



**PSA
Submission on
the
Equal Pay
Amendment
Bill
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Submission to the Employment and Workforce Select Committee on the Equal Pay Amendment Bill 2018 by the New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi

About the PSA

The PSA is the largest trade union in Aotearoa New Zealand with over 70,000 members. We are a democratic organisation representing members in the public service, the wider state sector (the district health boards, crown research institutes and other crown entities), state owned enterprises, local government, tertiary education institutions and non-governmental organisations working in the health, social services and community sectors. Our membership is 73% women.

The PSA has been advocating for strong, innovative and effective public and community services since our establishment in 1913. People join the PSA to negotiate their terms of employment collectively, to have a voice within their workplace and to have an independent public voice on the quality of public and community services and how they are delivered.

The PSA has a long and proud history of advocating for equal pay. A policy of equal pay was adopted within a year of the PSA being formed, in 1913. The PSA won the case for equal pay for women public servants by progressing the case of Jean Parker in 1956. The Parker case successfully challenged the assumption of men requiring higher pay because they had financial responsibility for dependents while women wage earners did not. The PSA campaigned for legislative change in support of equal pay and the Government Service Equal Pay Act was passed in 1960.

Equal pay has always been a central goal for the PSA. In the early 2000s the PSA launched the Pay and Employment Equity Agenda which led to the formation of the PAEE Taskforce and subsequent pay and employment equity reviews across the state sector, supported by the establishment of the Pay and Employment Equity Unit located in the Department of Labour.

More recently, the PSA has identified equal pay as one of its four strategic goals. Following the success of Kristine Bartlett's case (*SERVICE AND FOOD WORKERS UNION NGA RINGA TOTA INC v TERRANOVA HOMES AND CARE LIMITED NZEmpC AUCKLAND 2013 NZEmpC 157 [22 August 2013]*), the PSA was one of the joint working group partners which developed the pay equity principles to guide the process and implementation of equal pay for female dominated occupations. The PSA, together with NZNO and E

Tū, negotiated the care and support worker settlement and vocational disability settlements. Together with E Tū we also negotiated the mental health and addictions support worker pay equity settlement. We used the pay equity principles agreed to by the RJWG to settle our equal pay claim for social workers at Oranga Tamariki. The PSA was also a partner in the development of the Gender Pay Principles, designed to implement equal pay throughout the state sector.

Te Rūnanga o Ngā Toa Āwhina is the body that represents and coordinates Māori members within the structures of the PSA. Te Rūnanga o Ngā Toa Āwhina o Te Pūkenga Here Tikanga Mahi has read this submission and Te Runanga’s comments are incorporated within this submission.

The PSA is an affiliate of the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU) and supports the submission of the CTU on this Bill. As an affiliate of the CTU the PSA is actively involved in the Pay Equity Coalition. The PSA participated in the Joint Working Group and the Reconvened Joint Working Group (the RJWG) and we support the principles developed by these two groups and finalised by the RJWG.



Overall comment

The New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi (the PSA) considers this Bill is an important addition to Aotearoa New Zealand’s human rights legislation. It provides key advancements toward removing gender-based undervaluation in the rates of pay for women in the

workplace. The principles of partnership, protection and participation embodied in Te Tiriti o Waitangi can also be advanced in the workplace through this important legislation.

We consider this in turn will provide important advances for Māori and Pacific women.

The PSA supports the stated intention of the changes to the Equal Pay Act 1972 (the Act) to improve the process for raising and progressing pay equity claims and eliminating and preventing gender-based discrimination for those employed in female dominated work.

The PSA supports the purpose of the Bill in confirming women's right to equal pay rates and in strengthening women's access to pay equity pay rates by incorporating into the Act the pay equity principles agreed to by the RJWG into the Act. These principles stand alongside other initiatives to reduce inequities. We see this as an important step forward for woman workers. As a union, we applaud the enactment of the pay equity principles agreed to by the RJWG including the provisions which support the negotiation of pay equity rates on a collective basis through unions.

The PSA is proud to have been involved in the care and support, vocational disability and the mental health and addictions support worker pay equity settlements. We have used the pay equity principles agreed to by the RJWG to successfully settle our equal pay claim for social workers at Oranga Tamariki. These settlements have not only made a significant financial difference to the women involved, they have also had a positive impact on the recognition finally attached to the work they perform.

We consider confirming the right to collectively negotiate pay equity rates in the Act will provide women with a greater ability to advance pay equity claims, to achieve pay equity rates and to remove gender-based discrimination in their rates of pay. We consider that it is essential the enhanced bargaining supports are combined with an ability to progress claims through the Employment Relations Authority and the Courts as this will best serve the stated purpose of the Bill.



