

Industrial Relations (Equal Remuneration) Amendment Bill 2011

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Western Australia

LEGISLATIVE COUNCIL

(Introduced by the Hon. Alison Xamon MLC)

**Industrial Relations (Equal Remuneration)
Amendment Bill 2011**

A Bill for

An Act to amend the *Industrial Relations Act 1979*.

The Parliament of Western Australia enacts as follows:

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1 **1. Short title**

2 This is the *Industrial Relations (Equal Remuneration)*
3 *Amendment Act 2011*.

4 **2. Commencement**

5 This Act comes into operation as follows —

- 6 (a) sections 1 and 2 — on the day on which this Act
7 receives the Royal Assent;
8 (b) the rest of the Act — on a day fixed by proclamation,
9 and different days may be fixed for different provisions.

10 **3. Act amended**

11 This Act amends the *Industrial Relations Act 1979*.

12 **4. Section 6 amended**

13 In section 6:

- 14 (a) delete paragraph (ac) and insert:
15
16 (ac) to ensure equal remuneration for men and
17 women employees for work of equal or
18 comparable value; and
19
20 (b) after paragraphs (a), (aa), (ab) and (ad) to (e) insert:
21
22 and
23

24 **5. Section 7 amended**

- 25 (1) In section 7(1) insert in alphabetical order:
26

27 *equal remuneration for work of equal or comparable*
28 *value* has the meaning given in section 23C(1);

1 *equal remuneration order* has the meaning given in
2 section 23C(2);
3 *remuneration*, for a provision relating to work of equal
4 or comparable value, includes —
5 (a) the wage or salary payable to an employee; and
6 (b) amounts payable or other benefits made
7 available to an employee under a contract of
8 service;

9
10 (2) In section 7(1) in the definition of *industrial matter* after
11 paragraph (a) insert:

12
13 (ba) equal remuneration for men and women
14 employees for work of equal or comparable
15 value;

16
17 **6. Section 23 amended**

18 In section 23(3):

19 (a) in paragraph (h)(ii) delete “section 23A.” and insert:
20
21 section 23A;

22
23 (b) after paragraph (h) insert:

24
25 (i) on a claim for equal remuneration for work of
26 equal or comparable value, make any order
27 except an order that is authorised under
28 section 23C.

29

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7. Section 23C inserted

After section 23B insert:

23C. Equal remuneration order

(1) In this section —

equal remuneration for work of equal or comparable value means equal remuneration for men and women employees for work of equal or comparable value.

(2) The Commission may make an order (an *equal remuneration order*) if the Commission considers it appropriate to ensure that, for employees to whom the order will apply, there will be equal remuneration for work of equal or comparable value.

(3) However, the Commission may make the equal remuneration order only if it is satisfied that, for the employees to whom the order will apply, there is not equal remuneration for work of equal or comparable value.

(4) Without limiting subsection (2), an equal remuneration order may provide for such increases in rates of remuneration as the Commission considers appropriate to ensure that, for employees to whom the order will apply, there will be equal remuneration for work of equal or comparable value.

(5) An equal remuneration order must not provide for a reduction in an employee's rate of remuneration.

(6) An equal remuneration order may implement equal remuneration for work of equal or comparable value —

(a) immediately; or

(b) progressively, in stages as provided in the order.

- 1 (7) An employer must not reduce an employee's
2 remuneration because a claim for an equal
3 remuneration order, or an equal remuneration order,
4 has been made.
- 5 (8) If an employer purports to do so, the reduction is of no
6 effect.
- 7 (9) A term of an award, industrial agreement or order has
8 no effect in relation to an employee to the extent that it
9 is less beneficial to the employee than a term of an
10 equal remuneration order that applies to the employee.
- 11 (10) Subject to section 29AB, this section does not limit any
12 right a person may otherwise have to secure equal
13 remuneration for work of equal or comparable value.
14

15 **8. Section 29 amended**

16 In section 29(1):

- 17 (a) in paragraph (b)(ii) delete “employment,” and insert:
18
19 employment; or
20
- 21 (b) after paragraph (b)(ii) insert:
22
23 (iii) for equal remuneration for work of
24 equal or comparable value,
25
- 26 (c) in paragraph (b) delete “by the employee.” and insert:
27
28 by the employee; or
29

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- 1 (d) after paragraph (b) insert:
2
3 (c) in the case of a claim for equal remuneration
4 for work of equal or comparable value, by the
5 Commissioner for Equal Opportunity appointed
6 under the *Equal Opportunity Act 1984*
7 section 75.
8

9 **9. Section 29AB inserted**

10 After section 29AA insert:
11

12 **29AB. Certain equal remuneration claims not to be**
13 **determined**

- 14 (1) The Commission must not determine a claim for an
15 equal remuneration order in relation to an employee if
16 proceedings for an alternative remedy —
17 (a) to ensure equal remuneration for work of equal
18 or comparable value for the employee; or
19 (b) against unequal remuneration for work of equal
20 or comparable value for the employee,
21 have commenced under another provision of this Act
22 or another law of the State or the Commonwealth.
23 (2) Subsection (1) does not prevent the Commission from
24 dealing with the claim if the proceedings for the
25 alternative remedy —
26 (a) have been discontinued by the party who
27 commenced the proceedings; or
28 (b) have failed for want of jurisdiction.
29 (3) If a claim has been made to the Commission for an
30 equal remuneration order in relation to an employee, a
31 person is not entitled to commence proceedings for an

alternative remedy under this Act or any other law of the State —

- (a) to ensure equal remuneration for work of equal or comparable value for the employee; or
- (b) against unequal remuneration for work of equal or comparable value for the employee.

(4) Subsection (3) does not prevent a person from commencing proceedings for an alternative remedy if proceedings for an equal remuneration order —

- (a) have been discontinued by the party who commenced the proceedings; or
- (b) have failed for want of jurisdiction.

(5) A remedy that —

- (a) exists under a law of the State or the Commonwealth relating to discrimination in relation to employment; and
- (b) consists solely of compensation for past actions,

is not an alternative remedy for the purposes of this section.

10. Section 96 amended

In section 96(3):

(a) after paragraph (b) insert:

(ca) to make an equal remuneration order; and

(b) after paragraph (a) insert:

and