

STATE SERVICES CONDITIONS OF EMPLOYMENT AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill makes a number of important amendments to the State Services Conditions of Employment Act 1977.

Clause 1 relates to the Short Title.

Clause 2 applies Part VIII of the principal Act (except sections 71 and 72) to acts and omissions of employees of the State services. Part VIII relates to unjustified industrial action.

Section 71 (which relates to the suspension of striking employees) and section 72 (which relates to the suspension of non-striking employees where work is not available during a strike) come into force on a date to be appointed by Order in Council. Different dates may be so appointed for the purpose of different provisions of those sections or for the purpose of different groups or classes of employees of the State services or of both.

To the extent that Part VIII applies to the acts or omissions of employees, the State Services Conditions of Employment Act Commencement Order 1979 (S.R. 1979/130) brought it into force on 23 June 1979 in respect of acts and omissions of employees of the Public Service.

The application of Part VIII to acts or omissions of employees of the Public Service was suspended on 21 December 1979 by the State Services Conditions of Employment Act Suspension Order 1979 (S.R. 1979/271). That order will now be treated as suspending only the application of sections 71 and 72 of the principal Act to acts or omissions of employees of the Public Service.

Accordingly, on the passing of the Bill the whole of Part VIII (except sections 71 and 72) will be in force in respect of the acts and omissions of employees of the State services.

Clauses 3 to 6 vary the criteria that must be considered by employing authorities in determining conditions of employment and pay scales of employees of the State services.

Clause 7 substitutes a new section 21 in the principal Act. That section, as enacted in 1977, requires employing authorities to consult the Higher Salaries Commission in certain circumstances.

Subsection (2) of the new section places a similar obligation on the Public Sector Tribunal and each Single Service Tribunal.

Subsection (3) of the new section provides that a Tribunal is not obliged to consult with the Higher Salaries Commission in respect of an application if it is satisfied with the completeness of the opinions expressed by the Higher Salaries Commission to the employing authority.

Clause 8 inserts a new section 30A into the principal Act. The new section provides that every employing authority shall, in addition to the reviews required by sections 30 and 31 of the principal Act, be responsible for conducting,—

- (a) In a year to be appointed by the Minister of State Services, and in every second year thereafter, a review of the pay scales of the Executive/Clerical occupational class and related occupational classes and groups; and
- (b) In a year to be appointed by the Minister of State Services, and in every second year thereafter, a review of the pay scales of the Trades occupational classes and related occupational classes and groups.

Before carrying out such a review, the employing authority will be required to obtain a report from the Pay Research Unit and that report is to form the basis of the review.

In any year in which pay scales are being reviewed under the new section, those pay scales are not to be altered by any general adjustment under section 31 of the principal Act.

Clause 9 substitutes a new subsection (1) in section 31 of the principal Act (which relates to general reviews of remuneration).

The new subsection—

- (a) Uses the new definition of pay scales (which definition is set out in *clause 3* of the Bill);
- (b) Makes the subsection subject to the new section 30A (as inserted by *clause 8* of the Bill);
- (c) Omits the word “exceeds”, and substitutes the words “differs from”.

Clause 10 amends the criteria that apply in respect of a general review of remuneration. The clause—

- (a) Provides that, in conducting a general review of remuneration, an employing authority shall take into account the objectives set out in *section 9* (as substituted by *clause 6*):
- (b) Provides that the extent to which any general movement in pay scales outside the State services differs from any general movement in pay scales inside the State services shall be ascertained from—
 - (i) The quarterly employment surveys conducted by the Department of Labour; or
 - (ii) Such other surveys of wage movements as may be determined from time to time by the Minister after consultation with the service organisations concerned:
- (c) Does away with the deduction which is provided for in *subsection (6)* of the existing section and which is currently made in ascertaining the general movement in pay scales inside the State services.

Clause 11 substitutes a new section 33 in the principal Act. *Subsections (2) to (4)* of the section (which relates to the Pay Research Unit) are new.

The new *subsection (2)* provides that, notwithstanding any rules made under *subsection (1)*, the failure of any employing authority or service organisation to comply with any such rules, or the failure to co-operate in any way with the work of the Pay Research Unit shall not affect the responsibility of the Unit to conduct pay research exercises under this Act.

