

Equal Pay Amendment Bill

Government Bill

Explanatory note

General policy statement

Introduction

The purpose of this Bill is to improve the process for raising and progressing pay equity claims and eliminate and prevent discrimination, on the basis of sex, in the remuneration and employment terms and conditions for work done within female-dominated jobs. It aims to provide a simple and accessible process for claimants to progress a pay equity claim. In doing so, it also aims to promote the enduring settlement of claims relating to sex discrimination on pay equity grounds.

The Bill—

- amends the Equal Pay Act 1972 to establish a process for pay equity claims, while still retaining the rights and processes for claimants to raise equal pay and unlawful discrimination claims; and
- prohibits differentiation based on sex in the rate of remuneration offered to employees for work that is predominately performed by women and has been historically or currently undervalued; and
- enables employees to raise claims relating to sex discrimination in employment; and
- sets out the process for resolving a pay equity claim that is simple and accessible; and
- permits the courts or the Employment Relations Authority (the **Authority**) to award an amount of back pay in a pay equity determination.

Implementing these policies requires amendments to the Employment Relations Act 2000 and repealing the Government Service Equal Pay Act 1960.

Process for making and resolving pay equity claims

The Bill provides employees with a new process to raise a pay equity claim. An employee or group of employees may raise a pay equity claim with their employer or group of employers. If their employer considers the claim to be arguable then the parties will proceed to pay equity bargaining. A pay equity claim is arguable if it relates to work that is predominately performed by female employees and if the work is currently or has been historically undervalued. This reflects the policy intent that the threshold for raising a claim should be low so as to not create unnecessary hurdles for claimants, and that the process should be simple and accessible.

If a claim is arguable, this does not mean that there is a pay equity issue or that there will be a pay equity settlement. However, the employer and employee must enter into a pay equity bargaining process to agree on an enduring settlement comprising remuneration and terms and conditions of employment. Pay equity bargaining ordinarily must involve an assessment of the nature and remuneration of the work and comparable work, and must be undertaken free from assumptions based on sex. Claimants can use appropriate comparators against which to assess a pay equity claim. Appropriate comparators include any of the following:

- 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 Authority consider useful and relevant.

The Bill provides for a dispute resolution process based on the existing processes in the Employment Relations Act 2000. The Bill also enables parties to apply to the Authority for a determination relating to whether the claim is arguable, whether the work is currently, or has historically been, undervalued, or fixing terms and conditions of employment if other reasonable alternatives for settling the pay equity claim have been exhausted.

The Bill states that collective bargaining and pay equity are distinct, and entry into a collective agreement by an employer and a union does not settle or extinguish an unsettled pay equity claim between an employer and employee.

The Bill permits the courts or Authority to award back pay, in a way that balances the issues of addressing undervaluation and the structural nature of the discrimination while incentivising employers to address pay equity issues within the first 11 years following legislation being passed, with the incentives being progressively stronger after the first 5 years. The Bill also sets out factors that the courts must take into account when deciding whether to award back pay, and the amount, if any, to provide.

Enforcement

The Bill includes a penalty regime for non-compliance consistent with other employment legislation.

Amendments to Employment Relations Act 2000

The Bill provides for codes of employment practice to be approved to provide guidance on the application of the Employment Relations Act 2000 and other employment legislation.

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2018&no=103>.

Regulatory impact assessment

The Ministry of Business, Innovation, and Employment produced a regulatory impact assessment on 16 May 2018 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact assessment can be found at—

- <http://www.mbie.govt.nz/info-services/employment-skills/legislation-reviews/exposure-draft-employment-pay-equity-and-equal-pay-bill/documents-and-images/ris-pay-equity.pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. It provides that the Act comes into force on the day after the date on which it receives the Royal assent.

Clause 3 provides that the Bill amends the Equal Pay Act 1972 (the **principal Act**).

Part 1

Amendments to principal Act

Clause 4 inserts a new *Part 1 heading*, which reads “Preliminary provisions”. The new *Part 1 heading* will separate the standard preliminary provisions that appear at the start of the principal Act from the substantive provisions that follow.

Clause 5 amends section 2 of the principal Act, which is the interpretation section. The amendment inserts new definitions of the terms employment agreement, equal pay claim, and pay equity claim. It also repeals a number of spent definitions and updates terminology in others.

Clause 6 inserts *new sections 2AAA and 2AAB* into what will be Part 1 of the principal Act.

New section 2AAA gives effect to *new Schedule 1* of the principal Act (inserted by *clause 25*). That schedule contains transitional, savings, and related provisions.

New section 2AAB provides that the Act binds the Crown.

Clause 7 inserts a *new Part 2 heading* and *new section 2AAC*. The *new Part 2 heading* reads “Key provisions”, and the provisions that will appear beneath it are the following:

- *new section 2AAC* (differentiation in rates of remuneration prohibited):
- existing section 2A (unlawful discrimination):
- *new section 2B* (choice of proceedings):
- existing section 3 (criteria to be applied).

New section 2AAC prohibits an employer differentiating in the rates of remuneration provided to employees, on the basis of the sex of their employees. The Equal Pay Act 1972 does not currently explicitly prohibit such differentiation, although it is clear from the long title of the Act, and from the provisions within it (including section 6(8)), that a duty to not differentiate exists. By explicitly setting out the prohibition on differentiation in 2 separate paragraphs in *new section 2AAC*, it then becomes possible to carve out pay equity claims and provide a different process for resolving that category of claim.

The duty to provide equal pay is described in language that aligns with section 3 of the principal Act (which sets out criteria to be applied when determining claims). *New section 2AAC* provides that an employer must ensure that—

- there is no differentiation, on the basis of sex, between the rates of remuneration offered and afforded by the employer to employees of the employer who perform the same, or substantially similar, work; and
- there is no differentiation between the rates of remuneration offered and afforded by the employer for work that is exclusively or predominantly performed by female employees and the rate of remuneration that would be paid to male employees who—
 - have the same, or substantially similar, skills, responsibility and service; and
 - work under the same, or substantially similar, conditions, and with the same, or substantially similar, degrees of effort.

The first category covers an employee who wishes to bring a claim against their employer on the grounds that the employer is, on the basis of sex, paying another

employee more for doing the same or substantially similar work. (This can be considered to be a traditional equal pay claim.)

The second category covers an employee who performs work that is exclusively or predominantly performed by female employees, and who wishes to bring a claim against their employer on the grounds that a higher rate of remuneration would be paid to male employees who perform comparable work. A claim of this nature is defined as a pay equity claim.

It is possible that an employee may meet the criteria to bring a claim of either type, and the Bill would enable an employee in this position to choose which type of claim to bring.

Clause 8 amends section 2A of the principal Act, which prohibits unlawful discrimination. The amendment replaces subsection (2) with a *new subsection (2)* that provides that the section does not apply to a pay equity claim. (The process for dealing with pay equity claims is set out in *new Part 4*.) The existing subsection (2) prevents an employee from bringing a claim under section 2A and also a claim under the Human Rights Act 1993. This is now dealt with in *new section 2B*.

