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S18.40

Submission to the Education and Workforce Committee on the Equal Pay Amendment Bill 103-1

Introduction

- 0.1. The National Council of Women of New Zealand, Te Kaunihera Wahine o Aotearoa (NCWNZ) is an umbrella group representing over 200 organisations affiliated at either national level or to one of our 15 branches. In addition, about 450 people are individual members. Collectively our reach is over 450,000 with many of our membership organisations representing all genders. NCWNZ's vision is a gender equal New Zealand and research shows we will be better off socially and economically if we are gender equal. Through research, discussion and action, NCWNZ in partnership with others, seeks to realise its vision of gender equality because it is a basic human right. This submission has been prepared by the NCWNZ Employment Standing Committee and the Parliamentary Watch Committee after consultation with the membership of NCWNZ.
- 0.2. This submission is based on NCWNZ resolutions and policy built up since NCWNZ was first formed in 1896. Branches and affiliated organisations have discussed the Bill and contributed to the submission, involving members from a wide cross section of New Zealand society based from Auckland and Manukau in the North to Dunedin and Invercargill in the South.

Summary and Recommendations

- NCWNZ warmly welcomes the Equal Pay Amendment Bill (the Bill) and strongly supports the inclusion of the agreed Pay Equity Principles. Particular support is noted in regards of the following:
 - the replacement of the 'high bar' of 'merit' with the much lower bar of 'arguable case' cl.18 new s.13F;
 - that comparators used to establish a fair pay rate are those considered by the parties to be 'useful and relevant' cl.18 new s.13L(1); and,
 - that work which is either currently or historically undervalued and predominantly performed by women is included in the Bill cl.18 new s.13L(2)(b).

- NCWNZ believes that the process in the Bill needs streamlining to improve the ability of a claimant to progress a pay equity claim cl.18 new s. 13D to F.
- NCWNZ members believed the Employment Authority will need extra resourcing which is adequate for its new and expanded role and would like to see an acknowledgement of the need for mediators with specialist skills and knowledge in this field.
- NCWNZ members noted that pay equity, equal pay and employment equity are inter-linked and strongly recommends that the Bill include the Gender Pay Principles which were also agreed in a working group of employers, unions and the Crown. These principles tackle the other recognised reasons for the gender pay gap.
- NCWNZ members noted and welcomed the commitment of the Minister for Women, Minister of State Services and the State Services Commission to actioning the Gender Pay Principles and believe that this will be essential in addressing the unfair gender pay gap in the state sector. NCWNZ members recommended that these principles also be applied to the private sector and note that the Equal Pay Act 1972 covers both private and public sectors.
- NCWNZ believes that transparency of information is vital to achieving equal pay/pay equity but members had differing views regarding how adequate the Bill's provisions were in this regard.
- NCWNZ strongly supports the establishment of a unit/commission to operationalise and implement pay equity/equal pay in accordance with the recommendations of the UN Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW 2012¹ and 2018²).

0.3. NCWNZ members particularly focused on five aspects of the Bill:

1. the process
2. the Employment Authority
3. inclusion of the Gender Pay Principles
4. transparency
5. pay equity unit or commission

1. The Pay Equity Principles and process (Part 4 Pay equity claims)

1.1. NCWNZ members were pleased to see that the 'high bar' of 'merit' has been replaced by the much lower bar of 'arguable case' and also appreciated that comparators used to establish a fair pay rate are those considered by the parties to be 'useful or relevant'. It was noted by NCWNZ members that

¹ Committee on the Elimination of Discrimination against Women. 2012. Concluding observations of the Committee on the Elimination of Discrimination against Women. CEDAW/C/NZL/CO/7.
https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CEDAW%2fC%2fNZL%2fCO%2f7&Lang=en

² Committee on the Elimination of Discrimination against Women. 2018. Concluding observations on the eighth periodic report of New Zealand. CEDAW/C/NZL/CO/8.
https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CEDAW%2fC%2fNZL%2fCO%2f8&Lang=en

recognition of work which is either currently or historically undervalued and predominantly performed by women should be included under the new legislation.