PSA members have made the following comments about the Bill:

Attention Education & Workforce Select Committee-New Zealand Parliament

Submission - Equal Pay Amendment Bill

- *I am employed in the Community Public Sector as a Support Worker - in Auckland/Tamaki Makaurau and I work 48 hrs per week.*

I think it is important that the protection of Māori Women's Working conditions namely Equal Pay is promoted and recognized for the following Reasons:

A low wage economy has lead to disparities in health, education, employment, social injustice and increased incarceration of Māori men and women.

A higher wage economy will increase standards of living and generate a healthier economy.

The pay equity gap is discriminatory, particularly against women working in sectors that do not recognize Equal Pay.

Barriers to Equal Pay should be removed to promote quality of life for Māori women and their whanau and to ensure improved outcomes.

The Relationship between the Crown and Iwi/hapu, supports the Protection of Tangata Whenua/Indigenous People and their Resources, forests, land, rivers, sea, cultural practices/tikanga and Te Reo.

Māori women represent a significant number of women employed in low paid employment, (PSA Māori Membership is just under 12,000 74% of Māori Membership are women), the improvement of working conditions is a Human Rights issue. That's why we support making it easier to make and settle a pay equity claim.

My Story

In order to acquire an appropriate income women in this sector work longer hours, working 60 hours plus a week. This compounds the loss of time spent with their children, family members and their quality of life. Up until 2016 Guaranteed Hours Contract was implemented replacing casual hours. This provided Job Security for many women who have been employed entirely, or for long periods in the Community Public Sector.

- *I am on a single income due to a change in my personal circumstances with the sudden death of my husband. My income has now halved and with the current cost of living, there is not a lot over each fortnight to pay the bills and live on. We appear to have not moved on from 125 years ago where women to this day are still disadvantaged in the workplace and are paid considerably less. In the Admin sector I work within, the pay scale is very low & out of date for the type of work myself and my colleagues carry out. There is a constant struggle for pay justice & equality within our sector.
It is time for change and recognition of women in their working roles, for the outstanding work they carry out and the commitment & contribution they make within their roles.*
- *I work alongside several women of Pasefika heritage who have worked for the DHB from 20 – 40 years.
These women have been loyal to the DHB and have entered the work force as young women, married, created families.
They have worked in administrative roles and have seen many changes. One of the changes which they have not seen is a significant increase to their pay. They have been dedicated to the workplace and their managers and to their work colleagues.
They have sacrificed additional hours often to help get the work done without being paid overtime nor any real recognition of the time and energy they give. Their kindness has been exploited and they have been taken for granted. These women with all their experience and skills have been grouped together with school leavers and other recently arrived employees to the workforce with minimal years experience and there is not much difference to their pay. Pasefika women are viewed as humble workers who will barely speak up. Bright and always smiling.
They often do not speak up for fear of repercussion and with the notion they should be grateful they have a job.
Well, enough is enough. Close the pay gender gap. Pay fairly to our women. Despite the cost of living having skyrocketed in Aotearoa unfortunately this is not reflected with the wages and salaries of many female employees nationwide. Just make it right so the future of all New Zealanders – not just a few – can be successful and prosperous.*
- *I feel like for such a progressive country we are falling behind with pay equality. We were the first country to give the woman the vote and our current leader is a female, but our pay gap does not reflect our core values.*

So many females are struggling to raise a family or survive on their own, even though they are doing valued and imperative work for our society.

In particular, the PSA supports the following:

- **Adopting into the Act the pay equity principles agreed to by the RJWG**
- **Setting the threshold to enter pay equity bargaining at 'arguable'**

- **Retaining key sections of the 1972 Act, in particular the section 3(1)(a) and (b) definitions of equal pay for the same work and pay equity for female dominated work**
- **Measures which strengthen a collective approach to pay equity negotiations**
- **Measures which provide the parties with flexibility and choice in relation to comparator(s)**

The PSA supports the concept that pay equity should be a matter for negotiation in the first instance, but do not want to see restrictions to women's right to take up pay equity in the Courts if bargaining is not progressing. Sections 13Q to 13Z set out the process to seek facilitation and determinations of the Employment Relations Authority in resolving a pay equity claim, such as to fix the terms and conditions including the rates of pay. The sections give the Authority the ability to send the parties back for facilitation, mediation, further facilitation, further mediation and discussions. We consider this gives too much scope for a resistant employer to delay pay equity for women. This added complexity will particularly impact Māori as they may consider pay equity will be too difficult to pursue. These sections need to be amended to remove obstacles to seeking determinations by the Authority or Court. We consider this will promote efficiency and effectiveness and remove undue delay in achieving pay equity settlements.

