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Equal Pay Act 1972

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

This Act is administered by the Ministry of Business, Innovation, and Employment.

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An Act to make provision for the removal and prevention of discrimination, based on the sex of the employees, in the rates of remuneration of males and females in paid employment, and for matters incidental thereto

1 Short Title

This Act may be cited as the Equal Pay Act 1972.

2 Interpretation

- (1) In this Act, unless the context otherwise requires,—
- agreement** means any agreement specified in paragraph (d) or paragraph (e) of the definition of the term instrument
- agricultural workers order** means any order made under Part 3 of the Agricultural Workers Act 1962
- apprenticeship order** means any apprenticeship order within the meaning of the Apprenticeship Act 1983
- appropriate authority**, in relation to any instrument, means the authority having jurisdiction under any Act to fix rates of remuneration payable under that instrument
- award** means an award made under the Industrial Relations Act 1973 or any corresponding former Act, the Aircrew Industrial Tribunal Act 1971, or the Agricultural Workers Act 1977; and includes an agreement deemed to be an award by section 33(2) of the Agricultural Workers Act 1977

court means the Employment Court constituted under the Employment Relations Act 2000

employee has the same meaning as in the Employment Relations Act 2000; but does not include—

- (a) any person whose rate of remuneration is fixed under the State Sector Act 1988:
- (b) *[Repealed]*
- (c) any person whose rate of remuneration is fixed under section 52 of the Hospitals Act 1957 (as substituted by section 4(1) of the Hospitals Amendment Act 1976):
- (d) *[Repealed]*
- (e) any person whose rate of remuneration is fixed pursuant to regulations made under section 22 of the Education Act 1964 or under section 60A of that Act (as inserted by section 8(1) of the Education Amendment Act 1976)

employer means any person employing an employee or employees

Employment Relations Authority means the Employment Relations Authority established by section 156 of the Employment Relations Act 2000

equal pay means a rate of remuneration for work in which rate there is no element of differentiation between male employees and female employees based on the sex of the employees

first increment date means—

- (a) in relation to any award, the first increment date determined under subsection (2) of section 6:
- (b) in relation to any other instrument, the first increment date determined under the said subsection (2), as applied to such instruments by section 7

industrial agreement means an industrial agreement made under the Industrial Conciliation and Arbitration Act 1954 and includes a collective agreement made under the Industrial Relations Act 1973 and a collective agreement made under the Employment Relations Act 2000

Inspector means a Labour Inspector designated under section 223 of the Employment Relations Act 2000

instrument means—

- (a) any award, industrial agreement, or apprenticeship order:
- (b) any agreement under section 141 of the Industrial Relations Act 1973:
- (ba) any agreement filed with the Registrar of the court under section 141 of the Industrial Relations Act 1973:
- (c) any agricultural workers order, waterfront industry order, or any order or determination fixing rates of remuneration made by any court or tribunal or employing authority under any enactment:
- (d) any collective or ruling rates agreement, whether in writing or not, made between a workers' union and an employer or an employers' union or a society or body of employers:
- (e) any other agreement, whether in writing or not, made between an employee and an employer or an employers' union or a society or body of employers, or between a group of employees and an employer or an employers' union or a society or body of employers; and includes an employment contract within the meaning of the Employment Contracts Act 1991:
- (f) any decision, whether recorded in writing or not, made by an employer fixing the rate of remuneration for an individual employee or a group of 2 or more employees; and for the purposes of this Act the employer and the employee or, as the case may be, each of the employees who are members of that group shall be deemed to be parties to the instrument

remuneration, in relation to any employee, means the salary or wages actually and legally payable to that employee; and includes—

- (a) time and piece wages and overtime and bonus and other special payments:
- (b) allowances, fees, commission, and every other emolument, whether in 1 sum or several sums, and whether paid in money or not

waterfront industry order means a principal order made under the Waterfront Industry Commission Act 1976.

- (2) Nothing in this Act shall apply with respect to any agreement specified in paragraph (e) of the definition of the term instrument in subsection (1) made between an individual employee and an individual employer, or any decision under paragraph (f) of that definition made in respect of an individual employee, which fixes a rate of remuneration that is special to that employee by reason of special qualifications, experience, or other qualities possessed by that employee and does not involve any discrimination in relation to that employee or any other employee based on the sex of the employee.

Section 2(1) **apprenticeship order**: amended, on 1 November 1983, pursuant to section 58(2) of the Apprenticeship Act 1983 (1983 No 16).

Section 2(1) **award**: replaced, on 17 April 1978, by section 6(2) of the Industrial Relations Amendment Act 1977 (1977 No 108).

Section 2(1) **Commission**: repealed, on 17 April 1978, by section 6(2) of the Industrial Relations Amendment Act 1977 (1977 No 108).

Section 2(1) **court**: replaced, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 2(1) **employee**: amended, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 2(1) **employee** paragraph (a): replaced, on 1 April 1988, by section 87 of the State Sector Act 1988 (1988 No 20).

Section 2(1) **employee** paragraph (b): repealed, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

Section 2(1) **employee** paragraph (c): amended, on 1 December 1976, pursuant to section 4(1) of the Hospitals Amendment Act 1976 (1976 No 54).

