



**National Council of
Women of New Zealand**
Te Kaunihera
Wahine O Aotearoa

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Submission to the Transport and Industrial Relations Committee on the Employment Relations Law Reform Bill

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 42 nationally organised societies. It has 33 branches throughout the country attended by representatives of these societies. The Council's function is to serve women, the family and the community at local, national and international levels through research, study, discussion and action.

One of the greatest strengths of NCWNZ is the ability we have to network with the organisations we represent and many other women's groups so as to obtain a very wide and varied base for our submissions. Unfortunately when we receive a Bill at the end of November, as we did with this Bill, it is very hard to make these contacts, as it is rare for Branches to meet in December and January. Therefore this response is generated from the opinions of selected members, both employers and employees, who were contacted directly, and some other members who had expressed concern about Part 2 of the Bill.

NCWNZ policy in relation to the employment of women and children was formulated at its inception in 1896 and has been reviewed and updated continually. This policy has stressed equal pay for equal work, for equivalent work, and for work of equal value. NCWNZ supports, and encourages the Government to support, the Convention for the Elimination of all Forms of Discrimination Against Women (CEDAW) and ILO Convention 100.

Part 1 Employment Relations Act 2000

Clause 6 Parties ... to deal with each other in good faith.

NCWNZ is pleased to see the clearer definition that good faith behaviour is in addition to trust and confidence obligations. In particular, the members consulted appreciated the clarity of the additional clause (6) to Section 4 defining when an employer is in breach of good faith and collective bargaining

Clause 9 Access to workplaces

While our members were pleased to see what constitutes access to the workplace by the union has now been defined in the legislation, they were concerned that this was too loosely defined. Access is quantified for group activities and it would be appropriate to quantify time spent with individuals to avoid disruption of work patterns.

Clause 15 New heading and Sections 50A to 50J inserted

NCWNZ supports the inclusion of Sections 50A to 50J providing clarity to the process that facilitates collective bargaining when there is serious difficulty in concluding a collective agreement. We feel that Sections 50A to 50J should be strengthened by requiring that facilitation take place within a defined timeframe.



**Clause 30 New Part 6A inserted**

In many recent submissions, NCWNZ has highlighted issues in relation to low paid, part time or casual workers. Whilst these clauses are good for the employee because they provide security of tenure, we are concerned that this section may be too restrictive for a prospective new employer.

Clause 35 Part 8 A

NCWNZ is pleased to see that recently negotiated agreements are reflected in the Act. Concern has been expressed about the incorporation of the provisions of new clause 100D. Industrial action in the health sector is already constrained by the requirement for 14 days notice of industrial notice, restrictions on industrial action in the early stages of bargaining, and mediation.

Part 2 Equal pay

NCWNZ is pleased to see the use of non-gender specific language, and the following identified in the proposed legislation:

- duty to provide equal pay (Subpart 2)
- a process for comparison when no comparable other-gender employee is employed (Clause 74(1)(d)(ii))
- inclusion of equal pay across multi-employer collective agreements (Clause 76(2))
- inclusion of arrears (Clause 88)

Clause 74 and 76 definitions of equal pay

While the definition of equal pay is broad, National Council of Women seeks clarification that remuneration does include those terms and conditions that were defined in the Equal Pay Act 1972 Section 2A(1). This Act itemises fringe benefits, opportunities for training, promotion and transfer all of which may impact significantly on the content of pay structures.

Based on Statistics New Zealand figures, women are now 47 percent of all employees in New Zealand and on average they earn 84.3 percent of the average hourly earnings of men. When disaggregated by ethnicity, the pay gap is larger still, particularly when Maori and Pacific women are compared to all men. In recent research¹, the Ministry of Women's Affairs (MWA) suggests that not all of the differences between men's and women's pay can be explained by factors such as education or time in the workforce. The concentration of women in a narrow range of low paid occupations using skills such as caring and relationship management suggests that work that has been seen as being traditionally 'women's work' is not valued as highly as work that is considered to be 'men's work'. MWA notes that international conventions ratified by New Zealand recommend that the part of the gender pay gap that results from the undervaluing of traditional female skills be addressed through the principle of 'equal pay for work of equal value'. It is disappointing therefore that this principle is not being addressed by the proposed legislation.

NCWNZ strongly opposes the repeal of the both the Equal Pay Act 1972 and the Government Service Equal Pay Act 1960 because by removing these Acts there is no longer any opportunity or mechanism for taking equal pay for work of equal value claims to the employment tribunal/court. It also places New Zealand in breach of our international obligations under CEDAW (Article 11 Section 1(d)) and ILO Convention 100 (Articles 1-3).

These articles define remuneration to include ordinary, basic or minimum wage or salary and any additional emoluments and use the term equal remuneration for men and women workers for work of equal value to refer to rates of remuneration established without discrimination based on sex.

¹ Ministry of Women's Affairs. 2001. *Next steps towards pay equity*.



They advocate that members should take all appropriate measures to ensure that all workers have equal remuneration for work of equal value.

NCWNZ would reconsider its stance if there were a clear commitment to preserving and improving existing rights, ie

- cover for both equal pay and equal pay for work of equal value
- provision for individual and collective claims
- allowance for the role of unions in claims
- creation of a transparent process
- allowance of access to pay information by employees
- inclusion of access to independent expert advice and support
- enforcement through existing institutions

NCWNZ is disappointed that this legislation has been introduced at a time when the government has a Task Force on Pay and Employment Equity in the public service, public health and education that is due to report back on 1 March 2004.

Beryl Anderson
National President