

Removing barriers to pay equity – Government introduces Equal Pay Amendment Bill

[Hamish Kynaston](#), [Peter Chemis](#), [Sherridan Cook](#), [Susan Rowe](#), [Alastair Sherriff](#), [Mere King](#), [Nicola Cuervo](#), [Holly Hedley](#)

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The 125th anniversary of women's suffrage in New Zealand was celebrated with what should be another milestone in equal rights, the introduction of the [Equal Pay Amendment Bill](#). The Bill incorporates the new recommendations of the Joint Working Group on Pay Equity Principles to make it easier for women to lodge pay equity claims.

Process for initiating pay equity claims

A specific process for initiating a pay equity claim is contained in the Bill, which the Government says will be easier and simpler than the process announced under the previous National government.

Under this process, an employee, or group of employees, will be required to raise an 'arguable' pay equity claim with their employer, or group of employers. It will be 'arguable' if the claim relates to work that is predominantly performed by women and where it is arguable that the work is currently undervalued, or has been historically undervalued. This threshold is lower than under National's withdrawn Bill, which required female employees to show that their claim had 'merit'.

Employer's obligations upon receiving a pay equity claim

Upon receiving a pay equity claim, an employer will be required to, within 20 working days, give notice to all other employees who perform work that is the same as, or substantially similar to, the work performed by the claimant. The employer will have 65 days from the date the claim is received to make a decision as to whether the claim is arguable and to notify the claimant.

If the employer agrees that the employee's claim is arguable, the parties proceed to 'pay equity bargaining' under the existing dispute resolution processes provided for in the Employment Relations Act 2000 (ie mediation in the first instance). Parties will be required to engage in an assessment of the nature of the work, remuneration levels and comparable work during any pay equity bargaining.

Comparators

This principle of 'comparators' has been retained from National's Bill, but the 'hierarchical approach' has been abolished, as it was thought to provide an unnecessary hurdle. In determining what constitutes comparable work, parties involved in pay equity bargaining will be able to identify comparators, which may include:

- Work performed by male comparators that is the same or substantially similar work
- Work performed by male comparators that is different but that involves the same or substantially similar skills and experience, responsibilities, working conditions, or degrees of effort
- Any other comparator that the parties or the Employment Relations Authority consider useful and relevant.

Therefore, a comparator may exist within the organisation or sector, or in another organisation or sector.

Provision of information

The Bill also obliges both parties to provide each other, upon request, information that is reasonably necessary to support or substantiate claims made for the purposes of bargaining. However, this obligation will only arise once the employer has accepted that an employee's pay equity claim is arguable. For employees, this means that it may be difficult to gather enough information to establish an 'arguable' claim. For employers, this means that the administrative burden will not be as substantial as it could have been.

Unlike in some other jurisdictions, the Bill does not require employers to proactively supply pay equity-related information to employees or to undertake any form of pay audits. This is surprising, given that Green MP Jan Logie's Member's Bill, defeated by National in May 2017, sought to increase the amount of information publicly available and contained record-keeping obligations. It may be that additional obligations are introduced following the Select Committee stage.

Settling pay equity claims

A pay equity claim will be deemed to be 'settled' under the Bill when the parties record a determined level of remuneration that does not differentiate between male and female employees, and a process to review the employee's terms and conditions of employment to ensure the maintenance of pay equity. It is not clear under the Bill what this process might look like, but a regular audit of an employer's pay practices will likely be one option.

Where parties are having difficulties resolving a pay equity claim, the Bill provides that either party may refer one or more issues to the Authority for facilitation. However, the Authority would not be able to accept a reference unless it is satisfied that facilitation may be useful to resolve the issue(s) and either a party has failed to comply with its duty of good faith and/or sufficient efforts, including mediation, have failed to resolve an issue relating to that claim.

If that fails, the Parties can also apply to the Authority or court for a determination. The Bill also permits the Authority to award back pay in a pay equity determination, for a period of up to six years. While this aspect of the Bill has proved to be controversial, it does not represent a fundamental shift in the legal framework. National's Bill sought to eliminate the ability for women to claim any form of back pay, but the current Bill simply retains the status quo.

Thoughts

While the Bill certainly represents a step in the right direction, it is apparent that there are issues which will need to be ironed for the Bill to fully achieve its objectives. While it appears to provide a clear framework to address pay equity issues, technically, New Zealand has had legislation that has 'required' equal pay for work of equal value for over 40 years. It is likely that other changes will be required in the future to ensure pay equity is achieved. Given the priority that the new Government has given pay equity to date, such changes may well be in the works. In the meantime, we will report back as the Bill progresses through Parliament.

We would be happy to assist with any Select Committee submissions on the Bill.

This update was written by [Sherridan Cook](#) (partner), [Tasha Kuypers](#) (solicitor) and [Jennifer Howes](#) (legal adviser).

Auckland

188 Quay Street
Auckland 1010

PO Box 1433
Auckland 1140
New Zealand

P: +64 9 358 2555
F: +64 9 358 2055

Wellington

Aon Centre
1 Willis Street
Wellington 6011

PO Box 2694
Wellington 6140
New Zealand

P: +64 4 499 4242
F: +64 4 499 4141

Christchurch

83 Victoria Street
Christchurch 8013

PO Box 322
Christchurch 8140
New Zealand

P: +64 3 379 1747
F: +64 3 379 5659