Section 2(1) **employee** paragraph (d): repealed, on 1 April 1988, by section 87 of the State Sector Act 1988 (1988 No 20).

Section 2(1) **employee** paragraph (e): amended, on 1 November 1976, pursuant to section 8(1) of the Education Amendment Act 1976 (1976 No 42).

Section 2(1) **employer**: replaced, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 2(1) **Employment Relations Authority**: inserted, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 2(1) **Employment Tribunal**: repealed, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 2(1) **industrial agreement**: amended, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 2(1) **industrial agreement**: amended, on 8 March 1974, by section 5 of the Equal Pay Amendment Act 1973 (1973 No 23).

Section 2(1) **Inspector**: replaced, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 2(1) **instrument** paragraph (b): amended, on 8 March 1974, pursuant to section 234(c) of the Industrial Relations Act 1973 (1973 No 19).

Section 2(1) **instrument** paragraph (ba): inserted, on 8 March 1974, by section 5 of the Equal Pay Amendment Act 1973 (1973 No 23).

Section 2(1) **instrument** paragraph (ba): amended, on 17 April 1978, by section 6(2) of the Industrial Relations Amendment Act 1977 (1977 No 108).

Section 2(1) **instrument** paragraph (e): amended, on 15 May 1991, by section 2(2) of the Equal Pay Amendment Act 1991 (1991 No 25).

Section 2(1) **instrument** paragraph (f): inserted, on 14 November 1976, by section 2(1) of the Equal Pay Amendment Act 1976 (1976 No 49).

Section 2(1) **waterfront industry order**: amended, on 1 August 1987, pursuant to section 2(3) of the Waterfront Industry Commission Amendment Act 1987 (1987 No 82).

Section 2(2): amended, on 14 November 1976, by section 2(2) of the Equal Pay Amendment Act 1976 (1976 No 49).

2A Unlawful discrimination

- (1) No employer shall refuse or omit to offer or afford any person the same terms of employment, conditions of work, fringe benefits, and opportunities for training, promotion, and transfer as are made available for persons of the same or substantially similar qualifications employed in the same or substantially similar circumstances on work of that description by reason of the sex of that person.
- (2) Where an employee would be entitled to make a complaint in respect of a breach of this section or make a complaint under the Human Rights Act 1993, the employee may choose 1 of those entitlements but not both.

Section 2A: inserted, on 15 May 1991, by section 3(1) of the Equal Pay Amendment Act 1991 (1991 No 25).

Section 2A(2): amended, on 1 February 1994, by section 145 of the Human Rights Act 1993 (1993 No 82).

3 Criteria to be applied

- (1) Subject to the provisions of this section, in determining whether there exists an element of differentiation, based on the sex of the employees, in the rates of remuneration of male employees and female employees for any work or class of work payable under any instrument, and for the purpose of making the determinations specified in subsection (1) of section 4, the following criteria shall apply:

- (a) for work which is not exclusively or predominantly performed by female employees—
 - (i) the extent to which the work or class of work calls for the same, or substantially similar, degrees of skill, effort, and responsibility; and
 - (ii) the extent to which the conditions under which the work is to be performed are the same or substantially similar;
 - (b) for work which is exclusively or predominantly performed by female employees, the rate of remuneration that would be paid to male employees with the same, or substantially similar, skills, responsibility, and service performing the work under the same, or substantially similar, conditions and with the same, or substantially similar, degrees of effort.
- (2) In determining whether there exists an element of differentiation, based on the sex of the employees, in the rates of remuneration for male employees and female employees for any work or class of work, no account shall be taken of any provision in any Act or Order in Council which limits the work female employees may perform.
 - (3) Subject to any such provision in any Act or Order in Council and to sections 4 to 8, no instrument coming into force after 31 March 1973 shall contain classifications of work that differentiate, on the basis of the sex of the employees, in the work which male employees or female employees may perform.

4 Determination of equal pay

- (1) Where any instrument in force at the passing of this Act or coming into force before 1 April 1973 makes separate provision for the remuneration of female employees or makes provision for the remuneration of female employees only, then, subject to subsection (5) and to section 5, and notwithstanding anything in any other Act, the following determinations shall be made not later than the first increment date for the purpose of implementing equal pay, namely:
 - (a) the classifications of the work performed by those female employees in relation to work performed by male

- employees, those classifications being determined in accordance with the criteria set out in section 3; and
- (b) the rates of remuneration that would represent equal pay for each such classification, those rates being determined in accordance with the criteria set out in section 3; and
 - (c) the minimum percentage, determined,—
 - (i) in the case of any award to which section 6 applies, in accordance with the said section 6; or
 - (ii) in the case of any other instrument, in accordance with the said section 6 as applied to that other instrument by section 7,—that the rate of remuneration for female employees in each classification shall bear, on the first, second, third, fourth, and fifth increment dates (as determined pursuant to the said section 6), respectively, to the rate of remuneration for male employees in relation to whom the classification has been made in accordance with the criteria set out in section 3.
- (2) The determinations required by subsection (1) shall be made as follows:
- (a) in the case of any award, industrial agreement, agreement under section 8 of the Labour Disputes Investigation Act 1913, or agreement filed with the Registrar of the court under section 141 of the Industrial Relations Act 1973, the determinations shall be made by the parties to the instrument or their representatives:
 - (b) in the case of any apprenticeship order, the determinations shall be made by the court of its own motion or on the recommendation of the New Zealand Apprenticeship Committee having jurisdiction in respect of that order:
 - (c) in the case of any agricultural workers order—
 - (i) the determinations may be made by an Order in Council giving effect to an agreement reached by the parties referred to in section 16 of the Agricultural Workers Act 1962; or
 - (ii) where an agreement is not reached by those parties and the matter is referred to the court under

section 17 of that Act, the determinations may be made by an Order in Council giving effect to any recommendation made by the court pursuant to the said section 17:

- (d) in the case of any waterfront industry order, the determinations shall be made by the Waterfront Industry Tribunal pursuant to section 15 or, as the case may be, section 16 of the Waterfront Industry Commission Act 1976 on application made pursuant to section 18 of that Act:
 - (e) in the case of any instrument made pursuant to any enactment by any court or tribunal or employing authority (not being an instrument to which any of the foregoing provisions of this subsection apply), the determinations shall be made by that court or tribunal or employing authority or by the parties to the instrument or their representatives, as the case may be, in accordance with the provisions of that enactment:
 - (f) in the case of any agreement (not being an agreement to which any of the foregoing provisions of this subsection apply), the determinations shall be made by the parties to the agreement.
- (2A) Where the remuneration for any employee or group of employees is payable pursuant to any instrument specified in paragraph (f) of the definition of the term instrument in section 2(1), the employer shall, at the request of the employee, or, as the case may be, of any employee who is a member of the group to which the instrument applies, supply to the employee all information that is relevant for the purpose of implementing this Act as to any right or benefit provided for the employee by the instrument.
- (3) If the provisions of subsection (1) are not complied with before the first increment date (as so defined), then, subject to section 5, the court, on the application of any party to the instrument, or his representative, or, as the case may be, of the appropriate authority, or of an Inspector, shall make the determinations specified in subsection (1).
- (4) For the purpose of giving effect to the provisions of this Act in relation to any instrument other than an award, the court,

on the application of any party to the instrument or his representative, or, as the case may be, of the appropriate authority, or of an Inspector, may, notwithstanding anything in any other enactment or in any rule of law, amend the instrument to the extent necessary, and the instrument as so amended shall have effect accordingly.

- (4A) For the purpose of giving effect to the provisions of this Act in relation to any award the currency of which has not expired or which is continuing in force under section 171 of the Labour Relations Act 1987 or, as the case may be, under section 42 of the Aircrew Industrial Tribunal Act 1971, the court, on the application of either or both of the duly authorised agents of the parties to the dispute of interest that was settled by the award, may, notwithstanding anything in any other enactment or in any rule of law, amend the award to the extent necessary, and the award as so amended shall have effect accordingly.
- (4B) Where any meetings of representatives of the parties to an award are held under the chairmanship of a conciliator for the purpose of giving effect to the provisions of this Act in relation to any award to which subsection (4A) applies, those representatives, not exceeding the number who if they were assessors appointed to a conciliation council would be entitled to be paid remuneration, shall be paid remuneration as if they were such assessors.
- (4C) After the commencement of the Industrial Relations Act 1973—
- (a) the references to the court in subsections (4) and (4A) shall be read as references to the Commission:
 - (b) the reference to an industrial dispute in subsection (4A) shall be read as a reference to a dispute of interest:
 - (c) the reference to a Conciliation Commissioner in subsection (4B) shall be read as a reference to a conciliator:
 - (d) the reference to a Council of Conciliation in subsection (4B) shall be read as a reference to a conciliation council.
- (5) Nothing in this section shall apply with respect to any instrument which on 31 March 1973 provides for equal pay.

Section 4(2)(a): amended, on 17 April 1978, by section 6(2) of the Industrial Relations Amendment Act 1977 (1977 No 108).

Section 4(2)(a): amended, on 8 March 1974, by section 5 of the Equal Pay Amendment Act 1973 (1973 No 23).

Section 4(2)(d): amended, on 1 August 1987, by section 2(3) of the Waterfront Industry Commission Amendment Act 1987 (1987 No 82).

Section 4(2)(d): amended, on 1 April 1977, pursuant to section 62(a) of the Waterfront Industry Commission Act 1976 (1976 No 72).

Section 4(2A): inserted, on 14 November 1976, by section 3 of the Equal Pay Amendment Act 1976 (1976 No 49).

Section 4(3): amended, on 17 April 1978, by section 6(2) of the Industrial Relations Amendment Act 1977 (1977 No 108).

Section 4(4): replaced, on 2 October 1973, by section 2 of the Equal Pay Amendment Act 1973 (1973 No 23).

Section 4(4): amended, on 17 April 1978, by section 6(3)(a) of the Industrial Relations Amendment Act 1977 (1977 No 108).

Section 4(4A): inserted, on 2 October 1973, by section 2 of the Equal Pay Amendment Act 1973 (1973 No 23).

Section 4(4A): amended, on 8 March 1974, pursuant to section 234(2)(a) of the Industrial Relations Act 1973 (1973 No 19).

Section 4(4A): amended, on 8 March 1974, by section 4(4C)(b).

Section 4(4B): inserted, on 2 October 1973, by section 2 of the Equal Pay Amendment Act 1973 (1973 No 23).