Clause 9 inserts *new section 2B* into the principal Act, which clarifies that if an employee considers that they have an unlawful discrimination, an equal pay, or a pay equity claim, they have a choice as to whether to bring the claim under the principal Act, bring the claim under the Human Rights Act 1993, or raise a personal grievance under the Employment Relations Act 2000, but they cannot take more than 1 of these actions.

Clause 10 amends section 3 of the principal Act to remove outdated and spent material.

Clause 11 repeals sections 4 to 8 of the principal Act, which are spent.

Clause 12 inserts a *new Part 3 heading*, which reads “Matters relating to equal pay claims”, and *new section 8A*. The provisions that will appear beneath the *new Part 3 heading* are the following:

- *new section 8A* (application of this Part) (this new provision provides that the provisions in *new Part 3* do not apply to a pay equity claim, or to a claim of unlawful discrimination under section 2A):
- existing section 9 (court may state principles for implementation of equal pay):
- existing section 10 (approval by court or Employment Relations Authority of employment agreements or proposed employment agreements):
- existing section 12 (further powers of Employment Relations Authority):
- existing section 13 (recovery of remuneration based on equal pay).

Clause 13 amends section 9 of the principal Act to remove references to spent sections.

Clause 14 amends section 10 of the principal Act by updating the terminology to refer to employment agreements rather than instruments, and to replace redundant references to repealed sections with references to achieving equal pay.

Clause 15 repeals section 11 of the principal Act, which is spent.

Clause 16 amends section 12 of the principal Act by repealing aspects that are spent, and updating references to instruments with references to employment agreements.

Clause 18 inserts a *new Part 4*, headed “Pay equity claims”. The provisions in that Part set out the process for an employee to raise a pay equity claim and how that claim must be progressed.

New section 13A sets out the purpose of *new Part 4*, which is to facilitate resolution of pay equity claims by,—

- setting a low threshold to raise a claim; and
- providing a simple and accessible process to progress a claim.

New section 13B defines the term employer, for the purposes of *new Part 4*, as being an employer in relation to whom a pay equity claim has been raised.

New section 13C sets out when a pay equity claim may be raised. It provides that an employee, or group of employees, may raise a pay equity claim if they consider the claim is arguable. A claim is arguable if—

- it relates to work that is predominantly performed by female employees; and
- it is arguable that the work is currently undervalued or has historically been undervalued.

New section 13C(3) sets out factors to which consideration may be given in determining whether it is arguable that work is currently undervalued or has historically been undervalued.

New section 13C(4) provides that a pay equity claim that relates to work that is covered by an existing pay equity claim settlement may only be raised if the Authority or court determines that it may be raised.

New section 13D sets out the process for making a pay equity claim, including a requirement that the claim must be in writing and must set out the elements required for an arguable pay equity claim and the evidence that the employee relies on in support of those elements.

New section 13E provides that an employer who receives a pay equity claim must—

- acknowledge receipt of the claim within 5 working days; and
- give notice of the claim to all of the employer’s other employees who perform work that is the same as, or substantially similar to, the work performed by the claimant.

The notice must be given as soon as is reasonably practicable and not later than 20 working days after the employer receives the claim. (This does not apply if the employer has already given notice of another claim that relates to the work.)

An employer may extend the time limit for notifying other affected employees if the employer has genuine reasons, based on reasonable grounds, for doing so.

New section 13F provides that an employer who receives a pay equity claim must decide whether, in the employer's view, the claim is arguable. The decision must be made and the claimant must be notified of the decision as soon as is reasonably practicable, and not later than 65 days after the employer receives the claim. The section also provides that a decision that a claim is arguable does not mean the employer agrees that a pay equity issue exists, or that a settlement will follow.

If the employer decides the claim is not arguable, the notice to the employee must set out the reasons for that decision and provide information about the steps the employee may take to challenge it.

If the employer decides the claim is arguable, the notice to the employee must provide information about the pay equity bargaining process.

If an employer fails, within 65 days of receiving the claim, to give notice to an employee who has made a pay equity claim, the employer is deemed to have accepted that the pay equity claim is arguable.

New section 13G provides that the provisions relating to the pay equity bargaining process apply to a pay equity claim in the following 2 circumstances:

- if the employer decides the claim is arguable;
- if the Authority or the court determines the claim is arguable.

New section 13H relates to the consolidation of claims by employees of the same employer. It provides as follows:

- if an employer receives multiple claims that relate to the same, or substantially similar, work, the employer must treat those claims as 1 claim (unless the employer has genuine reasons, based on reasonable grounds, not to do so). The employer must notify all claimants of one another's names and addresses for service (except where a claimant has requested confidentiality). If a claimant has nominated a person to act as their representative, the name and address for service of that representative must be provided to other claimants;
- the claimants must seek to reach agreement as to how the consolidated claim will be progressed, including who will represent them and how decisions will be made. If they cannot agree, any of them may apply to the Authority for a direction.

New section 13I relates to the consolidation of similar claims against multiple employers, as follows:

- if multiple employers receive pay equity claims from employees who perform the same, or substantially similar, work, the parties may agree to consolidate the claims for the purposes of the pay equity bargaining process (in which case an agreement must set out who will represent the parties and how decisions relating to the claim will be made):

- the employers must provide to each of their employees who has made a claim—
 - the name of every other employer that is a party to the consolidated claim; and
 - the name and address for service of the nominated representative of each of those other employers:
- at the conclusion of the pay equity bargaining process, each employer must enter into a separate pay equity claim settlement with their employees.

New section 13J requires the parties to a pay equity bargaining process to act in good faith, in accordance with section 4 of the Employment Relations Act 2000.

New section 13K requires the parties to a pay equity claim to provide information to one another that is reasonably necessary to support the claims or responses to claims, if that information is requested in writing. It also enables confidential information to be provided, instead, to an independent reviewer.

New section 13L sets out the matters that must be assessed for the purposes of pay equity bargaining. They are as follows:

- the nature of the work to which the claim relates and the nature of comparable work (including the skills required, responsibilities imposed, working conditions, terms and conditions, degree of effort, level of experience required to perform the work, and any other relevant work features):
- the remuneration paid to persons who perform the work:
- the remuneration paid to persons who perform comparable work.

The section provides that the assessment must be undertaken objectively and without assumptions based on sex, and must recognise the importance of skills, responsibilities, effort, and conditions that are or have traditionally been overlooked or undervalued in female-dominated work.

New section 13L(3) and (4) enable the parties to a pay equity claim to enter a written agreement that sets out an alternative process that they will use and that they agree is suitable and sufficient to settle the claim.

New section 13M sets out how appropriate comparators must be identified for the purposes of assessing a pay equity claim. *New section 13M(1)* provides that comparable work may include—

- work performed by male comparators that is the same as, or substantially similar to, the work to which the claim relates; or
- work performed by male comparators that is different to the work to which the claim relates, if the comparator's work involves the same, or substantially similar, skills and experience, responsibilities, working conditions, or degrees of effort; or

- work performed by any other comparators that the parties or the Authority consider useful and relevant, including comparators who perform work that has previously been the subject of a pay equity settlement.

