



## New Equal Pay and Pay Equity law – help us fix it

### Key points

- Days after the historic care and support workers equal pay settlement, government released its proposed new law for equal pay and pay equity, via an exposure draft Bill.
- A key problem is that the Bill adds additional barriers for women taking pay equity claims by putting significant restrictions on the ‘comparator’ male dominated jobs that women select to help determine whether their job has been undervalued because it is female dominated.
- The government have opened a three week consultation on the Bill before it goes to Select Committee. This is a key window to make it clear that the Bill needs fixing to ensure it delivers pay equity for women.
- We need your help to ensure we get the best possible law. Please add a short comment now!

### Comparators

Pay equity means that women and men should receive equal pay for work of equal value. This involves working out the rate of pay that would be paid to male workers with the same (or substantially similar) skills, effort, responsibility and conditions as the female workers taking the pay equity case. A pay equity process identifies one or a number of male ‘comparators’ to help assess this.

Sometimes these comparators might be from the same industry, but sometimes they will need to be from a different industry – particularly when a whole industry of work has been undervalued and affected by gender discrimination because it's been work performed largely by women.

The Bill (at Clause 23) sets out a limiting mechanism for comparators by establishing a hierarchy which tries to keep comparators as close as possible to the equal pay claimants’ workplace. The hierarchy would mean comparators would have to be selected as follows:

1. Comparators within the same business, or if not then
2. Comparators from within a similar business, or if not then
3. Comparators from within the same industry/sector, or if not then
4. Comparators from a different industry or sector.

Women need to be able to select the most appropriate comparator for their particular role, regardless of who their employer happens to be.

Although there is provision in the Bill to deal with comparators that may themselves be historically undervalued, under the above process women would still need to prove there are no appropriate comparators in each of the steps (meaning they'd have to consider male comparators in each step and prove they don't have the same skills, effort, responsibility and conditions) before moving on to the next one. This is at odds with the existing Equal Pay Act, the recent Court of Appeal Judgement in the Kristine Bartlett case, and is impractical and ultimately impedes and slows down women making pay equity claims.

### **Other issues of concern**

There are other issues of concern with the Bill. These include the complexity of the process needed to establish merit (clause 14) in particular. The Council of Trade Unions and several unions and NGOs will be doing a detailed submission, contact Sue O'Shea at [sueo@nzctu.org.nz](mailto:sueo@nzctu.org.nz) if you'd like more information. We'd also welcome any of your feedback on issues you plan to raise in your comments too.

## **Frequently asked Questions**

### **What does the bill do?**

It repeals the 1972 Equal Pay Act and sets out the process for taking equal pay and pay equity claims. It sets out that any worker may raise an equal pay or pay equity claim, describes how and when the employer must respond and how the merit of the claim is assessed, requires parties to enter bargaining over the claim using the pay equity principles and comparators, and provides that if bargaining does not resolve it, then the Employment Relations Authority or Court can be involved.

### **Why should I add a comment/submission to the exposure draft?**

Because we don't think the government have got the draft Bill right, and it's important they hear from working people that it needs fixing. We've waited a long time to get progress on equal pay – we need to make sure we get this right.

### **Do I need to do a long or detailed comment/submission?**

No. The Council of Trade Unions and several unions, plus many community and women's organisations will be doing detailed submissions. Your comments don't need to be long at all – a few paragraphs will be fine. All help to reinforce that this issue of comparators needs fixing.

### **What should I say in my comments?**

We think all submissions should include these points on comparators (plus others if you wish)

- Comparators are a crucial part of assessing whether pay inequity exists, and it's essential that women aren't restricted in choosing appropriate comparators.
- The government's proposed hierarchy of comparators are impractical and will impede and slow down women taking pay equity claims.
- Sometimes it's important that comparators come from outside the industry if that industry as a whole has been tainted by gender bias.
- The fairest outcome is that the best and most relevant comparator should be the one used.

### **Where can I get help on writing my comments?**

If you are a union member then contact your union and ask for the person working on equal pay.

### **How do I send in my comments?**

You can email it to MBIE (or post it). Email it to [EmploymentRelations@mbie.govt.nz](mailto:EmploymentRelations@mbie.govt.nz), and include your name and contact details (and the name of your organisation/group if it's on behalf of a group). All submissions will be public unless you specify otherwise. Remember **submissions close 5pm on Thursday, 11 May 2017**. Visit this web link for details of how to post it: [www.tinyurl.com/EqualPayBillApril2017](http://www.tinyurl.com/EqualPayBillApril2017), and for other information about the consultation.

### **What is the difference between equal pay and pay equity?**

Equal pay means that women and men should receive the same pay for doing the same job. Pay equity means that women and men should receive the same pay for doing different jobs, but jobs that are of equal value – and involves working out the rate of pay that would be paid to male workers with the same (or substantially similar) skills, effort, responsibility and conditions as the female workers compared with.