The new *subsection (3)* provides that the Pay Research Unit shall carry out—

- (a) In accordance with the new *section 30A*, the pay research exercises required for the purposes of that section; and
- (b) Such other pay research exercises as may from time to time be determined under its rules.

- The new *subsection (4)* provides that the results of any pay research exercise—
- (a) Shall be made available to every employing authority and service organisation whose employees or members will be affected by the exercise; and
 - (b) Shall be taken into account in fixing the pay scales for the occupational class affected.

Clauses 12 and 13 impose new obligations on the Public Sector Tribunal and on each Single Service Tribunal. The new obligations (which are related to the new *section 21 (2)*, as inserted by *clause 7*) require that where any such Tribunal considers that any decision likely to be made by it may tend to lead to unreasonable disparities between or inappropriate relativities with salaries determined by the Higher Salaries Commission, the Tribunal shall act in accordance with the new *section 21 (2)*.

Right Hon. Mr Thomson

**STATE SERVICES CONDITIONS OF EMPLOYMENT
AMENDMENT**

ANALYSIS

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A BILL INTITULED

An Act to amend the State Services Conditions of Employment Act 1977

BE IT ENACTED by the General Assembly of New Zealand
5 in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the State Services Conditions of Employment Amendment Act 1983, and shall be read together with and deemed part of the State Services
10 Conditions of Employment Act 1977* (hereinafter referred to as the principal Act).

*1977, No. 95

Amendments: 1978, No. 41; 1979, No. 111; 1980, No. 142; 1981, No. 132; 1982, No. 101

2. Application of Part VIII of principal Act—(1) Section 1 of the principal Act (as amended by section 2 of the State Services Conditions of Employment Amendment Act 1979) is hereby amended by repealing subsections (2) to (4), and substituting the following subsections: 5

“(2) Except as provided in **subsections (3) and (4)** of this section, this Act shall come into force on the date on which it receives the Governor-General’s assent.

“(3) Subject to **subsection (4)** of this section, Part VIII of this Act, to the extent that it is not in force immediately before the date of commencement of the State Services Conditions of Employment Amendment Act 1983, shall come into force on that date. 10

“(4) Sections 71 and 72 of the principal Act, to the extent that they apply to the acts or omissions of employees, shall come into force on a date to be appointed by the Governor-General by Order in Council; and different dates may be so appointed for the purpose of different provisions of those sections or for the purposes of different groups or classes of employees of the State services or of both. 15 20

“(5) The Governor-General may from time to time by Order in Council suspend the application of sections 71 and 72 of this Act, either generally or in relation to any group or class of employees of the State services specified in the Order in Council. Any such Order in Council may at any time be revoked or amended by a subsequent Order in Council.” 25

(2) Nothing in this section affects the validity of the State Services Conditions of Employment Act Commencement Order 1979, which order brought Part VIII of the principal Act (including sections 71 and 72) into force on the 23rd day of June 1979 in respect of the acts and omissions of employees of the Public Service (as defined in section 2 of the State Services Act 1962). 30

(3) As from the commencement of this section the State Services Conditions of Employment Act Suspension Order 1979 shall have effect as if, instead of suspending the application of Part VIII of the principal Act to acts or omissions of employees of the Public Service (as defined in section 2 of the State Services Act 1962) it suspended only the application of sections 71 and 72 of the principal Act to acts or omissions of employees of the Public Service (as so defined). 35 40

(4) Nothing in **subsection (3)** of this section prevents the State Services Conditions of Employment Act Suspension Order 1979 being revoked or amended under section 1 (5) of the principal Act (as enacted by **subsection (1)** of this section). 45

(5) The State Services Conditions of Employment Amendment Act 1979 is hereby consequentially repealed.

3. Interpretation—Section 2 (1) of the principal Act is hereby amended by inserting, in their appropriate alphabetical order, the following definitions:

5 “ ‘Benchmark positions’ has the meaning given to it by **section 5A (3)** of this Act:

10 “ ‘Employment conditions’ means such conditions as a good employer outside the State services would be required to provide to his employees to ensure that he could recruit and retain enough employees of sufficient competence to enable him to provide efficiently, and without endangering the health or safety of those employees, the services that are required to be provided by him or, if services of that type are not being provided by any employer outside the State services, by such an employer if he were required to provide services of that type:

15 “ ‘Pay scales’ means salary rates or scales of salary rates, or wage rates or scales of wage rates:”.