However, *new section 13M(2)* clarifies that a male comparator may not be used if the work performed by that male comparator is work that is predominantly performed by women and there are reasonable grounds to believe it has been historically undervalued and continues to be undervalued.

New section 13N sets out when a pay equity claim is settled. In particular, it provides for written agreement as to remuneration and a review process. It also provides that an employer may not reduce an employee's terms and conditions of employment for the purposes of settling a pay equity claim.

New section 13O describes the relationship between pay equity claims and collective bargaining. It states that—

- entry into a collective agreement does not settle or extinguish an unsettled pay equity claim; and
- the existence of an unsettled pay equity claim is not a justification for failure to conclude collective bargaining.

New section 13P provides that the parties to a pay equity claim may refer any issue relating to that claim to mediation services. The provisions of the Employment Relations Act 2000 that relate to mediation apply to pay equity claim issues that are referred for mediation.

New sections 13Q to 13Y provide for the parties to a pay equity claim to refer any issue relating to the claim to the Authority for facilitation. The clauses are based on sections 50A to 50I of the Employment Relations Act 2000 (being the provisions that govern facilitated bargaining for collective agreements).

New section 13Q provides that the purpose of the facilitation provisions is to provide a process for the parties to seek help from the Authority to resolve difficulties they are having in relation to a pay equity claim. It also provides that the provisions do not prevent the parties seeking assistance from another person to resolve their difficulties.

New section 13R sets out the process to refer an issue relating to a pay equity claim to the Authority. It gives the following examples of the sorts of issues that could be referred:

- a dispute about whether a claim is arguable:
- a dispute about whether an employee's claim relates to work that is the same as, or substantially similar to, that of another claimant for consolidation purposes:
- a dispute about whether work is comparable work:
- a dispute about whether proposed remuneration no longer discriminates on pay equity grounds.

New section 13S sets out the circumstances in which the Authority may accept a reference for facilitation. They are—

- where the Authority is satisfied that facilitation may be useful to resolve the issue; and
- where 1 or both of the following grounds exist:
 - a party has failed to comply with the duty of good faith, in a way that is serious and sustained and has undermined the progress of the claim;
 - sufficient efforts (including mediation) have failed to resolve an issue relating to the claim.

New section 13S(3) sets limits on the circumstances in which the Authority may accept a subsequent reference for facilitation in relation to the same pay equity claim.

New section 13T provides that a member of the Authority who accepts a reference for facilitation must not be a member of the Authority who facilitates resolution of the issue.

New section 13U sets out the process to be followed during facilitation. The key aspects are that—

- facilitation is conducted in private;
- the process is determined by the Authority;
- pay equity bargaining continues during facilitation, subject to the process determined by the Authority;
- the Authority is not acting as an investigative body during facilitation;
- the provision of facilitation may not be questioned in proceedings on the ground that the nature and content of the facilitation, or the manner in which it was provided, were inappropriate.

New section 13V provides that statements made by the parties during facilitation are not admissible against that party in proceedings under the Bill or the Employment Relations Act 2000. It also provides that public statements about facilitation may be made only in good faith and must be limited to the process of facilitation or the progress being made.

New section 13W provides that proposals made by a party, or positions reached by the parties, during facilitation are not binding after the facilitation ends. However, this is subject to any agreement between the parties.

New section 13X enables the Authority to make a recommendation about any matter relating to a pay equity claim. Recommendations are not binding but must be considered by the parties. Examples of the sorts of recommendations that the Authority might make are recommendations as to—

- whether a claim is arguable;
- the process the parties should follow to reach agreement;

- terms and conditions of employment (including remuneration) that would no longer discriminate on pay equity grounds.

Recommendations may be publicly notified.

New section 13Y requires the parties to a facilitation to deal with the Authority in good faith.

New section 13Z provides that a party to a pay equity claim may apply to the Authority or the court for determination of any matter that relates to the claim. Examples of the sorts of determinations that may be sought from the Authority or the court include the following:

- a determination as to whether a claim is arguable:
- a determination as to whether an employee's claim relates to work that is the same as, or substantially similar to, work performed by another claimant:
- a determination as to whether the work to which the claims relates is currently, or has historically been, undervalued:
- a determination fixing terms and conditions of employment (including remuneration) that do not discriminate on pay equity grounds.

Before considering an application for a determination, the Authority or the court must consider whether an attempt has been made to resolve the difficulties by mediation or facilitation, and the Authority or the court may direct the parties to try those options. If any of the grounds in *New section 13S(2)* exist (which relate to a serious and sustained failure to comply with the duty of good faith and failure to make sufficient efforts to resolve the claim), the Authority or the court must direct that facilitation be used before investigating, unless the Authority or court considers facilitation will not help, is not in the public interest, will undermine the urgency of the process, or is otherwise impractical or inappropriate.

New section 13Z(4) relates to applications for a determination that a claim may be raised despite *new section 13C(4)* (which provides that claims that relate to work that is covered by an existing settlement may not be raised unless the Authority or court determines otherwise). When determining applications of this kind, the Authority or court must have regard to the existing pay equity claim settlement and make a determination only if it is satisfied that there are exceptional circumstances.

New section 13ZA provides that if the Authority or the court determines that a pay equity claim is arguable, the parties must enter into the pay equity bargaining process.

New section 13ZB relates to applications to the Authority to fix terms and conditions of employment. It provides that if the Authority has not already directed the parties to try to resolve the difficulties by mediation, it must do so, or recommend another process that the parties must follow. The Authority may accept an application for a determination to fix terms and conditions only if the parties have first tried mediation, or another process recommended by the Authority, and the Authority is satisfied that other reasonable alternatives for settling the claim have been exhausted.

New section 13ZC provides that a determination that fixes terms and conditions of employment may also provide for recovery of remuneration for work performed before the date of the determination, and sets out factors that the Authority must take into account in determining whether to provide for recovery and how much to provide.

New section 13ZD sets out the following limitation periods that apply to awards of remuneration for work performed before the date of the determination:

- the maximum period for which remuneration may be awarded is 6 years in all cases:
- claims notified before the commencement of *new section 13ZD* may receive an award of remuneration for work performed back to the date on which the claim was notified or formally filed:
- claims raised within the first 5 years after the commencement of *new section 13ZD* may receive an award of remuneration for work performed back to the date on which the claim was raised:
- claims raised more than 5 years after the commencement of *new section 13ZD* may receive an award of remuneration for work performed back to the date that is 5 years after the date on which *new section 13ZD* came into force.

New section 13ZE obliges employers to keep certain records in respect of pay equity claims.

New section 13ZF establishes a process for employees of the education service (other than employees of a tertiary education institution) to raise pay equity claims against the State Services Commissioner, and provides for the State Services Commissioner to have the rights, duties, and obligations of an employer in the process of settling the claim. It also provides for any pay equity claim settlement agreement reached with the Commissioner to be binding on affected employers in the education service, and for those employers to be represented in the pay equity bargaining process. In the case of employees of a tertiary education institution, the chief executive of the institution is responsible for dealing with any pay equity claim, but must consult the State Services Commissioner before entering into a settlement.

