

[AS REPORTED FROM THE LABOUR COMMITTEE]

House of Representatives, 6 October 1972.

Words struck out by the Committee are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

Hon. Mr Thomson

EQUAL PAY

ANALYSIS

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A BILL INTITULED

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

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

No. 60—2

Price 15c

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” in this subsection: 5

“Agricultural workers order” means any order made under Part III of the Agricultural Workers Act 1962:

“Apprenticeship order” means any apprenticeship order within the meaning of the Apprentices Act 1948:

“Appropriate authority”, in relation to any instrument, 10 means the authority having jurisdiction under any Act to fix rates of remuneration payable under that instrument:

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“Associated instrument”, in relation to any award, means 15 any instrument providing for payment to employees whose conditions of employment are governed by that award of remuneration at a rate fixed by the instrument, either in addition to or in substitution for that payable to those employees under that 20 award:

“Award” means an award made by the Court under the Industrial Conciliation and Arbitration Act 1954 or by the Aircrew Industrial Tribunal under the 25 Aircrew Industrial Tribunal Act 1971:

“Court” means the Court of Arbitration constituted under the Industrial Conciliation and Arbitration Act 1954:

“Employee” means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual 30 labour, clerical work, or any other work or effort whatsoever; and includes any person who is a worker within the extended meaning given to the term “worker” by subsections (2) and (3) of section 2 35 of the Industrial Conciliation and Arbitration Act 1954; but does not include—

(a) Any person whose rate of remuneration is fixed by an employing authority or tribunal under the State Services Remuneration and Conditions 40 of Employment Act 1969 or by an Order in Council under that Act or under the State Services Act 1962:

5 (b) The Commissioner of Police or any person whose rate of remuneration is fixed under any of the provisions of sections 66A to 66G of the Police Act 1958 (as inserted by section 2 (1) of the Police Amendment Act 1969):

10 (c) Any person whose rate of remuneration is fixed under section 52 of the Hospitals Act 1957 (as substituted by section 58 (1) of the State Services Remuneration and Conditions of Employment Act 1969):

15 (d) Any person whose rate of remuneration is fixed under subsection (3) of section 6 or section 219 of the Post Office Act 1959 (as substituted by sections 59 (1) and 59 (8), respectively, of the State Services Remuneration and Conditions of Employment Act 1969):

20 (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 3 of the Education Amendment Act 1969):

25 “Employer” means any person employing an employee or employees; and includes a person who is an employer within the extended meaning given to the term “employer” by subsections (2) and (3) of section 2 of the Industrial Conciliation and Arbitration Act 1954:

30 “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—

35 (a) In relation to any award (*and to any associated instrument related to that award*), the first increment date determined under subsection (2) of section 6 of this Act:

40 (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 of this Act.

“Industrial agreement” means an industrial agreement made under the Industrial Conciliation and Arbitration Act 1954:

45 “Inspector” means an Inspector of Factories appointed under the Factories Act 1946:

“Instrument” means—

(a) Any award, industrial agreement, or apprenticeship order:

(b) Any agreement under section 8 of the Labour Disputes Investigation Act 1913: 5

(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: 10

(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: 15 20

“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: 25

(b) Allowances, fees, commission, and every other emolument, whether in one sum or several sums, and whether paid in money or not:

“Waterfront industry order” means a principal order made under the Waterfront Industry Act 1953. 30

(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) of this section made between an individual employee and an individual employer 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. 35

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 40

instrument, and for the purpose of making the determinations specified in subsection (1) of section 4 of this Act, the following criteria shall apply:

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- 5 (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 identical, or substantially identical, degrees of skill, effort, and responsibility; and
- 10 (ii) The extent to which the conditions under which the work is to be performed are identical or substantially identical:
- (b) For work which is exclusively or predominantly performed by female employees, the rate of remuneration that would be paid to male employees with
- 15 identical, or substantially identical, skills, responsibility, and service performing the work under identical, or substantially identical, conditions and with identical, or substantially identical, degrees of effort.
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New

- (a) For work which is not exclusively or predominantly performed by female employees—
- 25 (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:
- 30 (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
- 35 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