Section 4(4B): amended, on 8 March 1974, by section 4(4C)(c).

Section 4(4B): amended, on 8 March 1974, by section 4(4C)(d).

Section 4(4C): inserted, on 2 October 1973, by section 2 of the Equal Pay Amendment Act 1973 (1973 No 23).

5 Interim increases

- (1) Where the provisions of subsection (1) of section 4 have not been complied with in relation to any instrument before the first increment date, the court, may, if it thinks fit, on the application of any party to the instrument, or his representative, order that there shall be payable to every female employee whose rate of remuneration is fixed by the instrument, as an interim increase in remuneration towards the implementation of equal pay, an increase in remuneration at such rate as the court determines, and that increase shall be deemed to have come into force on the first increment date.
- (2) If the question of the implementation of equal pay in relation to any instrument is before a conciliation council and the conciliator is satisfied at any time on or before the first increment date that the parties are unable to agree on that question, he

shall forthwith notify the Registrar of the court, and the court may make an order under subsection (1) granting an interim increase in remuneration as if application had been made to the court under that subsection.

- (3) For the purpose of determining any such interim increase, the court may make an interim classification of the work performed by the female employee, and may have regard to such other matters as the court considers relevant.

Section 5(1): amended, on 17 April 1978, by section 6(2) of the Industrial Relations Amendment Act 1977 (1977 No 108).

Section 5(2): amended, on 17 April 1978, by section 6(2) of the Industrial Relations Amendment Act 1977 (1977 No 108).

Section 5(2): amended, on 8 March 1974, by section 5 of the Equal Pay Amendment Act 1973 (1973 No 23).

Section 5(2): amended, on 8 March 1974, pursuant to section 234(2)(f) of the Industrial Relations Act 1973 (1973 No 19).

Section 5(2): amended, on 8 March 1974, pursuant to section 234(2)(g) of the Industrial Relations Act 1973 (1973 No 19).

Section 5(2): amended, on 8 March 1974, pursuant to section 234(2)(h) of the Industrial Relations Act 1973 (1973 No 19).

Section 5(3): amended, on 17 April 1978, by section 6(2) of the Industrial Relations Amendment Act 1977 (1977 No 108).

6 Implementation of equal pay in awards

- (1) The minimum percentages to be determined pursuant to paragraph (c) of subsection (1) of section 4 that the rates of remuneration of female employees fixed by any award shall bear to the relevant rates of remuneration of male employees shall be fixed so as to reduce the differential in those rates existing on the day immediately preceding the first increment date by 5 approximately equal steps, on the first, second, third, fourth, and fifth increment dates, respectively, as determined under subsections (2) to (4).
- (2) The first such increment date shall be—
- (a) in the case of any award the term of which has expired on or after 1 April 1973 and before 1 September 1973—
- (i) if a settlement on such of the provisions of the award as implement equal pay has been reached under this Act before 1 September 1973, the first increment date as determined under the provi-

- sions of this Act that were in force on 31 August 1973:
- (ii) if a settlement on such of the provisions of the award as implement equal pay has not been reached under this Act before 1 September 1973, the date of expiration of a period of 3 months after the expiry of the term of the award or 1 October 1973, whichever is the earlier:
- (b) in the case of any award the term of which expired on or after 1 September 1973 or will expire before 1 October 1973—
 - (i) if a settlement on such of the provisions of the award as implement equal pay is reached before the expiry of the term of the award, the day after the date of expiry of that term:
 - (ii) if a settlement on such of the provisions of the award as implement equal pay is not reached before the expiry of the term of the award, 1 October 1973:
 - (c) in the case of any other award, 1 October 1973.
- (3) Where—
- (a) the term of any award has expired before the passing of this Act and the award is continuing in force pending the making of a new award; or
 - (b) the term of any award in force at the passing of this Act will expire after the passing of this Act and before 1 April 1973,—
- then, for the purposes of subsection (2), the term of that award shall be deemed to expire with the first anniversary of the date of the expiry of the term of the award that occurs on or after 1 April 1973.
- (4) The second, third, and fourth such increment dates shall be—
- (a) in the case of any award specified in paragraph (a) or paragraph (b) of subsection (2), the first, second, and third anniversaries, respectively, of the day after the date of expiry of the term of the award:
 - (b) in the case of any award specified in paragraph (c) of subsection (2), the first, second, and third anniversaries, respectively, of the date of the first increment.

- (5) The fifth such increment date shall be the first anniversary of the fourth increment date or 1 April 1977, whichever is the earlier.
- (6) For the purposes of this section—
- (a) where an award provides for any rate of remuneration to be reviewed on a date earlier than the date of expiry of the term of the award, the term of the award shall, in relation to that remuneration, be deemed to expire on the date provided for that review:
 - (b) where an interim increase in remuneration is granted pursuant to section 5,—
 - (i) that interim increase shall be deemed to be the first of the 5 steps by which the differential referred to in subsection (1) is to be reduced; and
 - (ii) the amount of that differential shall be deemed to have been reduced by the amount of that interim increase; and
 - (iii) the 4 subsequent steps by which that differential is required to be reduced shall be so adjusted as to reduce on the second, third, fourth, and fifth increment dates, respectively, as determined under subsections (2), (4), and (5), the balance of the differential remaining after the granting of that interim increase, by 4 approximately equal steps.
- (7) Notwithstanding anything in section 4 or subsection (1),—
- (a) subject to subsection (6) and to section 10, the parties to any award, or their representatives, may agree upon or fix the annual adjustments in rates of remuneration for female employees required to be made by the said subsection (1) otherwise than on the basis of minimum percentages:
 - (b) nothing in the foregoing provisions of this section shall restrict the rights of the parties to any award to agree upon or fix before 1 April 1977 rates of remuneration that represent equal pay:
provided that unless the parties have agreed on an earlier date of payment or on payment of an increased percentage, the court shall not make an award providing for payment of any increment in respect of equal pay on a date earlier than the