Clause 19 repeals section 14 of the principal Act.

Clause 20 inserts a *new Part 5 heading*, which reads “General provisions”. The provisions that will appear beneath the *new Part 5 heading* are the following:

- a replacement section 15 (claimant employee must not be treated adversely):
- a replacement section 18 (Penalty for non-compliance):
- *new section 18A* (proceedings by Labour Inspector or employee concerned for penalty):
- *new section 18B* (powers of Inspectors):
- *new section 18C* (procedure and jurisdiction of Employment Relations Authority and Employment Court)

- existing section 19 (regulations).

Clause 21 replaces section 15 of the principal Act. The replacement section provides that an employer must not treat an employee adversely if the employee raises a claim under the principal Act. The provision is based on equivalent provisions in the Employment Relations Act 2000 and the Shop Trading Hours Act 1990. Such an employee who considers that they have been adversely treated may bring a personal grievance claim against their employer.

Clause 22 repeals sections 16 to 17A of the principal Act.

Clause 23 replaces section 18 of the principal Act with *new sections 18 to 18C*.

New section 18 sets penalties for failure to comply with specified duties in the Bill. The penalty for a breach of 1 of the following duties is a maximum penalty of \$10,000 for an individual or \$20,000 for a body corporate:

- the duty under *new section 2AAC(a)* to not differentiate on the basis of sex in the remuneration paid to employees who perform the same, or substantially similar, work:
- the duty under section 2A to not unlawfully discriminate between employees on the grounds of sex:
- the duty on employers who decide a pay equity claim is arguable to enter into pay equity bargaining:
- the duty to act in good faith during facilitation:
- the duty on employers to keep records relating to pay equity claims:
- the duty not to treat adversely an employee who has made a claim.

New section 18A provides that only a Labour Inspector or the employee concerned may bring an action to recover a penalty, and sets out other details in respect of claims to recover penalties. It includes a 12-month limitation period to bring an action, starting from the date when the cause of action became known, or should reasonably have become known (whichever is the earlier).

New section 18B provides that a Labour Inspector has, in addition to the powers conferred by the principal Act, all the powers available to a Labour Inspector under the Employment Relations Act 2000.

New section 18C provides that, when performing functions under the principal Act, the Authority and the Employment Court have the same powers and functions they have under the Employment Relations Act 2000.

Clause 24 amends section 19 of the principal Act, which contains regulation making powers. Powers are added to prescribe matters to be taken into account when assessing a pay equity claim, and when identifying comparable work.

Clause 25 inserts *new Schedule 1*, which contains transitional, savings, and related provisions.

Part 2

Related amendments and repeals

Clauses 26 to 28 make amendments to sections 100A and 100C of the Employment Relations Act 2000. Those sections currently enable the Minister to approve codes of employment practice to provide guidance on the application of the provisions of that Act.

The amendments in *clause 27* empower the Minister to also approve codes of employment practice to provide guidance on the application of the Equal Pay Act 1972 and other Acts specified in section 223(1) of the Employment Relations Act 2000 (being the Care and Support Workers (Pay Equity) Settlement Act 2017, the Holidays Act 2003, the Home and Community Support (Payment for Travel Between Clients) Settlement Act 2016, the Minimum Wage Act 1983, the Parental Leave and Employment Protection Act 1987, the Volunteers Employment Protection Act 1973, and the Wages Protection Act 1983), or any regulations made under them.

Clause 27 also inserts a *new section 100A(5)*, which provides that a code of employment practice is not a legislative instrument but is a disallowable instrument for the purposes of the Legislation Act 2012.

Clause 28 replaces section 100C with a *new section 100C*, which provides that the Authority or a court may have regard to a code of employment practice as evidence of compliance with the provisions of the enactment to which it relates, and may rely on the code in determining compliance with those provisions.

Clause 29 and *Schedule 2* make consequential amendments to the Employment Relations Act 2000.

Clause 30 repeals the Government Service Equal Pay Act 1960.

Hon Iain Lees-Galloway

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15	Claimant employee must not be treated adversely	27
22	Sections 16 to 17A repealed	28
23	Section 18 replaced (Offences)	28
18	Penalty for non-compliance	28
18A	Proceedings by Labour Inspector or employee concerned for penalty	29
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18B	Powers of Inspectors	29
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<i>Regulations</i>		
24	Section 19 amended (Regulations)	30
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Part 2		
Related amendments and repeals		
<i>Amendments to Employment Relations Act 2000</i>		
26	Related amendments to Employment Relations Act 2000	30
27	Section 100A amended (Codes of employment practice)	30
28	Section 100C replaced (Authority or court may have regard to code of practice)	30
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29	Consequential amendments to Employment Relations Act 2000	31
<i>Repeal</i>		
30	Repeal of Government Service Equal Pay Act 1960	31
Schedule 1		
New Schedule 1 inserted		
Schedule 2		
Consequential amendments to Employment Relations Act 2000		

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Equal Pay Amendment Act **2018**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent. 5

3 Principal Act

This Act amends the Equal Pay Act 1972 (the **principal Act**).

Part 1

Amendments to principal Act

10

4 New Part 1 heading inserted

After section 1, insert:

Part 1
Preliminary provisions

5 Section 2 amended (Interpretation)

- (1) In section 2(1), insert in their appropriate alphabetical order:
- employment agreement** has the same meaning as in section 5 of the Employment Relations Act 2000
 - equal pay claim** means a claim that an employer has breached **section 2AAC(a)** 5
 - pay equity claim** means a claim that an employer has breached **section 2AAC(b)**
- (2) In section 2(1), definition of **employee**,—
- (a) delete “; but does not include—”; and 10
 - (b) repeal paragraphs (a), (c), and (e).
- (3) In section 2(1), repeal the definitions of **agricultural workers order**, **apprenticeship order**, **award**, **first increment date**, **industrial agreement**, **instrument**, and **waterfront industry order**.
- (4) In section 2(2), replace “agreement specified in paragraph (e) of the definition of the term instrument in subsection (1) made between an individual employee and an individual employer, or any decision under paragraph (f) of that definition made in respect of an individual employee, which fixes a rate of remuneration that is special to that employee” with “employment agreement that fixes a rate of remuneration that is special to an employee”. 15
20
- (5) After section 2(2), insert:
- (3) Any term or expression used but not defined in this Act has the meaning given to it in the Employment Relations Act 2000.

6 New sections 2AAA and 2AAB inserted

After section 2, insert: 25

2AAA Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.

2AAB Act binds the Crown

This Act binds the Crown. 30

7 New section 2AAC and Part 2 heading inserted

Before section 2A, insert:

Part 2

Key provisions

2AAC Differentiation in rates of remuneration prohibited

An employer must ensure that—

- (a) there is no differentiation, on the basis of sex, between the rates of remuneration offered and afforded by the employer to employees of the employer who perform the same, or substantially similar, work; and 5
- (b) there is no differentiation between the rates of remuneration offered and afforded by the employer for work that is exclusively or predominantly performed by female employees and the rate of remuneration that would be paid to male employees who— 10
 - (i) have the same, or substantially similar, skills, responsibility and service; and
 - (ii) work under the same, or substantially similar, conditions, and with the same, or substantially similar, degrees of effort. 15

8 Section 2A amended (Unlawful discrimination)

Replace section 2A(2) with:

- (2) This section does not apply to a pay equity claim.