40 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 of this Act, no instrument coming into force after the 31st day of 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. 5

4. Determination of equal pay—(1) Where any instrument in force at the passing of this Act or coming into force before the 1st day of April 1973 makes separate provision for the remuneration of female employees makes provisions for the remuneration of female employees only, then, subject to subsection (5) of this section and to section 5 of this Act, 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: 10

(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 of this Act; and 15 20

(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 of this Act; and

(c) The minimum percentage, determined,— 25

(i) In the case of any award (*or associated instrument*) to which section 6 of this Act 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 of this Act,— 30

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, 35 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 of this Act.

(2) The determinations required by subsection (1) of this section shall be made as follows:

- 5 (a) In the case of any award, industrial agreement, or agreement under section 8 of the Labour Disputes Investigation Act 1913, the determinations shall be made by the parties to the instrument or their representatives:
- 10 (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:
- 15 (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:
- 20 (d) In the case of any waterfront industry order, the determinations shall be made by the Waterfront Industry Tribunal pursuant to section 11 or, as the case may be, section 12 of the Waterfront Industry Act 1953 on application made pursuant to section 14 of that Act:
- 25 (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:
- 30 (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.
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(3) If the provisions of subsection (1) of this section are not complied with before the first increment date (as so defined), then, subject to section 5 of this Act, the Court, on the application of any party to the instrument, or his representative, or, as the case may be, the appropriate authority, or of an Inspector, shall make the determinations specified in subsection (1) of this section. 5

(4) For the purpose of giving effect to the provisions of subsection (1) of this section in relation to any instrument, 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. 10 15

(5) Nothing in this section shall apply with respect to any instrument which on the 31st day of March 1973 provides for equal pay.

5. Interim increases—(1) Where the provisions of subsection (1) of section 4 of this Act 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. 20 25

(2) If the question of the implementation of equal pay in relation to any instrument is before a Conciliation Commissioner and the Commissioner 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 Clerk of Awards, and the Court may make an order under subsection (1) of this section granting an interim increase in remuneration as if application had been made to the Court under that subsection. 30 35

(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. 40

6. **Implementation of equal pay in awards (and associated instruments)**—(1) The minimum percentages to be determined pursuant to paragraph (c) of subsection (1) of section 4 of this Act that the rates of remuneration of female employees
 5 fixed by any award **(or associated instrument)** 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
 10 approximately equal steps, on the first, second, third, fourth, and fifth increment dates, respectively, as determined under subsections (2) to (4) of this section.

(2) The first such increment date shall be—

15 (a) In the case of any award the term of which will expire on or after the 1st day of April 1973 and before the 1st day of January 1974 **(and of any associated instrument related to that award)**—

20 (i) If a settlement on the provisions of the award **(and of any such associated instrument)** (including the provisions implementing equal pay) is reached before the expiry of the term of the award, the date after the date of expiry of that term:

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25 (ii) If a settlement on such of the provisions of the award and of any such associated instrument as implement equal pay is reached within 3 months after the expiry of the term of the award, the date on which that settlement is reached (that date being as specified in the award):

New

30 (ii) If a settlement of such of the provisions of the award as implement equal pay is reached within 3 months after the expiry of the term of the award, the date on which the provisions of the award fixing rates of remuneration come into force or the date of expiration of that period of 3 months, whichever is the
 35 earlier:

40 (iii) If a settlement on such of the provisions of the award **(and of any such associated instrument)** as implement equal pay is not reached within 3 months after the expiry of the term of the award, the date of the expiration of that period of 3 months:

(b) In the case of any award the term of which will expire on or after the 1st day of January 1974 and before the 1st day of April 1974 (*and of any associated instrument related to that award*)—

(i) If a settlement on the provisions of the award (*and of any such associated instrument*) (including the provisions implementing equal pay) is reached before the expiry of the term of the award, the day after the date of expiry of that term: 5

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(ii) If a settlement on such of the provisions of the award and of any such associated instrument as implement equal pay is reached before the 1st day of April 1974, the date on which that settlement is reached (that date being as specified in the award): 15