appropriate date specified in this section or, as the case may be, for payment on any increment date of an increment greater than the minimum percentage.

(8) Every award in force on or after 1 April 1977, whether made on or before or after that date, shall provide for equal pay.

(9) Where—

(a) the rate of remuneration for any female employee is fixed as a percentage of the rate of remuneration for male employees in any specified classification; and

(b) at any time between 2 consecutive increment dates in relation to that female employee the rate of remuneration for male employees in that classification is increased,—

the rate of remuneration for that female employee shall be increased, with effect from the date on which the increase in remuneration for those male employees took effect, by the percentage by which the remuneration for those male employees has been increased.

Section 6(2): replaced, on 2 October 1973, by section 4(1) of the Equal Pay Amendment Act 1973 (1973 No 23).

Section 6(5): amended, on 2 October 1973, by section 4(2) of the Equal Pay Amendment Act 1973 (1973 No 23).

Section 6(7)(b): amended, on 2 October 1973, by section 4(2) of the Equal Pay Amendment Act 1973 (1973 No 23).

Section 6(7) proviso: amended, on 17 April 1978, by section 6(2) of the Industrial Relations Amendment Act 1977 (1977 No 108).

Section 6(8): amended, on 2 October 1973, by section 4(2) of the Equal Pay Amendment Act 1973 (1973 No 23).

Section 6(9): inserted (with effect on 20 October 1972), on 14 November 1976, by section 4(1) of the Equal Pay Amendment Act 1976 (1976 No 49).

7 **Implementation of equal pay in other instruments**

The provisions of section 6 shall, with the necessary modifications, apply with respect to every instrument that is not an award as if it were an award under the Industrial Relations Act 1973, and as if—

(a) in any case where the rates of remuneration payable under the instrument are to be fixed by an appropriate authority, the references in subsection (7) of that section to the parties to the instrument were references to that authority; and

- (b) in the case of an instrument having no expiry date, its term expired on the first anniversary of the date of its commencement that occurs on or after 1 April 1973.

Section 7: amended, on 8 March 1974, pursuant to section 234(2)(a) of the Industrial Relations Act 1973 (1973 No 19).

8 New classification of work

- (1) If at any time on or after 1 April 1973 but before 1 April 1977 separate provision is made in any instrument fixing the rate of remuneration payable to female employees in respect of any work or class of work not previously provided for in the instrument or, as the case may be, in any instrument that it replaces, or an instrument making provision for the remuneration of female employees only fixes the remuneration payable to those employees in respect of such work, the parties to the instrument, or, as the case may be, the appropriate authority, shall fix a rate of remuneration for that work or class of work at a rate that equals as near as possible the rate of remuneration that would have been fixed for that work or class of work in accordance with sections 3 to 6, or, as the case may be, sections 3 to 5 and section 7, if it had been performed by female employees on 1 April 1973.
- (2) For the purposes of subsection (1), the parties to the instrument or, as the case may be, the appropriate authority, shall make the determinations specified in subsection (1) of section 4 as if the instrument had come into force before 1 April 1973.
- (3) If the parties are unable to agree upon the rate of remuneration to be fixed by that instrument or, as the case may be, by the appropriate authority, any party to the instrument, or, as the case may be, that authority, or an Inspector, may apply to the court to fix that rate, and the court shall fix the rate of that remuneration.

Section 8(1): amended, on 2 October 1973, by section 4(3) of the Equal Pay Amendment Act 1973 (1973 No 23).

Section 8(3): amended, on 17 April 1978, by section 6(2) of the Industrial Relations Amendment Act 1977 (1977 No 108).

9 Court may state principles for implementation of equal pay

The court shall have power from time to time, of its own motion or on the application of any organisation of employers or employees, to state, for the guidance of parties in negotiations, the general principles to be observed for the implementation of equal pay in accordance with the provisions of sections 3 to 8.

Section 9 heading: amended, on 17 April 1978, by section 6(2) of the Industrial Relations Amendment Act 1977 (1977 No 108).

Section 9: amended, on 17 April 1978, by section 6(2) of the Industrial Relations Amendment Act 1977 (1977 No 108).

