

Rt. Hon. Helen Clark

EQUAL EMPLOYMENT OPPORTUNITIES

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A BILL INTITULED

An Act to establish a Commission for Equity in Employment and procedures that have as their purpose 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

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

No. 71—1

*Price
incl. GST \$2.30*

1. Short Title and commencement—(1) This Act may be cited as the Equal Employment Opportunities Act 1991.

(2) This Act shall come into force on the **1st day of October 1991**.

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

“Commission” means the Commission for Equity in Employment:

“Designated group” means—

(a) Any group of women; or

(b) Any group of Maori; or

(c) Any group of Pacific Island people; or

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

(e) Any group of workers designated by the Commission for the purposes of this definition:

“Employer” means a person employing any worker or workers; and includes a person engaging or employing a homemaker:

“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:

“Equity in employment” means the elimination from all forms of paid employment of inequality of opportunity for designated groups:

“Maori” means a person of the Maori race of New Zealand; and includes any descendant of such a person:

“Opportunity” includes an opportunity to be employed on merit in any position or occupation on 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:

“Specified number” means 100 or such lesser number as the Governor-General may from time to time specify by Order in Council as the specified number:

“Union” means any organisation, governed by explicitly democratic procedures, established by employees to promote their collective employment interests, and the economic, social and political rights of workers:

5 “Worker”—

(a) Means any person of any age employed by an employer to do any work for hire or reward; and

(b) Includes—

10 (i) A homemaker; or

(ii) A person intending to work; or

(iii) Where the employer is a partnership, every partner.

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

PART I

15 COMMISSION FOR EQUITY IN EMPLOYMENT

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

(a) To provide for the establishment of a Commission for Equity in Employment:

20 (b) To ensure that the procedures of this Act can be carried out:

(c) To ensure that there is liaison between the various parties involved in research into employment equity issues:

(d) To ensure the achievement of the purpose described in the Title to this Act is properly monitored.

25 **5. Establishment of Commission**—(1) There is hereby established a Commission to be called the Commission for Equity in Employment.

(2) The Commission shall be a body corporate with perpetual succession and a common seal.

30 **6. Membership of Commission**—(1) The Commission shall consist of two or more persons.

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

35 (3) One member shall be appointed as Chairperson of the Commission, and another shall be appointed as Deputy Chairperson of the Commission.

40 (4) The powers of the Commission shall not be affected by any vacancy in its membership, or by any deficiency in the appointment of any member.

7. Terms and conditions of appointment—(1) Except as otherwise provided in **section 8** of this Act, members of the Commission shall 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 member. 5

(2) Members of the Commission shall be eligible for reappointment from time to time.

(3) Where the term for which a member has been appointed 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— 10

- (a) That person is reappointed; or
- (b) A successor to the person is appointed.

8. Vacation of office—(1) Any member of the Commission may, at any time, be removed from office by the Governor-General for inability to perform the duties of the office, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General. 15

(2) A member may at any time resign from office by notice in writing to the Minister of Labour. 20

9. Remuneration of members of Commission—(1) There shall be paid to the members of the Commission such remuneration by way of fees, salary, wages or allowances as may from time to time be fixed, either generally or in respect of any particular member or members, by the Higher Salaries Commission. 25

(2) Any decision under **subsection (1)** of this section shall take effect on such date (whether the date thereof or any earlier or later date) as may be specified therein. If no date is so specified the decision shall take effect on the date thereof. 30

10. Functions of Commission—(1) The functions of the Commission shall be—

- (a) To advise and assist employers, unions, workers and other representatives of workers, in the development and implementation of equal employment opportunities programmes: 35
- (b) To undertake research and educational programmes for the purpose of ensuring that equal employment opportunities programmes are effectively developed and implemented, and to co-ordinate research on issues relating to equity in employment: 40

- (c) To liaise with Government agencies and learning and teaching institutions working on issues relating to equity in employment:
- 5 (d) To designate, for the purposes of the definition of “designated group” in **section 2** of this Act, particular groups of workers whose situation should be addressed by equal employment opportunities programmes:
- 10 (e) To act as a central repository for research and for the commissioning and appraising of research on employment equity issues:
- (f) To operate a system providing for accreditation of persons or organisations who wish to contract their services as equal employment opportunities advisors:
- 15 (g) To provide an annual report to the House of Representatives and to present such supplementary reports to the House of Representatives as it deems necessary:
- 20 (h) Such other functions in relation to equity in employment as the Minister of Labour may from time to time direct.

11. Power to obtain information—(1) The Commission may from time to time, by notice in writing to an employer, require that employer to supply to the Commission, 25 information within a reasonable time to be specified in the notice, being information—

- (a) Relating to the employment of workers by that employer; and
- 30 (b) Relevant to the exercise of the functions of the Commission under this Act.