New

(ii) If a settlement of such of the provisions of the award as implement equal pay is reached before the 1st day of April 1974 the date on which the provisions of the award fixing rates of remuneration come into force or the 1st day of April 1974, whichever is the earlier: 20

(iii) If a settlement on such of the provisions of the award (*and of any such associated instrument*) as implement equal pay is not reached before 1 April 1974, the 1st day of April 1974: 25

(c) In the case of any other award (*and of any associated instrument related to that award*), the 1st day of April 1974. 30

(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 the 1st day of April 1973,— 35

then, for the purposes of subsection (2) of this section, the term of that award (*and of every associated instrument related to 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 the 1st day of April 1973. 40

(4) The second, third, and fourth such increment dates shall be—

5 (a) In the case of any award specified in paragraph (a) or paragraph (b) of subsection (2) of this section ~~(and of any associated instrument related to that award)~~, the first, second, and third anniversaries, respectively, of the day after the date of expiry of the term of the award:

10 (b) In the case of any award specified in paragraph (c) of subsection (2) of this section ~~(and of any associated instrument related to that award)~~, the first, second, and third anniversaries, respectively, of the date of the first increment.

15 (5) The fifth such increment date shall be the first anniversary of the fourth increment date or the 1st day of April 1978, whichever is the earlier.

(6) For the purposes of this section—

20 (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:

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25 (b) Every associated instrument, whether or not provision is made therein for it to expire on any specified date, shall be deemed to expire on the date of expiry of the term of the award with which it is associated. Where an associated instrument is associated with 30 2 or more awards, it shall be deemed under this paragraph to expire, in relation to each of those awards, on the respective dates of expiry of the several awards:

35 (c) Where an interim increase in remuneration is granted pursuant to section 5 of this Act,—

(i) That interim increase shall be deemed to be the first of the 5 steps by which the differential referred to in subsection (1) of this section is to be reduced; and

40 (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) of this section, the balance of the differential remaining after the granting of that interim increase, by 4 approximately equal steps. 5

(7) Notwithstanding anything in section 4 of this Act or subsection (1) of this section,— 10

(a) Subject to subsection (6) of this section and to section 10 of this Act, the parties to any award (*and any associated instrument related to that 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: 15

(b) Nothing in the foregoing provisions of this section shall restrict the rights of the parties to any award (*or associated instrument*) to agree upon or fix before the 1st day of April 1978 rates of remuneration that represent equal pay. 20

New

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. 25 30

(8) Every award (*and every associated instrument*) in force on or after the 1st day of April 1978, whether made on or before or after that date, shall provide for equal pay.

7. Implementation of equal pay in other instruments—The provisions of section 6 of this Act shall, with the necessary modifications, apply with respect to every instrument that is not an award (*or an associated instrument*) as if it were an award under the Industrial Conciliation and Arbitration Act 1954, and as if— 35 40

(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

- 5 (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 the 1st day of April 1973.

8. New classification of work—(1) If at any time on or after the 1st day of April 1973 but before the 1st day of April 10 1978 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 15 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 20 remuneration that would have been fixed for that work or class of work in accordance with sections 3 to 6 of this Act, or, as the case may be, sections 3 to 5 and section 7 of this Act, if it had been performed by female employees on the 1st day of April 1973.

25 (2) For the purposes of subsection (1) of this section, 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 of this Act as if the instrument had come into force before the 1st day of April 1973.

30 (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 35 rate of that remuneration.

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 40 in negotiations, the general principles to be observed for the implementation of equal pay in accordance with the provisions of sections 3 to 8 of this Act.

10. Approval by Court of instruments or proposed instruments—(1) Notwithstanding anything in the Industrial Conciliation and Arbitration Act 1954, the Court may, of its own motion or on the application of any party, examine the provisions of any proposed award 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 award meet such of the requirements of sections 3 to 6 and section 8 of this Act as are applicable, and, after hearing the parties or, if the Court thinks fit, without a hearing, may—

(a) If the Court is satisfied that those provisions meet those requirements, approve those provisions:

(b) If it is not so satisfied,—

(i) Refer the proposed award back to the parties for further consideration and amendment of those provisions in order to meet those requirements, and, if it does so, the Court may state principles for the guidance of the parties for the implementation of equal pay in that award; or

(ii) Amend the provisions of the proposed award in order to meet those requirements, and make the award as so amended.