10 Approval by court or Employment Relations Authority of instruments or proposed instruments

- (1) Despite anything in the Employment Relations Act 2000, the court may, of its own motion or on the application of any party, examine the provisions of any proposed collective agreement under that Act fixing any rate of remuneration of employees, whether or not those provisions have been agreed upon in conciliation, in order to determine whether the provisions of the proposed collective agreement meet such of the requirements of sections 3 to 6 as are applicable.
- (2) After hearing the parties or, if the court thinks fit, without hearing the parties, the court may,—
 - (a) if the court is satisfied that those provisions meet the requirements of sections 3 to 6, approve those provisions:
 - (b) if the court is not so satisfied,—
 - (i) refer the proposed collective agreement back to the parties for further consideration and amendment of those provisions in order to meet the requirements of sections 3 to 6 and, if it does so, the court may state principles for the guidance of the parties for the implementation of equal pay in that collective agreement; or
 - (ii) amend the provisions of the proposed collective agreement in order to meet the requirements of sections 3 to 6, and make the collective agreement as so amended.

- (3) Despite anything in any other Act or in any rule of law, the Employment Relations Authority may, of its own motion or on the application of an Inspector, examine the provisions of any instrument or proposed instrument (not being a collective agreement under the Employment Relations Act 2000) in order to determine whether the provisions of the instrument or proposed instrument fixing any rate of remuneration for employees meet such of the requirements of sections 3 to 7 as are applicable.
- (4) After hearing the parties to the instrument or proposed instrument or their representatives or, if the Employment Relations Authority thinks fit, without a hearing, the Employment Relations Authority may,—
 - (a) if the Employment Relations Authority is satisfied that those provisions meet such of the requirements of sections 3 to 7 as are applicable, approve those provisions:
 - (b) if the Employment Relations Authority is not so satisfied,—
 - (i) refer the instrument or proposed instrument back to the parties, or, as the case may be, to the appropriate authority, for renegotiation or, as the case may be, for reconsideration or amendment of those provisions in order to meet those requirements and, if it does so, the Employment Relations Authority may state principles for the guidance of the parties or that authority for the implementation of equal pay in that instrument or proposed instrument; or
 - (ii) in the case of an instrument, amend it to the extent necessary to meet those requirements and the instrument as so amended has effect accordingly.
- (5) The Employment Relations Authority must not exercise any of its powers under this section without a hearing if any party to the instrument or proposed instrument requests a hearing.

Section 10: replaced, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

11 Court may make partial award

- (1) Notwithstanding anything in the Industrial Relations Act 1973, and without limiting the powers of the court under section 5, where the parties to any dispute of interest within the meaning of that Act, or their representatives, have arrived at a settlement of all matters arising in that dispute with the exception of matters relating to the implementation of equal pay, and a memorandum of partial settlement to that effect is delivered to the Registrar of the Arbitration Court under section 84 of that Act, the court may make an award incorporating the terms of the settlement and reserving the question of the implementation of equal pay.
- (2) Where the court makes such an award, then, notwithstanding anything in the Industrial Relations Act 1973,—
 - (a) the court may, on the application of any party to the award, amend the award for the purpose of giving effect to any settlement arrived at by the parties or their representatives on the question of the implementation of equal pay:
 - (b) if no such settlement is arrived at within 3 months after the date of the making of the award, any party to the award may apply to the court to determine that question, and the court may determine that question accordingly in accordance with the provisions of sections 4 to 7 and amend the award to give effect to that determination.

Section 11 heading: amended, on 17 April 1978, by section 6(2) of the Industrial Relations Amendment Act 1977 (1977 No 108).

Section 11(1): amended, on 17 April 1978, by section 6(2) of the Industrial Relations Amendment Act 1977 (1977 No 108).

Section 11(1): amended, on 17 April 1978, pursuant to section 6(3)(b) of the Industrial Relations Amendment Act 1977 (1977 No 108).

Section 11(1): amended, on 8 March 1974, by section 5 of the Equal Pay Amendment Act 1973 (1973 No 23).

Section 11(1): amended, on 8 March 1974, pursuant to section 234(2)(a) of the Industrial Relations Act 1973 (1973 No 19).

Section 11(1): amended, on 8 March 1974, pursuant to section 234(2)(f) of the Industrial Relations Act 1973 (1973 No 19).

Section 11(2): amended, on 17 April 1978, by section 6(2) of the Industrial Relations Amendment Act 1977 (1977 No 108).

Section 11(2): amended, on 8 March 1974, pursuant to section 234(2)(a) of the Industrial Relations Act 1973 (1973 No 19).

Section 11(2)(a): amended, on 17 April 1978, by section 6(2) of the Industrial Relations Amendment Act 1977 (1977 No 108).

Section 11(2)(b): amended, on 17 April 1978, by section 6(2) of the Industrial Relations Amendment Act 1977 (1977 No 108).

12 Further powers of Employment Relations Authority

Without limiting any other power of the Employment Relations Authority, whether under this Act or otherwise, the Employment Relations Authority may—

- (a) determine the classification of any work, any rate of remuneration that would represent equal pay, the minimum percentage for the adjustment of any rate of remuneration of female employees, and any interim increase in remuneration required to be granted to implement equal pay, pursuant to section 4 or, as the case may be, section 5:
- (b) determine any question arising under subsection (1) of section 6, or, as the case may require, section 7, relating to the steps to be taken under the said section 6 or section 7, as the case may require, for the reduction of the differential in any rates of remuneration of female employees and of male employees:
- (c) determine any other question relating to the implementation of equal pay that may be referred to it pursuant to this Act:
- (d) determine any question of law, including the interpretation of this Act, in relation to any instrument arising out of this Act that is referred to it by any party to any instrument or the representative of any party, or by the appropriate authority, or by an Inspector:
- (e) determine such other questions and give such rulings as may be necessary for the exercise of its jurisdiction under this Act.