The PSA considers the ability for claimants to also pursue their claim in the Authority or Court is an important factor to enhance bargaining power during the pay equity negotiation process. It is our view that collective bargaining without the right to seek immediate redress in the Courts has not and would not deliver pay equity to women. If the ability to pursue a claim in the Authority or Court is fettered or permitted only as a last resort we consider this could lead to an unnecessarily protracted process which would severely weaken women's power when bargaining the rate. This would impede access to pay equity.

The PSA does not support the Bill's restrictive approach to backpay for pay equity rates set by the Employment Relations Authority. Nor do we support the use of facilitation for any matter other than bargaining the pay equity rate. We discuss these matters in more detail below and suggest technical amendments to the Bill.

The PSA is also concerned about the transitional arrangements for back pay. They are unnecessarily complex and not consistent with the principles of the RJWG. We also consider they may impede settlement of claims currently in negotiations.

The PSA is disappointed that the Bill does not require pay transparency. It is our view that in order to eliminate the gender pay gap, open scrutiny of what is paid to men and women must occur. We consider employers must be required to publish the rates they pay to men and women. We seek this obligation in statute together with a prescribed formula which sets out how the published rates are to be calculated. This is a vital measure to monitor our community's progress toward both equal pay and pay equity. If a decision is made that this Bill will not provide for gender pay transparency, the PSA urges the government to take steps in the very near future to amend the Employment Relations Act 2000 for this purpose.

The PSA is aware that pay disparities are greater for Māori and Pacific women and to support addressing this we also seek disclosure requirements based on ethnicity. We seek the application of Te Tiriti o Waitangi and the use of its principles to new and changing circumstances.

The PSA seeks the ability for unions to make pay equity claims for members based on classes of work rather than through a process which requires naming each individual for whom a claim is raised. We would consider any such requirement to be an impediment to long-awaited pay equity outcomes for our members.

The PSA would like employers who receive requests for comparator information to be required to provide this to a party in pay equity negotiations.

The PSA commends the Gender Pay Principles agreed for the state sector including the principle of freedom from bias and discrimination as it applies to valuing gender diversity. We consider active protection from bias and discrimination requires extending this principle beyond the state sector.

The PSA would like to make an oral submission to the select committee.

Detailed submissions on the Bill

New section 2B

We consider the requirement to make a choice of proceedings at new section 2B occurs too early in the claim process. We seek a change to the Bill so that the choice is made at the point of choosing a forum to have the matter heard rather than at the point when the matter is first raised.

New section 2AAC

The PSA considers the use of the words 'offered and afforded' in new sections 2AAC(a), 2AAC(b) and 13ZD(4) to be confusing and problematic. We seek the replacement of the words *offered and afforded by the employer* with the word *paid*.

The use of the phrase *offered and afforded by the employer* is a change to the Act which is not consistent with the pay equity principles agreed by the RJWG on Pay Equity Principles (RJWG).

New section 13C

A pay equity claim should be able to be raised by a union on the employee's behalf in a manner which is consistent with how collective bargaining is initiated, by describing the work in line with section 42(2) of the Employment Relations Act 2000.

New section 13D(1)(d)

The PSA considers the requirement to supply evidence relied on to support the elements is too high. It is the use of the word 'evidence' at this stage which is problematic, we suggest 'factors'.

New s 13E(1)(a)

The PSA does not see any useful purpose for a requirement that the employer must acknowledge the claim within 5 working days. We consider this unnecessarily adds an additional step to the process. If whether an employer has received a claim or not becomes an issue it should be subject to an ordinary test for receipt of correspondence.

A new s13E(8)(d)

We support new section 13E which requires an employer in receipt of a pay equity claim to let other people doing the same work know about the claim and provide them with information on how they can join the claim or start their own. There is a time limit for when this must happen of 20 days however the limit is then weakened. New section 13E(8) allows employers to extend the time simply by providing notice and reasons. We think this section needs to be tightened rather than leaving it open in a way that is likely to result in unnecessary delay. The PSA seeks an upper limit of 10 additional days on the employer's ability to extend the time for notifying affected employees that it has received a claim.

New section 13F

The PSA strongly supports the threshold that a pay equity claim be **arguable** in order for the parties to enter into the bargaining process. We consider the threshold of 'arguable' to be pitched at the correct level. This reflects the agreement reached by the RJWG. It is neither too difficult so as to inhibit worthy claims being progressed nor so low that non-viable claims would enter into the process.

New section 13F(1) and (6)

The PSA seeks a tighter time limit than 65 days for an employer to inform the claimant whether it considers the claim arguable after which a claim is deemed to be arguable in new section 13F(1) and 13F(6). It is our view that no later than 30 days is appropriate for this.

New section 13I

We seek the ability for claimants to also have a say about whether claims about similar work made to multiple employers are consolidated. It is our view that employee rights in this regard should be consistent with both employer rights and with ballots of workers which are held regarding multi-employer collective bargaining.