(2) Notwithstanding anything in any other Act or in any rule of law, the Court may, of its own motion or on the application of an Inspector, examine the provisions of any instrument or proposed instrument (not being an award under the Industrial Conciliation and Arbitration Act 1954 or a proposed award under that Act) 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 8 of this Act as are applicable, and, after hearing the parties to the instrument or proposed instrument or their representatives, or, if the Court thinks fit, without a hearing, may—

(a) If the Court is satisfied that those provisions meet such of the requirements of sections 3 to 8 of this Act as are applicable, approve those provisions:

(b) If the Court 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 Court 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

5 (ii) In the case of an instrument, amend it to the extent necessary to meet those requirements, and the instrument as so amended shall have effect accordingly.

(3) In the exercise of its powers under this section, the Court shall not refer any instrument or proposed instru-
10 ment back to the parties, or, as the case may be, to the appropriate authority, at any time before the 1st day of April 1974 if the Court is satisfied that, through negotiations between the parties or otherwise, satisfactory progress is being made to implement equal pay in accordance with section 4 of this Act.

15 *New*

(4) The Court shall not exercise any of its powers under this section without a hearing if any party to the instrument or proposed instrument requests a hearing.

11. Court may make partial award—(1) Notwithstanding
20 anything in the Industrial Conciliation and Arbitration Act 1954, and without limiting the powers of the Court under section 5 of this Act, where the parties to any industrial dispute within the meaning of that Act, or their representatives,
25 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 Clerk of Awards under section 134 of that Act, the Court may make an award incorporating the terms of the settlement and reserving the question of the
30 implementation of equal pay.

(2) Where the Court makes such an award, then, notwithstanding anything in the Industrial Conciliation and Arbitration Act 1954,—

35 (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:

40 (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 of this Act and amend
45 the award to give effect to that determination.

12. Further powers of Court—Without limiting any other power of the Court, whether under this Act or otherwise, the Court 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 of this Act: 5 10
- (b) Determine any question arising under subsection (1) of section 6, or, as the case may require, section 7, of this Act 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: 15
- (c) Determine any other question relating to the implementation of equal pay that may be referred to it pursuant to this Act: 20
- (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: 25
- (e) Determine such other questions and give such rulings as may be necessary for the exercise of its jurisdiction under this Act. 30

13. Recovery of remuneration based on equal pay—

- (1) Where any proceedings are taken against any employer in any Court 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 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 otherwise indicates. 35 40

(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 Court of Arbitration as if it were a claim for the recovery of wages under section 211 of the Industrial Conciliation and Arbitration Act 1954:

Provided that where the remuneration is payable under any instrument specified in paragraph (d) or paragraph (e) of the definition of the term "instrument" in subsection (1) of section 2 of this Act, no such claim under the said section 211 as applied by this section shall be brought except by an Inspector or, notwithstanding anything in section 206 of the Industrial Conciliation and Arbitration Act 1954, by a union of which the claimant is a member.

(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—

(a) Be commenced in any Court before the 1st day of April 1974; or

(b) Be commenced in any Court for the recovery of any such remuneration that became payable more than 2 years before the date of the commencement of the proceedings.

14. Procedure and jurisdiction of Court—(1) The provisions of the Industrial Conciliation and Arbitration Act 1954 relating to the powers and procedure of the Court in proceedings under that Act, as far as they are applicable and with the necessary modifications, shall apply with respect to proceedings before the Court under this Act.

(2) Where in any proceedings before any Court other than the Court of Arbitration for the recovery of remuneration alleged to be payable under any instrument any question arises as to whether that remuneration has been fixed in compliance with the requirements of this Act, that other Court may refer that question to the Court of Arbitration for its opinion, and that other Court may determine that question in accordance with the opinion given by the Court of Arbitration.