4. External comparability and “benchmark positions”—
20 The principal Act is hereby amended by inserting, after section 5, the following section:

25 “5A. (1) For the purposes of this Act, external comparability, in relation to conditions of employment of employees of the State services, can be achieved if a comparison can be made between conditions of employment of employees holding positions in the State services or the relevant occupational class, as the case may require, and the conditions of employment of persons outside the State services who hold positions that have duties and responsibilities that are closely comparable with the duties and responsibilities of the positions in the State services or the relevant occupational class, as the case may require.

30 “(2) Notwithstanding anything in **subsection (1)** of this section, external comparability cannot be achieved in relation to conditions of employment of employees in the State services if—

“ (a) The conditions of employment of the persons holding positions outside the State services are shown to be—

40 “ (i) Based on conditions of employment in the State services; or

45 “ (ii) Linked directly or indirectly to conditions of employment in the State services or to movements or adjustments in conditions of employment in the State services; or

“(iii) Determined in accordance with or under the criteria of this Act; or

“(b) The conditions of employment (other than pay scales) of the persons holding positions outside the State services differ sufficiently to prevent a fair comparison: 5

“(3) For the purposes of this Act, ‘benchmark positions’ means positions which are in the State services or any occupational class and which, for the purposes of **subsection (1)** of this section, can be compared with positions outside the State services. 10

5. Conditions of employment which may be prescribed—(1) Section 7 of the principal Act is hereby amended by repealing subsection (2).

(2) The principal Act is hereby consequentially amended by omitting from section 28 (1), and also from section 30 (1), the expression “7 (2) and”. 15

6. New sections substituted—The principal Act is hereby amended by repealing sections 9 to 12, and substituting the following sections: 20

“9. Objectives relating to prescribing of conditions of employment—(1) In prescribing under this Act conditions of employment of employees of the State services or of any branch of the State services, every employing authority—

“(a) If external comparability can be achieved, shall prescribe conditions of employment that are broadly in line with those outside the State services; or 25

“(b) If external comparability cannot be achieved, shall prescribe conditions of employment that fairly reflect the employment conditions generally prevailing at the time. 30

“(2) In applying **subsection (1)** of this section, every employing authority shall have regard to the special features of employment in the State services or branch of the State services, as the case may require. 35

“(3) In applying **subsection (1)** of this section to the prescribing of pay scales, every employing authority shall aim to set for each occupational class a pay scale that—

“(a) Will enable the State services to recruit and retain an efficient staff; and 40

“(b) Will take account of special responsibilities or conditions applying to employment in the occupational class; and

“(c) Will be fair to the tax-paying public and to employees in the State services. 45

“10. **Criteria relating to pay scales for occupational classes**—In applying **section 9** of this Act to the prescribing under this Act of the pay scales of employees who belong to any occupational class, every employing authority shall have
5 regard to:

“(a) Recruitment and retention, being the need to attract,
and to hold at all levels of that occupational class,
enough employees of sufficient competence to
enable the employing authority to provide
10 efficiently, and without endangering the health or
safety of those employed in that occupational class,
the services that are required to be provided by that
authority:

“(b) The adequacy of the current pay scale to meet the need
15 mentioned in **paragraph (a)** of this section:

“(c) External comparability, where it can be achieved, in
relation to the remuneration currently being
received by employees in that occupational class:

“(d) Vertical relativity, being the adequacy, after taking into
20 account differences of responsibility and skill, of the
margins between the salary steps in that
occupational class, and between salaries in that
occupational class and salaries determined by the
Higher Salaries Commission under the Higher
Salaries Commission Act 1977:

“(e) Horizontal relativity, being a comparison between the
25 current remuneration being received by employees
in positions in the occupational class and the current
remuneration received by employees in benchmark
positions in other occupational classes, which
benchmark positions, however dissimilar in job
content, have some similar requirements such as
education, training, or skill to the positions in that
occupational class, which comparison shall involve
35 taking into account any differences in the levels of
skill and responsibility between the positions in that
occupational class and those benchmark positions:

“(f) Internal relativity, being a comparison between the
40 current remuneration being received by those in
positions in that occupational class which have duties
or responsibilities that are closely comparable with
the duties or responsibilities of positions in another
occupational class.