(2) All information required by a notice under **subsection (1)** of this section shall be furnished in such form as the Commission may require.

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

- (a) By the provisions of any Act or regulations, other than the Official Information Act 1982 or the State Sector Act 40 1988; or
- (b) By the provisions of the Official Information Act 1982 or 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 Commission under this section.

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 Department of Labour and the Commission, no later than the 30th day of May, a list of the names and addresses of all employers who, as at the close of the pay period in that year that includes the 20th day of February or such other date as the Commission specifies to the Government Statistician in respect of any class of employers, employed the specified number of workers or more.

(2) The list supplied under subsection (1) of this section shall, in the case of the list to be supplied in the year 1992, relate only to employers who employed, as at the close of the pay period that includes the 20th day of February 1992 or other relevant date, 200 or more workers.

13. Confidentiality—(1) The members of the Commission, 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 1961 to be officials.

(2) The members of the Commission and every person engaged or employed in connection with the work of the Commission shall maintain and aid in maintaining the secrecy of all matters which come to their knowledge when carrying out their functions or duties under this Act, and shall not communicate any such matters to any person except for the purposes 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 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. Officers and employees—(1) The Commission may from time to time appoint such employees (including employees on secondment from other organisations) as it thinks necessary for the efficient performance and exercise of its functions and powers, and, subject to subsection (2) of this section, may at any time remove any employee from office or employment.

(2) Employees appointed under **subsection (1)** of this section shall be employed on such terms and conditions of employment and shall be paid such salaries and allowances as the Commission from time to time determines.

5 (3) Subject to the terms and conditions of employment determined by the Commission, the Commission may at any time terminate or suspend the employment of any employee.

(4) No person shall be deemed to be in the service of the Crown or in any part of the State services within the meaning
10 of the State Sector Act 1988 by reason only of being employed under this section.

15. Procedure—Subject to the provisions of this Act, the Commission may regulate its procedure in such manner as it thinks fit.

15 **16. Proceedings privileged**—(1) Subject to **subsection (2)** of this section,—

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

(b) The members of the Commission, and any person as aforesaid shall not be called to give evidence in any
25 Court or in any proceedings of a judicial nature, in respect of anything coming to his or her knowledge in the exercise of his or her functions.

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

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

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

17. Accreditation—(1) The Commission shall establish an accreditation system for persons who wish to contract their services as equal employment opportunities advisers.

(2) The Commission shall publish a register of those persons
40 who have applied to it for accreditation, pursuant to **subsection (1)** of this section, and who, in the view of the Commission have sufficient qualifications and experience to provide advisory

services relating to equal employment opportunities programmes of a professional standard.

18. Annual report—(1) As soon as practicable after the end of each year ending with the 30th day of June, the Commission shall furnish to the Minister of Labour a report on the carrying out of the Commission's functions and duties during that year. 5

(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.

PART II

10

EQUAL EMPLOYMENT OPPORTUNITIES

19. Application—Subject to sections 20 and 21 of this Act, this Part of this 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: 15
- (b) A corporation named in the First Schedule to the State-Owned Enterprises Act 1986 or a subsidiary of such a corporation:
- (c) A Board of Trustees constituted under Part IX of the Education Act 1989: 20
- (d) An area health board established under section 6 of the Area Health Boards Act 1983:
- (e) A local authority within the meaning of the Local Government Act 1974:
- (f) A free kindergarten association by which any kindergarten recognised as a free kindergarten by the Minister of Education is controlled: 25
- (g) An employer who employs the specified number of workers or more.

20. Application of Part II for year ending 1 April 1992—Notwithstanding section 19 of this Act, this Part of this Act shall, in respect of the year ending on the 1st day of April 1992, apply only to: 30

- (a) The employers specified in paragraphs (a) to (f) of subsection (1) of that section; and 35
- (b) An employer who employs 500 workers or more.

21. Application of Part II for period 2 April 1992 to 1 October 1992—Notwithstanding section 19 of this Act, this Part of this Act shall, in respect of the period from 2 April 1992 to 1 October 1992, apply only to— 40

- (a) The employers specified in paragraphs (a) to (f) of subsection (1) of that section; and
- (b) An employer who employs 200 workers or more.

5 **22. Date at which workers to be counted**—Where in any year, it is necessary, for the purposes of sections 19 to 21 of this Act, to count the number of workers employed by an employer, those workers shall be counted at—

- 10 (a) Such date as the Commission 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 Commission in relation to that employer or any class of employers to which that employer belongs, the 31st day of January in that year.