Section 12: replaced, on 17 April 1978, by section 6(2) of the Industrial Relations Amendment Act 1977 (1977 No 108).

Section 12 heading: amended, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 12: amended, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

13 Recovery of remuneration based on equal pay

- (1) Where any proceedings are taken against any employer in the Employment Relations Authority for the recovery of remuneration in respect of any period commencing on or after the first increment date at a rate that exceeds the rate for the time being provided by the instrument fixing that rate of remuneration, on the ground that the employer has not implemented equal pay in accordance with the provisions of this Act, proof that the provisions of the instrument fixing that rate of remuneration have been approved or fixed by the Court of Arbitration or by the Industrial Commission or by the Arbitration Court shall be conclusive evidence that the provisions of this Act have been complied with in relation to that rate of remuneration, unless the decision of the Court of Arbitration or of the Arbitration Court, as the case may be, otherwise indicates.
- (2) Notwithstanding anything in any other Act, any claim for the recovery of any remuneration in excess of the amount fixed by any instrument and made on the ground that it is payable pursuant to the provisions of this Act may be made to the Employment Relations Authority as if it were a claim for the recovery of wages under section 131 of the Employment Relations Act 2000.
- (3) Without limiting the right of any employee to recover any remuneration payable otherwise than pursuant to this Act, no proceedings for the recovery of any remuneration in excess of the amount payable under any instrument, being an amount claimed on the ground that that excess is payable pursuant to this Act, shall be commenced in the Employment Relations Authority for the recovery of any such remuneration that became payable more than 6 years before the date of the commencement of the proceedings.

Section 13(1): amended, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 13(1): amended, on 15 May 1991, by section 6(1) of the Equal Pay Amendment Act 1991 (1991 No 25).

Section 13(1): amended, on 17 April 1978, by section 6(2) of the Industrial Relations Amendment Act 1977 (1977 No 108).

Section 13(1): amended, on 8 March 1974, by section 5 of the Equal Pay Amendment Act 1973 (1973 No 23).

Section 13(2): replaced, on 15 May 1991, by section 6(2) of the Equal Pay Amendment Act 1991 (1991 No 25).

Section 13(2): amended, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 13(3): replaced, on 15 May 1991, by section 6(2) of the Equal Pay Amendment Act 1991 (1991 No 25).

Section 13(3): amended, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

14 Procedure and jurisdiction of Employment Relations

Authority

In exercising its functions under this Act, or in respect of any breach of this Act, the Employment Relations Authority has all the powers and functions it has under the Employment Relations Act 2000.

Section 14: replaced, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

15 When dismissal or reduction of employee an offence

- (1) Every employer commits an offence who dismisses any employee or alters any employee's position in the employer's business or undertaking to the employee's prejudice, where, at any time within the period of 12 months immediately preceding that dismissal or alteration, the employee had made or caused to be made a claim against the employer for any right or benefit pursuant to this Act or had exercised a right of action pursuant to this Act on the employee's own behalf or on behalf of any other employee, whether by complaining to an Inspector or to an organisation of employees, or by giving evidence in any claim for any such right or benefit against the employer or any other employer, or in any other manner whatsoever.
- (2) It shall be a defence in any proceedings for an offence against this section if the employer proves that the dismissal or alteration was for any reason other than 1 of those specified in subsection (1).
- (3) Nothing in this section derogates from the rights of any person under Part 9 of the Employment Relations Act 2000 in relation to the settlement of a personal grievance.

Section 15(3): replaced, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

16 Powers of Inspectors

For the purposes of this Act, every Inspector shall have, in addition to any powers conferred by this Act, all the powers that the Inspector has under the Employment Relations Act 2000.

Section 16: replaced, on 31 August 1990, by section 3 of the Equal Pay Amendment Act 1990 (1990 No 111).

Section 16: amended, on 2 October 2000, pursuant to section 241 of the Employment Relations Act 2000 (2000 No 24).

17 Records to be kept by employers

- (1) Subject to any regulations made under this Act, every employer who is not bound by an award or industrial agreement under the Industrial Conciliation and Arbitration Act 1954 or a collective agreement under the Industrial Relations Act 1973 shall comply with the provisions of section 219 of the last-mentioned Act as if he were so bound, and shall keep the records required to be kept by the said section 219—
 - (a) in the case of records in respect of the period commencing with the date of the passing of this Act and ending with the date on which he has fully complied with the provisions of section 6 or, as the case may require, section 7, for at least 6 years after that last-mentioned date:
 - (b) in the case of records in respect of any subsequent period, for at least 6 years after the end of that period.
- (2) The records required to be kept by every employer pursuant to section 219 of the Industrial Relations Act 1973 or, as the case may be, subsection (1) shall include particulars of all equal pay determinations made by the employer (whether before or after the commencement of this subsection) for the purpose of implementing equal pay pursuant to this Act.
- (3) Where before the commencement of this subsection an employer has destroyed or failed to keep, in respect of any person who is an employee of that employer at the commencement of this subsection, a record of the particulars referred to in subsection (2), the obligation imposed by section 219 of the

Industrial Relations Act 1973 or, as the case may be, by subsection (1) shall include an obligation to prepare forthwith and keep a record of those particulars.

