the male occupational class. Where a difference in value is found, the rate of pay for the claimant or claimants shall, where lesser than that paid to the male occupational class be adjusted so that the percentage difference in rates of pay equates to the percentage difference in value found.

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(7) The rate agreed upon by the parties, or determined by the Commission, as the case may be, shall be incorporated into the relevant award or agreement.

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**17. Claims to which section 14 (c) relates—**(1) A claim to which paragraph (c) of section 14 of this Act relates shall be lodged with the Arbitration Commission by the Bureau.

(2) Any claim under this section shall identify the female occupational class or classes concerned and the male occupational class or classes against which the equal value claim is made. The male occupational class or classes may be covered by the same award or agreement, or award or agreement of the same nature. A representative group of employers employing members of the male occupational class shall be determined in the same way as for a dispute of interest under the Labour Relations Act 1987.

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(3) Upon completion of the equal value exercise pursuant to subsection (4) of this section, the findings shall be advised to the parties and to the Bureau and the Arbitration Commission shall give effect to the findings in a determination.

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(4) Where the work compared is found to be of equal value to that of the male occupational class, the rate of pay of the



claimant or claimants, as the case may be, shall be adjusted to equal that paid to the male occupational class. Where a difference in value is found, the rate of pay for the claimant or claimants shall, where lesser than that paid to the male occupational class be adjusted so that the percentage difference in rates of pay equates to the percentage difference in value found.

(5) The rate agreed upon by the parties, or determined by the Commission, as the case may be, shall be incorporated into the relevant award or agreement.

**18. Implementation into award or agreement**—Where a union and an employer are covered by an award or agreement which is affected by a determination of the Commission, the union and employer shall agree to the method of implementing the equal value determination into that award or agreement and shall advise the Bureau of the nature of the agreement and the Bureau shall ratify the agreement accordingly. In the event that the parties are unable to agree on the method of implementation, either party may request the assistance of a mediator from the Bureau. In the event that the parties remain unable to reach an agreement, either party may refer the method of implementation to the Arbitration Commission for arbitration.

**19. Amendment to Labour Relations Act 1987**—Section 233 (1) of the Labour Relations Act 1987 is hereby amended by adding the following subsection:

“(e) A strike or lockout shall be lawful during negotiations on the implementation of an equal value determination of the Arbitration Commission arrived at pursuant to the Employment Equity Act.”

**20. Enforcement**—A rate of pay determined as a result of a claim under section 15 or section 16 of this Act shall be enforceable in the Labour Court.

### PART III

#### EQUAL EMPLOYMENT OPPORTUNITIES

**21. Application of this Part**—(1) This Part of this Act shall apply to all public and private sector employers employing 50 or more employees and to any such employer who employs fewer than 50 employees where that employer so elects and advises the Equal Employment Opportunities Unit. Employers to whom this subsection relates shall be required to develop,

introduce, and implement an equal employment opportunities programme as defined in **section 3** of this Act.

(2) Any employer who employs fewer than 20 employees and who does not elect to be covered by **subsection (1)** of this section shall appoint from that employers staff a person who is responsible for equal employment opportunities matters and details of that person's name and position shall be forwarded to the Unit. 5

(3) (a) The public service shall establish the relevant equal employment opportunities programmes within 12 months of the commencement of this Act. 10

(b) Employers employing 20 or more employees as at the commencement of this Act shall establish the relevant equal employment opportunities programmes within 12 months of the commencement of this Act. 15

## **22. Equal employment opportunities programmes—**

(1) For the purposes of this Act, all equal employment opportunities programmes shall include a general action plan with specific reference to women and other groups designated from time to time by the Unit. Equal employment opportunities programmes may differ to take account of the different requirements of different groups. Employers may develop programmes for groups other than women and designated groups. 20 25

(2) All equal employment opportunities programmes required by this Act to be developed shall be developed in consultation with the employees affected by the programme and the union or unions of which those employees are members. 30

(3) The Unit shall provide such assistance as it can in the developing of equal employment opportunities programmes, including education and information programmes for employers, employees and unions, as well as assistance to individual employers as required. 35

## **23. Development, introduction, implementation, and review of equal employment opportunities programmes—**

(1) Each employer to whom **section 21 (1)** applies shall, as part of the equal employment opportunities programmes appoint a senior manager who shall be responsible for the development, introduction, and implementation of the programmes and for informing the Unit in respect of the programmes. 40

(2) Each equal employment opportunities programme shall cover a period of five years, following which time it shall be reviewed by the Unit, in consultation with the parties to the programme.

5 (3) At the conclusion of each year of operation of each equal employment programme, each employer shall send to the Unit a report of the extent to which the employer was able to meet, during the year to which the report relates, the equal  
10 employment opportunities programme. The report shall be in a form determined by the Unit.

(4) Following the receipt of any report prepared pursuant to subsection (3) of this section, the Unit may take reasonable steps to investigate, review and report on any matter in the report that it considers necessary.

15 **24. Offences**—Employers who wilfully disregard advice and assistance proffered by the Unit in relation to the implementation of an equal employment opportunities  
20 programme shall, after 6 months of non-compliance, be deemed to have committed an offence, and shall be liable to a fine not exceeding \$5,000.00.

**25. Regulations**—(1) The Governor-General may from time to time, by Order in Council, make regulations providing for such matters as are contemplated by or necessary for giving  
25 effect to the provisions of this Act and for its due administration.

(2) Without limiting the generality of subsection (1) of this section, the Governor-General may from time to time, by Order in Council made on the recommendation of the  
30 Employment Equity Office, make regulations providing penalties to be imposed pursuant to section 24 of this Act.