“11. Application of criteria relating to pay scales of occupational classes—In applying the criteria set out in **section 10** of this Act, they shall be given weight as follows:

“(a) Recruitment and retention, whether or not there is any abnormal ease or difficulty of recruitment and retention established, shall always be given weight, together with such other of the criteria as may be applicable, in determining whether or not the aim specified in **section 9 (3)** of this Act is being achieved in respect of the pay scale for the occupational class: 5 10

“(b) Whenever abnormal ease or difficulty in attracting and holding enough competent staff indicates that rates based on external comparability or other relativities are out of touch with the realities of employment conditions, recruitment and retention shall outweigh 15 the other criteria:

“(c) The closer the resemblance between the duties and responsibilities of benchmark positions and those of the positions outside the State services with which the benchmark positions are being compared the greater shall be the weight to be given to external comparability in comparison with other relativities: 20

“(d) The more closely pay rates based on vertical relativity are linked to external comparability, the greater shall be the weight attached to vertical relativity; and in this connection, without limiting the generality of the foregoing provisions of this paragraph,— 25

“(i) The more accurately a benchmark has been fixed, the greater shall be the confidence in margins calculated from it: 30

“(ii) The greater the number of benchmarks within a class, the greater shall be the confidence in a structure of margins based on that framework:

“(iii) The narrower the range between benchmarks, the greater shall be the confidence in interpolated margins: 35

“(iv) Interpolated margins shall command more confidence than extrapolated margins,— so that a pay rate which, for reasons such as those specified in **subparagraphs (i) to (iv)** of this paragraph, commands a high degree of confidence may outweigh one insecurely based on external comparability: 40

5 “(e) Horizontal relativities shall have weight only when no closer comparisons are available; and, in choosing between them, the more likely a comparison is to indicate pay rates that, in accordance with employment conditions, are realistic for the occupation under review, the greater shall be its weight:

10 “(f) Internal relativities shall have weight only when no external comparability and no horizontal relativities are available, and in choosing between internal relativities the more likely a comparison is to indicate pay rates that, in accordance with employment conditions, are realistic for the occupation under review, the greater shall be its weight.

15 “12. **General considerations applying in respect of pay scales**—In applying sections 9 to 11 of this Act, the following provisions shall apply:

20 “(a) Current remuneration means current wage or salary rates, unless it can be shown, taking into account other conditions of service, that effective remuneration differs from wage or salary, and that such a difference can be evaluated:

25 “(b) References to employment outside the State services shall be limited to employment in New Zealand, unless it can be shown that there is an effective demand outside New Zealand for New Zealand staff of the occupation and grade concerned, in which case the pay scale shall be fixed (taking into account overseas salaries together with other relevant factors) at a level that will enable the State services to recruit and retain an efficient staff:

30 “(c) References to employment outside the State services shall not include self-employed persons:

35 “Provided that, when so many of the counterparts of those in the occupation and grade concerned are self-employed as to prevent the application of external comparability, then the pay scale shall be fixed (taking into account the incomes of self-employed persons together with other relevant factors) at a level that will enable the State services to recruit and retain an efficient staff:

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- “(d) References to employment outside the State services shall be limited to employment with good employers, that is to say, those maintaining standards which are generally accepted for the time being as necessary minima; and (apart from general adjustments, based on the widest sampling of the sector outside the State services) comparisons shall, where possible, be made with employers who are competing in the same labour market as the State services and whose conditions of employment are similar: 5 10
- “(e) External comparability shall require, not that State services pay for a benchmark position shall correspond to the mean of the rates for its counterparts outside the State services, but that it shall fall within a reasonable range about that figure, taking into account such other relevant considerations as the quality of performance sought, the record of recruitment and retention in that occupation, and likely changes in future demand: 15
- “(f) External comparability shall not require the setting of separate district pay scales for occupational classes which have a distribution throughout New Zealand, and State services pay scales (except under awards and industrial agreements) shall be uniform throughout New Zealand: 20 25
- “(g) Each reference to abnormal ease in recruiting and retaining staff of an occupation in the State services means ease—
- “(i) Which is shown to be greater than that which, in accordance with the historical pattern, has applied in respect of that occupation; and 30
 - “(ii) Which—
 - “(A) Where external comparability can be achieved, is shown to be greater than that of employers outside the State services; or 35
 - “(B) Where the State is the major or only employer of employees in that occupation, is shown to be greater than that applying in respect of the State services as a whole:
- “(h) Each reference to abnormal difficulty in recruiting and retaining staff of an occupation in the State services means difficulty— 40

