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1983, No. 47

An Act to amend the State Services Conditions of Employment Act 1977
[1 December 1983]

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

1. Short Title and commencement—(1) 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 Conditions of Employment Act 1977 (hereinafter referred to as the principal Act).

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

(3) Section 15 of this Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

2. Application of Parts VIIA and 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:

“(2) Except as provided in subsections (3), (5), and (6) of this section, this Act shall come into force on the date on which it receives the Governor-General’s assent.

“(3) Part VIIA of this Act 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 purposes of different groups or classes of employees of the State services.

“(4) The Governor-General may from time to time by Order in Council suspend the application of Part VIIA 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.

“(5) Subject to subsection (6) of this section, Part VIII of this Act, to the extent that it is not in force immediately before the date of commencement of section 2 of the State Services Conditions of Employment Amendment Act 1983, shall come into force on that date.

“(6) 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.

“(7) 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.”

(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).

(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).

(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 (7) of the principal Act (as enacted by subsection (1) of this section).

(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:

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

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

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

“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—

“(a) The conditions of employment of employees holding positions in the State services or the relevant occupational class, as the case may require; and

“(b) The conditions of employment provided by good employers outside the State services to persons 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.

“(2) A comparison cannot be made, for the purposes of subsection (1) of this section, if—

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

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

- “(ii) 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; or
 - “(c) The remuneration of the persons holding positions outside the State services is derived wholly or substantially from the Government or from rates or from levies or from licence fees.
- “(3) Where, in accordance with subsections (1) and (2) of this section, external comparability can be achieved in relation to the conditions of employment of employees who hold positions in the State services or in any occupational class, those positions shall, for the purposes of this Act, be ‘benchmark positions’.”

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”.

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

“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—

“(i) Which are provided by good employers outside the State services to persons who hold the closely comparable positions; and

“(ii) Which ensure that good employers outside the State services can recruit and retain enough employees of sufficient competence to enable such employers to provide efficiently, and without endangering the health or safety of those employees, the services that are required to be provided by such employers; or

“(b) If external comparability cannot be achieved, shall prescribe conditions of employment that fairly reflect the conditions of employment generally prevailing at the time outside the State services, being conditions of employment that good employers outside the State services would provide if they were required—

“(i) To provide services of the type being performed or to be performed by employees holding positions in the State services or the relevant occupational class; and

“(ii) To recruit and retain enough employees of sufficient competence to enable those employers to provide efficiently, and without endangering the health or safety of those employees, services of that type.

“(2) In applying subsection (1) of this section to the prescribing of pay scales, every employing authority shall, in addition to the obligations placed on it by that subsection, 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

“(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.

“(3) Notwithstanding subsections (1) and (2) of this section, every employing authority, in prescribing under this Act conditions of employment of employees of the State services or of any branch of the State services, shall have regard to the special features of employment in the State services or branch of the State services, as the case may require.

“10. **Criteria relating to pay scales for occupational classes**—(1) 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 regard to:

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

“(b) Vertical relativity, being the adequacy, after taking into 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:

“(c) Horizontal relativity, being a comparison between the 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 taking into account any differences in the levels of skill and responsibility between the positions in that occupational class and those benchmark positions:

“(d) Internal relativity, being a comparison between the 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:

“(e) 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 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:

“(f) The adequacy of the current pay scale to meet the need mentioned in paragraph (e) of this subsection.

“(2) Nothing in subsection (1) of this section shall prevent an employing authority, 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, making a comparison between the current remuneration being received by employees in positions in that occupational class and the current remuneration being received by—

“(a) Persons who hold positions in other occupational classes or outside the State services, being, in either case, positions which, however dissimilar in job content, have some similar requirements such as education, training, or skill to the positions in that occupational class; or

“(b) Persons—

“(i) Who hold positions outside the State services, being positions which have duties or responsibilities that are closely comparable with the duties and responsibilities of positions in that occupational class; and

“(ii) Who are in the employ of an employer who is, in respect of the occupation of those persons, the major or only employer, outside the State services, of persons in that occupation or who is a member of a class of employers which is, in respect of the occupation of those persons, the major or only class of employers, outside the State services, of persons in that occupation; or

“(c) Persons—

“(i) Who hold positions outside the State services, being positions which, however dissimilar in job content, have some similar requirements such as education, training, or skill to the positions in that occupational class; and

“(ii) Who would, but for section 4 (1) (c) of this Act, be employees employed in the same branch of the State services as the employees in that occupational class.

“(3) A comparison under subsection (2) of this section shall take account of any differences in the levels of skill and responsibility between the positions being compared.

“(4) A comparison cannot be made, for the purposes of subsection (2) (a) of this section, if the conditions of employment of the persons holding positions outside the State services would be precluded, by any of the provisions of section 5A (2) of this Act (other than subsection (2) (a) (ii) of that section), from being used for the purposes of a comparison under section 5A (1) of this Act.

“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) 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:

“(b) The more closely pay rates based on vertical relativity are linked to external comparability, the greater

hold enough competent staff or are less than are needed for that purpose, recruitment and retention shall outweigh the other criteria.