- 1.2. NCWNZ members were all agreed that the process should be easy to use for all women but particularly those with already limited resources. NCWNZ members wanted to ensure that the process would work for women who are influenced by multiple aspects of discrimination and therefore raised concerns about the ability of the current Authority to cope with the number of claims and the nature of them and to support doubly disadvantaged women through the process of making the claims.
- 1.3. Overall NCWNZ members felt that the process in this Bill needs further streamlining and that as it stands it could create more barriers, rather than improve the process. There is potential for stress and expense in delaying response to employees; for example 65 days is too long to wait for a response from the employer (cl.18 new s.13F(3)). It was noted by members that there are multiple points at which the process could be strung out e.g. the Authority insisting on mediation and facilitation rather than going to a determination when the parties have reached an impasse (cl.18 new s.13Z(2)).
- 1.4. The Bill sets up four roles for the Employment Authority i.e. facilitating cl.18 new s.13S – 13W, mediating cl.18 new s.13P, making recommendations cl.18 new s.13X and making determinations 13Z, however NCWNZ noted lack of reference to any additional resourcing of the Employment Authority.

2. The Employment Relations Authority cl. 18 new s. 13R

- 2.1. NCWNZ supports the purpose of the Bill in that it aims to improve the process so that it is simple and accessible. It was noted that if the Act was to be effective additional resources to enable the Authority to fulfil its new and expanded responsibilities would be essential. Such measures would be required if delays are to be avoided and determinations made in a timely and effective manner. NCWNZ would like to see the acknowledgement of the need for mediators to have specialist skills and knowledge in this field.

3. Gender Pay Principles

- 3.1. This Bill does not include the Gender Pay Principles which were also agreed in the Gender Pay Principles Joint Working Group of employers, unions and the Crown. These principles tackle the other reasons for the gender pay gap e.g. discrimination on the basis of sex around starting salaries, pay progression, promotions, parental leave and professional development. These examples of discrimination are grounds for an equal pay claim. The welcome commitment of the Minister for Women, Minister of State Services and the State Services Commission to actioning these principles means that the unfair gender pay gap in the state sector should be eliminated. However NCWNZ

members noted that women workers in the private sector would not have the same protections of these principles and note that the Equal Pay Act 1972 covers both the private and state sectors.

- 3.2. The following resolution was passed at the NCWNZ 2018 conference and states support for employment equity to ensure that pay, conditions, access to full range of jobs at all levels of the workplace, and experiences in the workplace, are not affected by gender.

That NCWNZ supports legislation that provides for the implementation, monitoring and effective enforcement of pay and employment equity. This includes:

- a) Equal Pay: equal pay for the same or similar work,
- b) Pay Equity: equal pay for work of equal value, and
- c) Employment Equity: to ensure that pay, conditions, access to the full range of jobs at all levels of the workplace, and experiences in the workplace, are not affected by gender. 2018.³

- 3.3. NCWNZ believes that focusing the Gender Pay Principles on the public sector only would mean that organisations such as law firms, banks, the dairy industry, service sector (including retirement and care businesses) and large organisations covering thousands of workers may see themselves as exempt from developing pay and employment equity policies and procedures.
- 3.4. Therefore NCWNZ strongly recommends that Gender Pay Principles cover both public and private sector employers and be included in the Equal Pay Act.

4. Transparency of information.

- 4.1. NCWNZ members had varying views about whether the transparency of information provisions in this Bill would be adequate for a claimant to know if they had a pay equity or equal pay case in the first instance and then how to argue it.
- 4.2. There was strong consensus from NCWNZ members around transparency and that it was vital for all employees to get equal pay/pay equity. A pay equity case requires knowledge of the sector and this links to the need for an independent unit doing pay and employment equity research.
- 4.3. Some NCWNZ members noted concerns that small employers could find full transparency difficult but were reassured by the independent reviewer option 13k (3).
- 4.4. NCWNZ members support the language in the Bill around the provision of information.
- 4.5. Some NCWNZ members noted that from an employer's perspective, there may be information about pay rates for a group of individual employees which should remain confidential and shared with an independent third party instead of one or more employees making a pay equity claim.

³ NCWNZ. 2018. Appendix "D": Resolutions of National Meetings 2011-2018. 6.2.3.27.