“(i) Which is shown to be of such magnitude that it impairs the effectiveness with which the employing authority can provide the standard and extent of the services that it is required to provide; and

5 “(ii) Which is greater than that which, in accordance with the historical pattern, has applied in respect of that occupation; and

“(iii) Which—

10 “(A) Where external comparability can be achieved, is shown to be greater than that of employers outside the State services; or

“(B) Where the State is the major or only employer of employees in that occupation, is shown to be greater than that applying in respect of the State services as a whole:

15 “(i) Where it appears likely that, by virtue of the application of **section 11 (b)** of this Act, recruitment and retention will outweigh the other criteria, the estimated extra cost of getting more staff at increased rates shall be compared with the benefit which the State services expect to derive from their employment:

20 “(j) Subject to any other enactment, it shall be for the employing authority in each case to decide, after having regard to the need to preserve the health and safety of the employees of that occupational class, the standard and extent of the services referred to in **paragraph (h)** of this section and in **section 10 (a)** of this Act:

25 “Provided that an employing authority shall not, for the purpose of avoiding the application of the provisions or criteria applicable under **paragraph (h)** of this section or **section 10 (a)** of this Act to any current preview of pay scales, redetermine the standard and extent of those services.”

35 **7. Consultation with Higher Salaries Commission**—The principal Act is hereby amended by repealing section 21, and substituting the following section:

40 “21. (1) Where any employing authority considers that the possible outcome of any negotiations under this Act on pay scales will or may tend to lead to unreasonable disparities or inappropriate relativities with salaries that are within the jurisdiction of the Higher Salaries Commission, that employing authority shall, before making a final decision in those negotiations,—

“(a) Consult with the Higher Salaries Commission; and

“(b) Have regard to—

“(i) Any opinions expressed by the Higher Salaries Commission; and

(ii) Any relevant salaries determined by the Higher Salaries Commission. 5

“(2) Where the Tribunal when dealing with an application for an alteration to the pay scales of an occupational class considers that the possible outcome of the application will or may tend to lead to unreasonable disparities or inappropriate 10 relativities with salaries that are within the jurisdiction of the Higher Salaries Commission, the Tribunal shall, before making a final decision in respect of the application,—

“(a) Consult with the Higher Salaries Commission; and

“(b) Have regard to— 15

“(i) Any opinions expressed by the Higher Salaries Commission; and

“(ii) Any relevant salaries determined by the Higher Salaries Commission.

“(3) If an employing authority has, at the time of its 20 consideration of an application, already consulted with the Higher Salaries Commission under **subsection (1)** of this section in respect of that application, the Tribunal may, if it is satisfied with the completeness of the opinions expressed by the Higher Salaries Commission to the employing authority, proceed to 25 determine the application without further reference to the Higher Salaries Commission.”

8. Biennial reviews—The principal Act is hereby amended by inserting, after section 30, the following section:

“30A. (1) Every employing authority shall, in addition to the 30 reviews required under sections 30 and 31 of this Act, be responsible for conducting,—

“(a) In a year to be appointed by the Minister for the purposes of this paragraph, and in every second 35 year thereafter, a review of the pay scales of the Executive/Clerical occupational class and related occupational classes and groups; and

“(b) In a year to be appointed by the Minister for the purposes of this paragraph, and in every second 40 year thereafter, a review of the pay scales of the Trades occupational classes and related occupational classes and groups.

“(2) In **subsection (1)** of this section, ‘related occupational classes and groups’ means those occupational classes and groups that are determined from time to time by the employing authority, after consultation with the service organisation whose
5 members are affected, to be related, for the purposes of determining their pay scale, to either the Executive/Clerical occupational class or the Trades occupational classes.