9 New section 2B inserted (Choice of proceedings)

After section 2A, insert: 20

2B Choice of proceedings

- (1) Where the circumstances giving rise to an unlawful discrimination claim, an equal pay claim, or a pay equity claim by an employee are such that the employee would also be entitled to make a complaint under the Human Rights Act 1993, or raise a personal grievance under the Employment Relations Act 2000, the employee may take 1, but not more than 1, of the following steps: 25
 - (a) the employee may raise a claim under this Act; or
 - (b) the employee may make a complaint under the Human Rights Act 1993; or
 - (c) the employee may raise a personal grievance under the Employment Relations Act 2000. 30
- (2) For the purposes of **subsection (1)(b)**, an employee makes a complaint when proceedings in relation to that complaint are commenced by the complainant or the Human Rights Commission.
- (3) If an employee raises a claim under this Act, the employee may not exercise or continue to exercise any rights in relation to the subject matter of that claim 35

- that the employee may have under the Human Rights Act 1993 or under the Employment Relations Act 2000.
- (4) If an employee makes a complaint referred to in **subsection (1)(b)**, the employee may not exercise or continue to exercise any rights in relation to the subject matter of the complaint that the employee may have under this Act or under the Employment Relations Act 2000. 5
- (5) If an employee raises a personal grievance under the Employment Relations Act 2000, the employee may not exercise or continue to exercise any rights in relation to the subject matter of that personal grievance that the employee may have under this Act or under the Human Rights Act 1993. 10

10 Section 3 amended (Criteria to be applied)

- (1) In section 3(1), replace “Subject to the provisions of this section, in” with “In”.
- (2) In section 3(1), delete “or class of work payable under any instrument, and for the purpose of making the determinations specified in subsection (1) of section (4)”. 15
- (3) Repeal section 3(2) and (3).

11 Sections 4 to 8 repealed

Repeal sections 4 to 8.

12 New section 8A and Part 3 heading inserted

Before section 9, insert: 20

Part 3

Matters relating to equal pay claims

8A Application of this Part

The provisions in this Part do not apply to—

(a) a pay equity claim; or

(b) an unlawful discrimination claim under section 2A. 25

13 Section 9 amended (Court may state principles for implementation of equal pay)

In section 9, replace “for the implementation of equal pay in accordance with the provisions of sections 3 to 8” with “to achieve equal pay in employment agreements”. 30

14 Section 10 amended (Approval by court or Employment Relations Authority of instruments or proposed instruments)

- (1) In the heading to section 10, replace “**instruments or proposed instruments**” with “**employment agreements or proposed employment agreements**”. 35

- (2) In section 10, replace “instrument or proposed instrument” with “employment agreement or proposed employment agreement” in each place.
- (3) In section 10, replace “proposed collective agreement” with “proposed or existing collective agreement” in each place.
- (4) In section 10, replace “meet the requirements of sections 3 to 6” with “provide for equal pay” in each place. 5
- (5) In section 10, replace “meet such of the requirements of sections 3 to 7 as are applicable” with “provide for equal pay” in each place.
- (6) In section 10(1), replace “meet such of the requirements of sections 3 to 6 as are applicable” with “provide for equal pay”. 10
- (7) In section 10(2)(b)(ii), after “and”, insert “, in the case of a proposed collective agreement,”.
- (8) In section 10(4)(b)(i), replace “meet those requirements” with “provide for equal pay”.
- (9) Replace section 10(4)(b)(ii) with: 15
- (ii) in the case of an existing employment agreement, amend it to the extent necessary to provide for equal pay, and the employment agreement as so amended has effect accordingly.
- 15 Section 11 repealed (Court may make partial award)**
- Repeal section 11. 20
- 16 Section 12 amended (Further powers of Employment Relations Authority)**
- (1) Repeal section 12(a) and (b).
- (2) In section 12(d), replace “instrument” with “employment agreement” in each place.
- 17 Section 13 amended (Recovery of remuneration based on equal pay)** 25
- (1) Repeal section 13(1).
- (2) In section 13(2) and (3), replace “instrument” with “employment agreement”.
- 18 New Part 4 inserted**
- After section 13 insert:
- Part 4**

Pay equity claims
- 13A Purpose**
- The purpose of this Part is to facilitate resolution of pay equity claims, by—
- (a) setting a low threshold to raise a claim (while recognising that entry into the pay equity claim process does not predetermine an outcome); and 35

- (b) providing a simple and accessible process to progress a pay equity claim.

13B Interpretation

In this Part, unless the context otherwise requires, **employer** means an employer in relation to whom a pay equity claim has been raised.

Employee’s right to raise pay equity claim 5

13C Employee may raise pay equity claim

- (1) An employee of an employer, or a group of employees who perform the same, or substantially similar, work for an employer, may raise a pay equity claim if that employee or group of employees considers that the claim is arguable.
- (2) A pay equity claim is arguable if— 10
 - (a) the claim relates to work that is predominantly performed by female employees; and
 - (b) it is arguable that the work is currently undervalued or has historically been undervalued.
- (3) In deciding whether it is arguable that work is currently undervalued or has historically been undervalued, consideration may be given to any relevant factor, including the following: 15
 - (a) the origins and history of the work, including the manner in which wages have been set;
 - (b) any social, cultural, or historical factors: 20
 - (c) characterisation of the work as women’s work:
 - (d) that the nature of the work requires an employee to use skills or qualities that have been—
 - (i) generally associated with women; and
 - (ii) regarded as not requiring monetary compensation: 25
 - (e) any sex-based systemic undervaluation of the work as a result of the following factors:
 - (i) a dominant source of funding across the relevant market, industry, sector, or occupation:
 - (ii) a lack of effective bargaining in the relevant market, industry, sector, or occupation: 30
 - (iii) occupational segregation or occupational segmentation in respect of the work:
 - (iv) the failure by the parties to properly assess or consider the remuneration that should have been paid to properly account for the nature of the work, the levels of responsibility associated with the 35

work, the conditions under which the work is performed, and the degree of effort required to perform the work:

- (v) any other feature of the relevant market, industry, sector, or occupation.
- (4) However, despite **subsections (1) to (3)**, a pay equity claim may not be raised if it relates to work that is covered by an existing pay equity claim settlement to which the employer is a party and the employer extends the benefit of that settlement to the claimant, unless the Authority or court determines otherwise in accordance with **section 13Z(3)**.