<https://www.ncwnz.org.nz/wp-content/uploads/2018/11/Appendix-D-Resolutions-2011-2018.pdf>

- 4.6. However other NCWNZ members supported further transparency and believed that without knowledge of levels of remuneration/pay rates, an employee may not be aware of injustice and the need to lodge a claim. There was a risk that women could remain unaware of the problem without access to information.
- 4.7. NCWNZ members recommend that these different concerns could be resolved by a specialist Pay Equity/Equal Pay unit.

5. Establishment of a unit/commission

- 5.1. NCWNZ members strongly supported a call for a unit or commission to operationalise and implement pay equity/equal pay in accordance with Article 11 (d) of CEDAW⁴ This unit would provide advice, information and support around pay equity and equal pay generally. Such a unit could gather and provide data for pay equity claims as well as be a third party to consider information not able to be released because of confidentiality concerns. A unit like this could also be a support unit for individual women and people who cannot call on a union or agency for assistance.
- 5.2. NCWNZ members believe that accurate, objective data and analysis is needed to inform employers and employees and that a unit as described above could carry out this research and analysis and help policy setting and agencies to be proactive about developing, implementing and monitoring fair employment policy and regulation. A number of NCWNZ members recommended that such a unit needs to be independent of existing government agencies such as the Ministry of Business, Innovation and Employment (MBIE) and the Employment Relations Authority. There are a number of international examples, including the Workplace Gender Equality Agency⁵, created as a governmental statutory agency under the Australian Workplace Gender Equality Act 2012.
- 5.3. NCWNZ notes that the average gender pay gap has been decreasing over the past decade but the gap between the earnings of Pacifica women and Pākehā men has not decreased at all in the past ten years. For every \$1 that a Pākehā man earns Pacifica women still earn only \$0.72.⁶ Such a pattern is unlikely to be turned around by individual Pacifica women workers raising claims using the process in this Bill. It needs the focussed expertise and resources of a specialist government unit as recommended again by CEDAW in 2018.⁷

⁴ Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979.
<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>

⁵ Australian Government Workplace Gender Equality Agency <https://www.wgea.gov.au/>

⁶ Household Labour Force Surveys 2008 and 2018

⁷ Committee on the Elimination of Discrimination against Women. 2018. Concluding observations on the eighth periodic report of New Zealand. CEDAW/C/NZL/CO/8.
https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fNZL%2fCO%2f8&Lang=en

- 5.4. NCWNZ reaffirms the recommendation in NCWNZ’s submission on the previous 2017 Bill⁸

“As noted in the Regulatory Impact Statement (paragraphs 88-98) current work and responsibilities for pay equity/equal pay is fragmented and involves a range of government and other organisations. We recommend that a centre with relevant expertise and knowledge be established to focus and, where relevant, coordinate pay equity/equal pay work. A centre could facilitate claims, provide advice and support, maintain monitoring and evaluation and summarise trends. It would also assist in the development of specific expertise for those who will be responsible for implementing the legislation. This expertise is currently in short supply.”

6. Conclusion

- 6.1. In conclusion the NCWNZ welcomes this Bill as it will enshrine the agreed Pay Equity Principles and process in law and provide a step forward in achieving pay and employment equity for women. NCWNZ believes, however, that the Bill requires further amendments if it is to make significant progress in achieving its purpose of improving the process for raising and progressing pay equity claims and eliminative and preventing discrimination on the basis of sex in the remuneration and employment terms and conditions for work done within female dominated jobs.
- 6.2. These recommended amendments include streamlining the process for making claims, adequately resourcing the Employment Relations Authority, and addressing issues around transparency of information.
- 6.3. NCWNZ also notes concerns regarding marginalised groups such as Māori, Pacifica, women with disabilities and non-unionised women who need extra support to achieve fair pay.
- 6.4. NCWNZ supports a specialist unit as essential to the achievement and sustainability of pay and employment equity and believe that the Gender Pay Principles should be included in the Equal Pay Act.



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⁸ NCWNZ. 2017. Submission to the Transport and Industrial Relations Committee on the Employment (Pay Equity and Equal Pay) Bill 284-1. S17.16. <https://www.ncwnz.org.nz/wp-content/uploads/2016/12/S17.16-Employment-Pay-Equity-and-Equal-Pay-Bill.pdf>