20 **23. Obligations of employers in relation to equal employment opportunities programmes**—Every employer to whom this Act applies—

- 25 (a) Shall develop, in accordance with the **Schedule** to this Act, 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 or their representatives 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 Commission in respect of equal employment opportunities programmes:
- 40 (d) Shall lodge with the Department of Labour, by the 1st day of April 1992, or by such other date as the Commission 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 the employer:
- (e) Shall certify that the equal opportunities programmes lodged with the Department of Labour pursuant to paragraph (d) of this section, comply with the

- requirements of the **Schedule** to this Act and to any other minimum requirements established by the Commission in respect of such programmes:
- (f) Shall implement the equal opportunities programmes lodged with the Department of Labour: 5
- (g) Shall lodge with the Department of Labour, within two years of lodging the initial equal employment opportunities programmes pursuant to **paragraph (d)** of this section, and every year following that, a report advising of the evaluation and monitoring process that has been undertaken with regard to the equal employment opportunities programmes and the results of that process: 10
- (h) Shall, upon request, make copies of the equal employment opportunities programme that is currently in force available free of charge to— 15
- (i) Workers employed by that employer; or
- (ii) Any person who has applied for employment with that employer; or
- (iii) Any individual or group representing any person employed by that employer: 20
- (i) Shall, in consultation with workers, or the representatives of their workers, monitor the implementation of the equal employment opportunities programme in force from time to time and report on progress to the Commission on request. 25

24. Transitional provisions—(1) Notwithstanding anything in **paragraph (d)** of **section 23** of this Act, the date by which the initial equal employment opportunities programme shall be lodged with the Department of Labour shall be,— 30

- (a) For an employer, not being an employer specified in **paragraphs (a) to (f)** of **section 19 (1)** of this Act, who employs between 200 and 500 workers, the 1st day of October 1992, or such other date as the Commission determines in a particular case or class of cases; and 35
- (b) For an employer, not being an employer specified in **paragraphs (a) to (f)** of **section 19 (1)** of this Act, who employs between 100 and 200 employees, the 1st day of April 1993, or such other date as the Commission determines in a particular case or class of cases. 40

25. Joint equal employment opportunities programmes— (1) Where two or more companies that are employers to whom this Part of this Act applies are related

companies within the meaning of the Companies Act 1955, those companies may develop and lodge a single equal employment opportunities programme under **section 23** of this Act in respect of the workers employed by the companies, and **section 23** of, and the **Schedule** to, this Act shall apply accordingly in respect of those companies with all necessary modifications.

(2) Employers of the type described in **paragraphs (a) to (e) of section 19 (1)** of this Act may, develop and lodge a joint equal employment opportunities programme under **section 23** of this Act in respect of workers employed by them; and **section 23** of, and the **Schedule** to, this Act shall apply accordingly in respect of those employers with all the necessary modifications.

26. Report to House of Representatives—The Department of Labour shall, in its annual report to the House of Representatives, identify by name those companies that have not complied with the requirements of this Act.

PART III

MISCELLANEOUS PROVISIONS

27. Regulations—The Governor-General may from time to time, by Order in Council, make regulations for the purpose of providing for such matter as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

28. 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 Commission and the Secretary of Labour shall each—

- (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 subsection); or
 - (ii) The date of the last review carried out under this subsection by the Commission (in the case of every subsequent review carried out by the Commission); or
 - (iii) The date of the last review carried out under this subsection by the Secretary of Labour (in the case of every subsequent review carried out by the Secretary of Labour); and
- (b) Consider—
- (i) Whether the Commission should be retained or abolished; and

- (ii) Whether any amendments to this Act are necessary or desirable; and
- (c) Report their findings to the Minister of Labour.
- (2) As soon as practicable after receiving a report from the Commission or the 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. 5

Amendment to the New Zealand Bill of Rights Act 1990

29. Discrimination—Section 5 of the New Zealand Bill of Rights Act 1990 is hereby amended by adding the following subsection: 10

“(2) Nothing in this Bill of Rights shall preclude any law, programme or activity which has as its object the amelioration of conditions for disadvantaged individuals or groups, including those that are disadvantaged because of colour, race, ethnic origins, gender, religious or ethical belief, mental or physical disability or health status.” 15

SCHEDULE

Section 23

PROVISIONS APPLYING IN RESPECT OF EQUAL EMPLOYMENT OPPORTUNITIES PROGRAMMES

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 23 of this Act an equal employment opportunities programme.
2. The 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) 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
 - (iii) The need to consult with workers and their representatives 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;
 - (c) A timetable for the implementation, within a reasonable period of time, of the equal employment opportunities programme;
 - (d) Details of the consultation that has taken place, before the lodging of the equal employment opportunities programme, with workers and their representatives in relation to the matters specified in paragraphs (b) and (c) of this clause.