Process to raise pay equity claim

13D Requirements relating to pay equity claims

- (1) A pay equity claim must—
- (a) be in writing; and
 - (b) state that it is a pay equity claim made under the Equal Pay Act 1972; and
 - (c) state—
 - (i) the employee’s name; and
 - (ii) the date on which the claim is made; and
 - (iii) the employee’s occupation, position, and a brief description of the work performed by the employee; and
 - (iv) if the employee engages a union or any other representative to act on the employee’s behalf in respect of the claim, the name and address for service of that representative; and
 - (d) briefly set out the elements required for an arguable pay equity claim (*see section 13C(2)*), and the evidence that the employee relies on in support of those elements.
- (2) The claim must be—
- (a) delivered in person to the employee’s employer; or
 - (b) sent to the employee’s employer by any form of electronic communication that is ordinarily used for formal communications; or
 - (c) notified to the employer in any manner specified in the employee’s employment agreement.

Compare: 1990 No 57 s 5J; 2000 No 24 s 69AAC

13E Employer must notify certain other employees

- (1) An employer who receives a pay equity claim from an employee (the **claimant**) must—

- (a) acknowledge receipt of the claim by giving a notice of receipt to the claimant not later than 5 working days after receiving it; and
- (b) give notice of the claim to the persons referred to in **subsection (2)** as soon as is reasonably practicable and not later than 20 working days after receiving it. 5
- (2) The persons are all of the employer’s other employees who perform work that is the same as, or substantially similar to, the work performed by the claimant (the **affected employees**).
- (3) The notice must—
 - (a) be in writing; and 10
 - (b) state that a pay equity claim has been made by an employee who performs work that is the same as, or substantially similar to, the work performed by the affected employees; and
 - (c) provide information about the steps that affected employees may take to join the claim or raise their own pay equity claim. 15
- (4) The notice must not identify the claimant without the claimant’s prior written consent.
- (5) The notice must be—
 - (a) delivered to the affected employee in person; or
 - (b) sent to the affected employee by any form of electronic communication that is ordinarily used for formal communications; or 20
 - (c) given in any manner specified in the affected employee’s employment agreement.
- (6) **Subsection (1)(b)** does not apply in respect of an affected employee if—
 - (a) the employer has given notice to that employee of another claim that relates to the same, or substantially similar, work; and 25
 - (b) that other claim has not been rejected or settled; and
 - (c) the claimant’s claim is to be consolidated under **section 13H** with an existing claim and the requirements of **section 13H** are complied with (which requires that a joinder notice be provided to the claimant, information about the claimant be provided to other claimants (unless confidentiality is requested), and information about other claimants be provided to the claimant). 30
- (7) Despite **subsection (1)(b)**, the employer may, by notice to the claimant, extend the time limit for notifying affected employees if the employer has genuine reasons, based on reasonable grounds, for requiring the extension. 35
- (8) A notice extending the time limit must—
 - (a) be given as soon as is reasonably practicable and not later than 20 working days after the employer receives the claim; and

- (b) specify the extended date by which the employer will notify affected employees of the claim; and
- (c) set out the reasons and grounds for requiring the extension.

13F Employer must form view as to whether pay equity claim is arguable

- (1) An employer who receives a pay equity claim must, as soon as is reasonably practicable and not later than 65 days after receiving it, decide whether, in the employer's view, the pay equity claim is arguable. 5
- (2) An employer's decision that a pay equity claim is arguable does not mean that—
 - (a) the employer agrees that there is a pay equity issue; or 10
 - (b) there will be a pay equity settlement as a result of following the pay equity claim process.
- (3) The employer must notify the employee who made the claim of the employer's decision under **subsection (1)** as soon as is reasonably practicable, and not later than 65 days after receiving the claim. 15
- (4) If the employer decides that the claim is not arguable, the notice under **subsection (3)** must—
 - (a) set out the reasons for the employer's decision; and
 - (b) provide an explanation of the steps that the employee may take to challenge the employer's decision, including advice that— 20
 - (i) the employee may seek further details of the reasons for the employer's decision:
 - (ii) the employee may refer the question of whether the claim is arguable to mediation under **section 13P**:
 - (iii) the employee may refer the question of whether the claim is arguable to the Authority for facilitation under **sections 13Q to 13Y**, if one of the grounds in **section 13S(2)** exists: 25
 - (iv) the employee may apply to the Authority under **section 13Z** for a determination as to whether the pay equity claim is arguable and that, if the employee does so, the Authority will first consider whether an attempt has been made to resolve the question by facilitation or mediation. 30
- (5) If the employer decides that the claim is arguable,—
 - (a) the notice under **subsection (3)** must provide information about the pay equity bargaining process under **sections 13H to 13ZD**; and 35
 - (b) the employer and the employee must enter into the pay equity bargaining process.
- (6) If the employer fails, within 65 days of receiving the claim, to give notice to the employee under **subsection (3)**,—

- (a) the employer is deemed to have accepted that the claim is arguable; and
 - (b) the employer must provide the employee with a notice containing information about the pay equity bargaining process under **sections 13H to 13ZD**; and
 - (c) the employer and the employee must enter into the pay equity bargaining process. 5
- (7) Notices under this section must be in writing and be—
- (a) delivered in person to the employee; or
 - (b) sent to the employee by any form of electronic communication that is ordinarily used for formal communications; or 10
 - (c) given in any manner specified in the employee’s employment agreement.
- Compare: 1990 No 57 s 5I; 2000 No 24 s 69AAE

Pay equity bargaining process

- 13G Process applies to arguable claims**
- Sections 13H to 13ZD** apply to a pay equity claim if— 15
- (a) the employer decides, or is deemed to have accepted, that the claim is arguable; or
 - (b) the Authority or the court determines that the claim is arguable.

- 13H Consolidation of claims by multiple employees**
- (1) If, before settling a pay equity claim, the employer receives 1 or more other claims that relate to the same, or substantially similar, work, the employer must— 20
- (a) treat all claims as 1 joint claim for the purposes of this Act, unless the employer has genuine reasons, based on reasonable grounds, for not treating the claims as a joint claim; and 25
 - (b) notify all claimants as to whether their claims will be dealt with jointly or separately.

Joinder notice

- (2) A notice that a claimant’s claim will be dealt with jointly (a **joinder notice**) must— 30
- (a) include advice that, unless the claimant requests confidentiality, the information in respect of the claimant set out in **subsection (3)** will be provided to all other claimants; and
 - (b) specify a reasonable date by which a request for confidentiality under **paragraph (a)** must be received by the employer. 35