(3) Where any action is brought in any Magistrate's Court for the recovery of remuneration alleged to be payable pursuant to the provisions of this Act, any party to the action may appeal to the Court of Arbitration against the judgment of the Magistrate's Court and, notwithstanding anything in the Magistrates' Courts Act 1947, shall not be entitled to appeal to the Supreme Court against that judgment. 5

(4) On any appeal under subsection (3) of this section, the Court of Arbitration shall have the same powers as the Supreme Court has in respect of an appeal from a Magistrate's Court, and the determination of the Court of Arbitration shall be final. 10

(5) In respect of any such appeal, the provisions of sections 72 to 78 of the Magistrates' Courts Act 1947, as far as they are applicable and with the necessary modifications, shall apply with the substitution of references to the Court of Arbitration for the references therein to the Supreme Court, and with the substitution of references to the Clerk of Awards for the references therein to the Registrar of the Supreme Court. 15 20

(6) In proceedings in the Court of Arbitration in respect of which its jurisdiction arises only under this Act, its jurisdiction shall not extend beyond matters required for the determination of questions arising under this Act. 25

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. 30 35

(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 one of those specified in subsection (1) of this section. 40

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(3) Nothing in this section shall derogate from the rights of any person under section 179 of the Industrial Conciliation and Arbitration Act 1954 (as substituted by section 4 of the Industrial Conciliation and Arbitration Amendment Act 1970), relating to the settlement of personal grievances.

16. Powers of Inspectors—(1) For the purposes of this Act, every Inspector shall have, in addition to any powers conferred by this Act, all the powers that he has under the Industrial Conciliation and Arbitration Act 1954.

(2) For the purposes of this Act, and without limiting the provisions of subsection (1) of this section, an Inspector shall have and may exercise the following powers:

(a) To enter during ordinary working or business hours any building, office, or place where an employee is employed or where any business of an employer is transacted or any records of an employer (including any records referred to in section 17 of this Act) are kept:

(b) To require the employer, or, where the employer is a corporate body, any officer or employee of the employer, to produce any such records, and to verify any entries in the records of matters concerning employees of the employer:

(c) To examine any such records, to ask questions of any person concerning any such records or concerning any other matters relating to the employment of any person, and to require an employer, or, where the employer is a body corporate, any officer or employee of the employer, to verify any entries in any such records by statutory declaration or in such other manner and form as may be prescribed.

(3) No person shall be required to answer any question tending to incriminate himself put to him by an Inspector pursuant to this section.

(4) Except for the purposes of this Act and the performance or exercise of his functions and powers under this Act, an Inspector shall not disclose to any person any information that he acquires in the performance or exercise of his functions or powers.

17. Records to be kept by employers—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 shall comply with the provisions of section 181 of that Act as if he were so bound, and shall keep the records required to be kept by the said section 181— 5

- (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 of this Act, for at least 2 years after that last-mentioned date: 10
- (b) In the case of records in respect of any subsequent period, for at least 2 years after the end of that period. 15

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 20
 - (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 25
 - (c) Wilfully obstructs or hinders any Inspector in the performance of his functions or the exercise of his powers under section 16 of this Act; or
 - (d) Refuses or fails to comply with any requirement of an Inspector under subsection (2) of section 16 of this Act; or 30
 - (e) Subject to subsection (3) of section 16 of this Act, 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 of this Act; or 35
 - (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 summary conviction— 40
- (a) In the case of an offence committed by any person (not being a body corporate), to a fine not exceeding ~~(\$500)~~ \$400;
 - (b) In the case of an offence committed by a body corporate, to a fine not exceeding ~~(\$2,000)~~ \$1,000. 45

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
5 due administration.

20. Act to be administered in Department of Labour—

(1) This Act shall be administered in the Department of Labour.

(2) The First Schedule to the Labour Department Act
10 1954 (as substituted by section 3 (1) of the Labour Department Amendment Act 1970) is hereby amended by inserting, after the reference to the Employment Agents Act 1908, the words “The Equal Pay Act 1972”.