“(3) Before carrying out a review under **subsection (1)** of this section, the employing authority shall obtain a report from
10 the Pay Research Unit and that report shall form the basis of the review under **subsection (1)** of this section.

“(4) In applying any adjustment under **subsection (1)** of this section, the employing authority shall take into account the details of any general adjustment under section 31 of this Act.

15 “(5) In any year in which pay scales are being reviewed under this section, those pay scales shall not be altered by any general adjustment under section 31 of this Act.

9. General reviews of remuneration—Section 31 of the principal Act is hereby amended by repealing subsection (1),
20 and substituting the following subsection:

“(1) All pay scales in the State services shall be reviewed annually, and, subject to **section 30A** of this Act, the employing authority shall make such adjustments to such of those pay scales as it considers necessary to reflect the extent to which
25 any general movement in rates and scales of remuneration outside the State services differs from any general movement in rates and scales of remuneration inside the State services.”

10. Criteria for general review of remuneration—

(1) Section 32 of the principal Act is hereby amended by
30 repealing subsections (1) and (2), and substituting the following subsections:

“(1) In conducting a review under **section 31 (1)** of this Act, an employing authority—

35 “(a) Shall not take into account the criteria prescribed in **sections 10 to 12** of this Act; but

“(b) Shall conduct the review on the basis of—

“(i) The criteria set out in this section; and

“(ii) The provisions of **section 9** of this Act.

40 “(2) The extent to which any general movement in pay scales outside the State services differs from any general movement in pay scales inside the State services shall be ascertained from—

“(a) The quarterly employment surveys conducted by the Department of Labour; or

“(b) Such other surveys of wage movements as may be determined from time to time by the Minister after consultation with the service organisations 5 concerned.”

(2) The said section 32 is hereby further amended by repealing subsection (5), and substituting the following subsection:

“(5) The general movement in pay scales inside the State 10 services shall, for the purposes of this section, be ascertained by obtaining the movement in the average ordinary time weekly earnings for males inside the State services since the last review and eliminating—

“(a) Such part of that movement as is due to general wage 15 increases which have been applied both inside and outside the State services; and

“(b) Such part of that movement as is due to any adjustment resulting from a previous review under this section.”

(3) The said section 32 is hereby further amended by 20 repealing subsections (6) and (17).

11. Pay Research Unit—The principal Act is hereby amended by repealing section 33, and substituting the following section:

“33. (1) There shall be a Pay Research Unit which shall 25 operate under such rules as may be agreed for the time being between the Co-ordinating Committee and the service organisations whose members are likely to be affected thereby, or failing agreement, as prescribed by the Minister after consultation with those service organisations. 30

“(2) Notwithstanding any rules made under **subsection (1)** of this section, the failure of any employing authority or service organisation to comply with any such rules, or the failure to co-operate in any way with the work of the Pay Research Unit shall not affect the responsibility of the Unit to conduct pay 35 research exercises under this Act.

“(3) The Pay Research Unit shall carry out—

“(a) In accordance with **section 30A** of this Act, the pay research exercises required for the purposes of that section; and 40

“(b) Such other pay research exercises as may from time to time be determined under its rules.

“(4) The results of any pay research exercise—

“(a) Shall be made available to every employing authority and service organisation whose employees or members will be affected by the exercise; and

5 “(b) Shall be taken into account in fixing the pay scales for the occupational class affected.”

12. Powers of Public Sector Tribunal—Section 43 of the principal Act is hereby amended by inserting, after subsection (4), the following subsection:

10 “(4A) Where the Public Sector Tribunal considers that any decision likely to be made by it may tend to lead to unreasonable disparities between or inappropriate relativities with salaries determined by the Higher Salaries Commission, the Public Sector Tribunal shall act in accordance with
15 **section 21 (2)** of this Act.”

13. Powers of Single Service Tribunals—Section 56 of the principal Act is hereby amended by inserting, after subsection (4), the following subsection:

20 “(4A) Where a Single Service Tribunal considers that any decision likely to be made by it may tend to lead to unreasonable disparities between or inappropriate relativities with salaries determined by the Higher Salaries Commission, the Single Service Tribunal shall act in accordance with
section 21 (2) of this Act.”