- (3) If the employer decides to treat a number of claims jointly, the employer must provide to every claimant, as and when each new claim is added to the consolidated claim, the following information in respect of every other claimant:
- (a) the claimant's name and address for service; or
 - (b) in the case of a claimant who has notified the employer of a representative under **section 13D(1)(c)(iv)**,—
 - (i) the claimant's name; and
 - (ii) the name of the claimant's representative; and
 - (iii) the address for service of the claimant's representative.
- (4) Despite **subsection (3)**, if, before the date specified in the joinder notice, an employer receives a request to keep a claimant's name and address confidential, the employer—
- (a) must not provide the information referred to in **subsection (3)(a) and (b)(i)** to the other claimants; but
 - (b) must advise the other claimants that a new claim has been joined and, if the claimant has notified the employer that the employee has a representative under **section 13D(1)(c)(iv)**, provide details of the name and address for service of the claimant's representative; and
 - (c) must keep the claimant, or the claimant's representative, informed of all significant issues arising and steps taken in respect of the joint claim.
- (5) Notices to claimants under this section must be in writing and be—
- (a) delivered to the claimant in person; or
 - (b) sent to the claimant by any form of electronic communication that is ordinarily used for formal communications; or
 - (c) given in any manner specified in the claimant's employment agreement.
- Process for consolidated claims*
- (6) Claimants who have been notified that their claim will be dealt with jointly must seek to reach an agreement as to how the consolidated claim will be progressed, including—
- (a) whether there will be 1 or more representatives for the claimants, and who that representative or those representatives will be; and
 - (b) how decisions relating to the claim will be made.
- (7) If the claimants cannot agree on how the consolidated claim will be progressed, any of them may apply to the Authority for a direction.
- (8) The Authority may give any of the following directions that it considers appropriate:
- (a) a direction as to representation of the claimants;
 - (b) a direction as to how decisions relating to the claim must be made:

- (c) any related direction that it considers useful to foster the efficient and just resolution of the claims.

13I Consolidation of claims against multiple employers

Consolidation of claims by multiple employers

- (1) If 2 or more employers receive pay equity claims made by employees who perform the same, or substantially similar, work, the employers may agree to consolidate those claims for the purposes of the pay equity bargaining process. 5

Process for consolidated claims

- (2) An employer’s agreement to consolidate pay equity claims must include provisions that set out— 10
 - (a) whether there will be 1 or more representatives for the employers and who that representative or those representatives will be; and
 - (b) how decisions relating to the claim will be made.

- (3) If 2 or more employers decide to consolidate pay equity claims for the purposes of the pay equity bargaining process, each employer must provide to each employee who has made a claim against that employer— 15

- (a) the name of every other employer that is a party to the consolidated claim; and
- (b) the name and address for service of the nominated representative of each employer. 20

- (4) At the conclusion of the pay equity bargaining process in respect of a consolidated pay equity claim, each employer must enter into a separate pay equity claim settlement with its employees who were parties to the claim.

Notices

- (5) Notices to claimants under this section must be in writing and be— 25
 - (a) delivered in person to the claimant; or
 - (b) sent to the claimant by any form of electronic communication that is ordinarily used for formal communications; or
 - (c) given in any manner specified in the claimant’s employment agreement.

13J Good faith in pay equity bargaining process 30

The duty of good faith in section 4 of the Employment Relations Act 2000 requires the parties, at least, to—

- (a) follow the process set out in this section, and in **sections 13K to 13ZD**, to resolve the pay equity claim; and
- (b) use their best endeavours to enter into an arrangement, as soon as possible after the start of pay equity bargaining, that sets out a process for conducting the bargaining in an effective and efficient manner; and 35

- (c) use their best endeavours to settle the pay equity claim in an orderly, timely, and efficient manner; and
- (d) recognise the role and authority of any person chosen by each of the parties to be that person's representative or advocate, and not (directly or indirectly) bargain about matters relating to the pay equity claim with the person for whom a representative or advocate acts (unless the parties agree otherwise); and
- (e) not undermine, or do anything that is likely to undermine, the bargaining or the authority of another party in the bargaining.

Compare: 2000 No 24 s 32

13K Duty to provide information

- (1) The parties to a pay equity claim must provide to each other, on request, information that is reasonably necessary to support or substantiate claims or responses to claims made for the purposes of the bargaining.
- (2) A request by a party to another party for information must—
 - (a) be in writing; and
 - (b) specify the nature of the information requested in sufficient detail to enable the information to be identified; and
 - (c) specify the claim, or the response to a claim, in respect of which information to support or substantiate the claim, or the response, is requested; and
 - (d) specify a reasonable time within which the information must be provided.
- (3) A party who receives an information request may provide the information to an independent reviewer, instead of to the requesting party, if the party reasonably considers that the information requested should be treated as confidential information.
- (4) If information is provided to an independent reviewer, section 34(4) to (9) of the Employment Relations Act 2000 applies as if references to the union and employer were references to the parties.

Compare: 2000 No 24 s 34

13L Matters to be assessed

- (1) The parties to a pay equity claim must determine whether the employee's work is currently undervalued, or has historically been undervalued, by assessing—
 - (a) the nature of the work to which the claim relates, and the nature of comparators, including, in each case, the following:
 - (i) the skills required;
 - (ii) the responsibilities imposed;
 - (iii) the conditions of work;

(iv)	the terms and conditions of employment:	
(v)	the degree of effort required to perform the work:	
(vi)	the level of experience required to perform the work:	
(vii)	any other relevant work features; and	
(b)	the remuneration that is paid to the persons who perform the work to which the claim relates; and	5
(c)	the remuneration that is paid to persons who perform comparable work.	
(2)	In making the assessments required by subsection (1) , the parties—	
(a)	must consider matters objectively and without assumptions based on sex (and prevailing views as to the value of work must not be assumed to be free of assumptions based on sex); and	10
(b)	must recognise the importance of skills, responsibilities, effort, and conditions that are or have been commonly overlooked or undervalued in female-dominated work (for example, social and communication skills, taking responsibility for the well-being of others, cultural knowledge, and sensitivity); and	15
(c)	may consider the list of factors at section 13C(3) .	
(3)	Despite subsection (1) , the parties to a pay equity claim may enter a written agreement that sets out an alternative process that they will use and that they agree is suitable and sufficient to settle the claim.	20
(4)	If the parties enter a written agreement under subsection (3) , they must follow the alternative process specified in that agreement to assess the claim, and subsections (1) and (2) and section 13M do not apply (except to the extent set out in the written agreement).	
13M	Identifying appropriate comparators	25
(1)	For the purpose of identifying 1 or more appropriate comparators against which to assess a pay equity claim as required by section 13L , comparable work may include any of the following:	
(a)	work performed by male comparators that is the same as, or substantially similar to, the work to which the claim relates:	30
(b)	work performed by male comparators that is different to the work to which the claim relates, if the comparators' work involves 1 or more of the following:	
(i)	skills and experience that are the same as, or substantially similar to, those required to perform the work to which the claim relates:	35
(ii)	responsibilities that are the same as, or substantially similar to, those involved in the work to which the claim relates:	
(iii)	working conditions that are same as, or substantially similar to, those involved in the work to which the claim relates:	