New section 13M

The PSA applauds the approach to choice of comparators contained in the Bill. During the pay equity bargaining process, it is imperative that the parties are able to choose from a variety of appropriate comparators in order to establish the pay equity rate. The 2017 Bill proposed by the last Government would have impeded access to pay equity justice for women by requiring, if at all possible, the use of comparator roles which also received 'gender-infected' rates. The new section 13M allows the parties to a pay equity claim to find the best and most appropriate comparators. The ability to choose non- infected comparators was key to the Court's decision in the Kristine Bartlett case and this Bill is consistent with that decision.

New section 13N(3)(b)(iii)

The PSA seeks the ability for unions to be able to file claims by describing work and without having to name the members individually.

New section 13N(3)(b)(vi)

The PSA supports this requirement and considers the legislation should be prescriptive on this point by specifying what is required to ensure pay equity is maintained. This will better ensure that settlements are not only lasting but also achieve and maintain pay equity pay rates.

New section 13R(2) (a) to (c)

The matters described in these sections; disputes about whether a claim is arguable; which work the claim relates to and what work is comparable are not appropriate for facilitation and the PSA is opposed to the use of facilitation for these matters. We consider the use of facilitation for any of these matters is inappropriate, unlikely to assist and likely to result in delay. Facilitation for such matters could weaken the stated purpose of the Bill. We prefer the use of mediation and a determination by the Authority to resolve these matters.

New section 13(S)(3)(c)

The PSA does not support the use of facilitation in these circumstances. We consider that if after the use of facilitation further protracted bargaining has occurred without agreement then it would be the appropriate time for the Authority to determine the pay equity rate without further delay.

New section 13Z(2)(c)

We object to requiring the Employment Relations Authority to order facilitation before it will rule on an undermining, serious and sustained breach of good faith during a bargaining process. It is imperative that the innocent party is able to bring a such a breach of good faith before the Authority or Court without delay if it so chooses.

New section 13ZB(2)(b)

The PSA considers a requirement that the Authority is satisfied that all other reasonable alternatives for settling a claim be exhausted before a determination which fixes terms and conditions of employment is problematic. This will reduce bargaining power for women and hinder access to pay equity.

New section 13ZC

We do not support the definition of past work as being work performed before the date of the determination. This restricted access to justice is not applied to any other employment entitlement and we consider it is important that it not be applied to women in this context. Nor do we support

the award of backpay being subject to considerations of such matters as the conduct of the parties, the ability of the employer to pay or the nature and extent of resources available to the parties. This scheme could act as an incentive for employers to drag out the process and as a driver toward lower paid settlements. It is inconsistent with women's right to pay equity.

The treatment of back pay was not dealt with by the RJWG. However the PSA notes that the ability to resort to the Authority or Court to have the rate set, and the ability to seek back pay, added significantly to the bargaining power of the women claimants in the pay equity settlements we have successfully settled recently. While back pay was not part of the final deal in any of the settlements, the ability to claim it added an important incentive to the employer groups and the funder to settle the claim efficiently and was an important lever in achieving the pay equity rates.

New section 18

We support increased penalties, but seek higher penalties as we consider this would provide a more effective incentive to be compliant.

Consistent use of the term 'experience' rather than 'service'

We seek the replacement of 'service' with 'experience' at new sections 2AAC(b)(i) and 13ZD(4)(a).

This is consistent with the principles developed by the RJWG

Transitional provisions

It is the PSA's view that claims already raised by employees or filed under the Equal Pay Act 1972 should be able to transition to the Part 4 process.

We encourage the Select Committee to allow claimants who have already raised a pay equity claim the choice of either progressing their claim (whether raised or filed) either under the current Act or under the amended Act. It is our view that this is consistent with the good faith approach unions have taken by already progressing claims as agreed by the RJWG.

In conclusion

The PSA asks the Committee as it considers submissions and reports back to the House on this Bill to make changes which advance women's access to pay equity.

We urge the Committee to bear in mind the words of Judge Christina Inglis in the Kristine Bartlett decision:

[109] Further, and more fundamentally, the expressed concerns relating to cost overlook one important point, namely the unquantifiable cost (including societal cost) of adopting an approach which may have the effect of perpetuating discrimination against a significant and vulnerable group

in the community simply because they are women, doing what has been described as undervalued women's work.

[110] History is redolent with examples of strongly voiced concerns about the implementation of anti-discrimination initiatives on the basis that they will spell financial and social ruin, but which prove to be misplaced or have been acceptable as the short term price of the longer term social good. The abolition of slavery is an old example, and the prohibition on discrimination in employment based on sex is both a recent and particularly apposite example.