- (4) Nothing in this section shall be construed as imposing an obligation on an employer to keep a record of the particulars referred to in subsection (2) in respect of any person who had ceased to be an employee of that employer before the commencement of this subsection, unless such a record is being kept by the employer at the commencement of this subsection.

Section 17(1): amended, on 8 March 1974, by section 5 of the Equal Pay Amendment Act 1973 (1973 No 23).

Section 17(1)(a): amended, on 14 November 1976, by section 6(1) of the Equal Pay Amendment Act 1976 (1976 No 49).

Section 17(1)(b): amended, on 14 November 1976, by section 6(1) of the Equal Pay Amendment Act 1976 (1976 No 49).

Section 17(2): inserted, on 14 November 1976, by section 6(2) of the Equal Pay Amendment Act 1976 (1976 No 49).

Section 17(3): inserted, on 14 November 1976, by section 6(2) of the Equal Pay Amendment Act 1976 (1976 No 49).

Section 17(4): inserted, on 14 November 1976, by section 6(2) of the Equal Pay Amendment Act 1976 (1976 No 49).

17A Advice of increments of pay and other increases in pay to be given to female employees

Where pursuant to this Act any increase in remuneration is granted by an employer to any female employee for the purpose of implementing equal pay or any other increase in remuneration is granted by an employer to a female employee before the date on which he has fully complied with the provisions of section 6 or, as the case may require, section 7 in relation to that employee, the employer shall at the time of payment to the employee of the first payment at the increased rate notify her in writing that her rate of remuneration has been increased, and that notice shall specify—

- (a) the name of the employee and the effective date of the increase; and
- (b) the classification of the work performed by her; and
- (c) the rate of remuneration payable for the step represented by the increase; and

- (d) in any case where that increase is not the final step in the full implementation of equal pay, the rate of remuneration that would be payable as at the effective date of the increase if equal pay had been fully implemented in relation to that employee on that date.

Section 17A: inserted, on 14 November 1976, by section 7 of the Equal Pay Amendment Act 1976 (1976 No 49).

18 Offences

- (1) Every person commits an offence who—
 - (a) does any act in contravention of or fails to comply with any provision of this Act or of any regulations made under this Act; or
 - (b) 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 or of any regulations under this Act; or
 - (c) wilfully obstructs or hinders any Inspector in the performance of his functions or the exercise of his powers under section 16; or
 - (d) refuses or fails to comply with any requirement of an Inspector under subsection (2) of section 16; or
 - (e) subject to subsection (3) of section 16, refuses or fails to answer, to the best of his knowledge and belief, any question asked by an Inspector pursuant to paragraph (c) of subsection (2) of section 16; or
 - (f) knowingly gives any false or misleading answer to any question asked pursuant to the said paragraph (c).
- (2) Every person who commits an offence against this Act is liable on conviction—
 - (a) in the case of an offence committed by any person (not being a body corporate), to a fine not exceeding \$400;
 - (b) in the case of an offence committed by a body corporate, to a fine not exceeding \$1,000.

Section 18(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

19 Regulations

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 full effect to the provisions of this Act and for its due administration.

20 Act to be administered in Department of Labour

[Repealed]

Section 20: repealed, on 14 December 1979, by section 2(3) of the Labour Department Amendment Act 1979 (1979 No 95).

Contents

- 1 General
 - 2 Status of reprints
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 - 5 List of amendments incorporated in this reprint (most recent first)
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Notes

1 *General*

This is a reprint of the Equal Pay Act 1972. The reprint incorporates all the amendments to the Act as at 1 July 2013, as specified in the list of amendments at the end of these notes. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, *see* <http://www.pco.parliament.govt.nz/reprints/>.

2 *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked are omitted.

For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

**5 *List of amendments incorporated in this reprint
(most recent first)***

Criminal Procedure Act 2011 (2011 No 81): section 413

Policing Act 2008 (2008 No 72): section 130(1)

Employment Relations Act 2000 (2000 No 24): sections 240, 241

Human Rights Act 1993 (1993 No 82): section 145

Equal Pay Amendment Act 1991 (1991 No 25)

Equal Pay Amendment Act 1990 (1990 No 111)

State Sector Act 1988 (1988 No 20): section 87

Waterfront Industry Commission Amendment Act 1987 (1987 No 82): section 2(3)

Apprenticeship Act 1983 (1983 No 16): section 58(2)

Labour Department Amendment Act 1979 (1979 No 95): section 2(3)

Industrial Relations Amendment Act 1977 (1977 No 108): section 6(2), (3)

Waterfront Industry Commission Act 1976 (1976 No 72): section 62(a)
Hospitals Amendment Act 1976 (1976 No 54): section 4(1)
Equal Pay Amendment Act 1976 (1976 No 49)
Education Amendment Act 1976 (1976 No 42): section 8(1)
Equal Pay Amendment Act 1973 (1973 No 23)
Industrial Relations Act 1973 (1973 No 19): section 234(2)(a), (c), (f)–(h)