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

“(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:

“(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:

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

“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:

“(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:

“(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:

“(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:

“(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

“(ii) Which—

“(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:

“(h) Each reference to abnormal difficulty in recruiting and retaining staff of an occupation in the State services means difficulty—

“(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

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

“(iii) Which—

“(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:

“(i) Where it appears likely that, by virtue of the application of section 11 (f) 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:

“(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 (1) (e) of this Act:

“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 (1) (e) of this Act to any current preview of pay scales, redetermine the standard and extent of those services.”

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

“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.

“(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 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—

“(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 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 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 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 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 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 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 the Pay Research Unit and that report shall form the basis of the review under subsection (1) of this section.

“(4) Notwithstanding subsection (1) of this section, the Minister may, with the concurrence of the Co-ordinating Committee and the Combined State Unions, postpone for not more than 1 year any review due to be conducted under that subsection.

“(5) Where a review is postponed under subsection (4) of this section, the reviews required by subsection (1) of this section to be conducted after the postponed review shall,

notwithstanding subsection (1) of this section, but subject to subsection (4) of this section, be conducted in every second year after the year in which the postponed review was conducted.

“(6) In any year in which pay scales are being reviewed under this section, those pay scales shall, subject to section 30 (5) and section 31 (2) of this Act, not be altered by any general adjustment under section 31 of this Act.

“(7) Where, as a result of a review under subsection (1) of this section, the employing authority, after having had regard to the provisions of sections 9 to 12 of this Act, considers that adjustments to the pay scales reviewed are necessary, those adjustments shall be effected by the employing authority as if they were adjustments under section 30 of this Act; and all the provisions of this Act that relate to adjustments under that section shall, where appropriate, apply accordingly.”

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

“(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 the criteria set out in this section.

“(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 concerned.”

(2) The said section 32 is hereby further amended by repealing subsections (5) and (6), and substituting the following subsections:

“(5) The general movement in pay scales inside the State 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 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.

“(6) Notwithstanding subsection (5) of this section, after a general movement in pay scales inside the State services has been ascertained in accordance with that subsection, that general movement may, by agreement between the parties, or, if they fail to agree, by the Public Sector Tribunal constituted in accordance with subsection (17) of this section, be varied if, by reason of all or any of the following matters:

“(a) The extent to which adjustments to specific occupational classes have altered the general pattern of wage movements inside the State services so that that general pattern differs from the general pattern of wage movements outside the State services:

“(b) The extent of changes in the general level of skill and qualifications of employees in the State services as compared with those of persons employed outside the State services:

“(c) The overall ability of the State services to recruit and retain staff in comparison with employers outside the State services,—

it is established beyond a reasonable doubt that employees in the State services will, unless that general movement is varied, either suffer an injustice relative to persons employed outside the State services or secure an unjustified benefit relative to persons employed outside the State services.”

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 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.

“(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 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

“(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

“(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:

“(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 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:

“(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.”

14. New Part VIIA inserted—The principal Act is hereby amended by inserting, after Part VII, the following Part:

“PART VIIA

“INDUSTRIAL ACTION AFFECTING PRODUCTION OR SUPPLY OF
ELECTRICITY OR OPERATIONAL MANAGEMENT OF STATE
ELECTRICITY SYSTEM

“62A. **Interpretation**—In this Part of this Act, ‘strike’ has the meaning given to it by section 63 of this Act.

“62B. **Industrial action affecting production or supply of electricity or operational management of State electricity system**—(1) Every person shall be liable to a penalty not exceeding \$300 who, being an employee of the State services who is employed in, or is engaged in activities essential to, the production or supply of electricity or the operational management of the State electricity system, becomes a party to a strike that stops, limits, or in any way affects the production or supply of electricity or the operational management of the State electricity system.

“(2) Every person who incites, instigates, aids, or abets any breach of subsection (1) of this section, or who incites, instigates, or assists any person who has become a party to a strike in breach of subsection (1) of this section to continue to be a party to the strike, shall be liable to a penalty—

“(a) If an employee or other person to whom the following paragraphs of this section do not apply, to a penalty not exceeding \$300:

“(b) If an officer or member of the committee of management of any service organisation, or of the branch (if any) concerned, to a penalty not exceeding \$1,500:

“(c) If a service organisation, to a penalty not exceeding \$3,000.

“(3) In any proceedings for the recovery of a penalty for a breach of this section, it shall be a defence to prove that the strike was justified on the grounds of safety or health.

“62C. **Savings**—Nothing in this Part of this Act—

“(a) Limits or affects Part VIII of this Act; or

“(b) Prevents any employee of the State services from becoming a party to a strike or from taking any form of industrial action (not being an act that constitutes a breach of section 62B (2) of this Act) if that strike or industrial action does not stop, limit,

or in any way affect the production or supply of electricity or the operational management of the State electricity system.”

15. Enforcement of penalties—Section 73 of the principal Act (as substituted by section 6(1) of the State Services Conditions of Employment Amendment Act 1981) is hereby amended—

- (a) By inserting in subsection (2), after the words “provided for in”, the words “section 62B or”:
- (b) By inserting in subsection (2) (a), after the words “alleged breach of”, the words “section 62B or”:
- (c) By inserting in subsection (2) (a), after the words “in the case of a breach of”, the words “section 62B (2) or”.

16. First Schedule amended—The First Schedule to the principal Act is hereby amended by adding to item 1 the words “or the operational management of the State electricity system”.

This Act is administered in the State Services Commission.