- (iv) degrees of effort that are the same as, or substantially similar to, those involved in the work to which the claim relates:
- (c) work performed by any other comparators that the parties or the Authority or court considers useful and relevant, including comparators who perform work that has previously been the subject of a pay equity settlement. 5
- (2) Despite **subsection (1)**, work performed by a male comparator may not be selected for the purposes of assessing a pay equity claim under **section 13L(1)** if there are reasonable grounds to believe that the work performed by that male comparator— 10
- (a) has been historically undervalued for 1 or more of the reasons set out in **section 13C(3)(a) to (d)**; and
- (b) continues to be undervalued for the reasons set out in **section 13C(3)(e)**.
- Settling pay equity claim* 15
- 13N Settling pay equity claim**
- (1) A pay equity claim is settled—
- (a) when—
- (i) remuneration is determined that the parties agree does not differentiate between male and female employees in the manner set out in **section 2AAC(b)**; and 20
- (ii) a process is agreed to review the employee's terms and conditions of employment to ensure that pay equity is maintained, including the agreed frequency of reviews; and
- (iii) those matters are recorded in writing in accordance with **subsection (3)**; or 25
- (b) when the Authority or the court—
- (i) determines that an employee's terms and conditions of employment do not differentiate between male and female employees in the manner set out in **section 2AAC(b)**; or 30
- (ii) issues a determination that fixes terms and conditions of employment that do not differentiate between male and female employees in the manner set out in **section 2AAC(b)**.
- (2) An employer may not reduce any terms and conditions of employment of an employee who has made a pay equity claim for the purpose of settling that claim. 35
- (3) A pay equity claim settlement must—
- (a) be in writing; and

<p>(b) state—</p> <p>(i) that it is a pay equity claim settlement for the purposes of this Act; and</p> <p>(ii) the name of the employer; and</p> <p>(iii) the name of the employee to whom the settlement relates; and</p> <p>(iv) the employee’s occupation and position; and</p> <p>(v) the terms and conditions of employment, including remuneration, that the parties agree do not differentiate between male and female employees in the manner set out in section 2AAC(b); and</p> <p>(vi) the process for reviewing those terms and conditions to ensure that pay equity is maintained; and</p> <p>(vii) the frequency of those reviews, which must be aligned with any applicable collective bargaining rounds.</p> <p>(4) If the requirements of subsections (2) and (3) are met, a settlement agreement is a pay equity claim settlement for the purposes of this Act (regardless of whether the parties followed the processes set out in this Act to reach that settlement).</p> <p>13O Relationship between pay equity claims and collective bargaining</p> <p>(1) The entry into a collective agreement by an employer and a union does not settle or extinguish an unsettled pay equity claim between that employer and 1 or more of the employer’s employees.</p> <p>(2) The existence of an unsettled pay equity claim between an employer and an employee is not a genuine reason for failing to conclude collective bargaining between that employer and a union representing the employer’s employees.</p> <p style="text-align: center;"><i>Mediation</i></p> <p>13P Parties may refer issues to mediation</p> <p>(1) Any party to a pay equity claim may refer any 1 or more issues relating to that claim to mediation services provided under Part 10 of the Employment Relations Act 2000.</p> <p>(2) Issues that may be referred to mediation services include, but are not limited to, the following:</p> <p>(a) a dispute as to whether the pay equity claim is arguable (<i>see section 13C(2)</i>):</p> <p>(b) a dispute as to whether an employee’s claim relates to work that is the same as, or substantially similar to, work performed by another claimant for the purposes of consolidating those employees’ claims under section 13H:</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p>
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<ul style="list-style-type: none"> (c) a dispute as to whether work performed by others is comparable work for the purposes of the assessment required by section 13L: (d) a dispute as to whether proposed remuneration no longer differentiates between male and female employees in the manner set out in section 2AAC(b) for the purposes of settling a pay equity claim. 	5
<p>(3) If an issue relating to a pay equity claim is referred to mediation services, sections 145 to 154 of the Employment Relations Act 2000 apply, with all necessary modifications.</p>	
<i>Facilitation</i>	
13Q Purpose of facilitating pay equity claim	10
<ul style="list-style-type: none"> (1) The purpose of sections 13R to 13Y is to provide a process that enables 1 or more parties to a pay equity claim who are having difficulties in resolving that claim to seek the assistance of the Authority in resolving the difficulties. (2) Sections 13R to 13Y do not— <ul style="list-style-type: none"> (a) prevent the parties from seeking assistance from another person in resolving the difficulties; or (b) apply to any agreement or arrangement with the other person providing such assistance. 	15
Compare: 2000 No 24 s 50A	
13R Reference to Authority	20
<ul style="list-style-type: none"> (1) Any party to a pay equity claim may refer any 1 or more issues relating to that claim to the Authority for facilitation to assist in resolving the claim. (2) Issues that may be referred to the Authority include, but are not limited to, the following: <ul style="list-style-type: none"> (a) a dispute as to whether the pay equity claim is arguable (<i>see section 13C(2)</i>): (b) a dispute as to whether an employee’s claim relates to work that is the same as, or substantially similar to, work performed by another claimant for the purposes of consolidating those employees’ claims under section 13H: (c) a dispute as to whether work performed by others is comparable work for the purposes of the assessment required by section 13L: (d) a dispute as to whether proposed remuneration no longer differentiates between male and female employees in the manner set out in section 2AAC(b) for the purposes of settling a pay equity claim. 	25
<ul style="list-style-type: none"> (3) A reference for facilitation must be made on 1 or more of the grounds specified in section 13S(2). 	30
Compare: 2000 No 24 s 50B	

13S When Authority may accept reference

- (1) The Authority must not accept a reference for facilitation unless—
 - (a) the Authority is satisfied that facilitation may be useful to resolve the issue referred; and
 - (b) 1 or both of the grounds in **subsection (2)** exist. 5
- (2) The grounds are—
 - (a) that a party has failed to comply with the duty of good faith in section 4 of the Employment Relations Act 2000 and the failure—
 - (i) was serious and sustained; and
 - (ii) has undermined the progress of the pay equity claim: 10
 - (b) that sufficient efforts (including mediation) have failed to resolve an issue relating to the claim.
- (3) The Authority must not accept a reference in relation to a pay equity claim for which the Authority has already acted as a facilitator unless—
 - (a) the earlier facilitation related only to the issue of whether the claim is arguable and the subsequent reference relates to the pay equity bargaining process; or 15
 - (b) the circumstances relating to the pay equity claim have changed; or
 - (c) the bargaining since the previous facilitation has been protracted. 20

Compare: 2000 No 24 s 50C 20

13T Limitation on which member of Authority may provide facilitation

A member of the Authority who facilitates resolution of an issue relating to a pay equity claim must not be the member of the Authority who accepted the reference for facilitation.

Compare: 2000 No 24 s 50D 25

13U Process of facilitation

- (1) The process to be followed during facilitation—
 - (a) must be conducted in private; and
 - (b) is otherwise determined by the Authority.
- (2) During facilitation, any pay equity bargaining in respect of the claim to which the facilitation relates continues subject to the process determined by the Authority. 30
- (3) During facilitation, the Authority—
 - (a) is not acting as an investigative body; and
 - (b) may not exercise the powers it has for investigating matters. 35
- (4) The provision of facilitation by the Authority may not be challenged or called in question in any proceedings on the ground—

<ul style="list-style-type: none"> (a) that the nature and content of the facilitation were inappropriate; or (b) that the manner in which the facilitation was provided was inappropriate. <p>Compare: 2000 No 24 s 50E</p>	5
13V Statements made by parties during facilitation	
<ul style="list-style-type: none"> (1) A statement made by a party for the purposes of facilitation is not admissible against the party in proceedings under this Act or under the Employment Relations Act 2000. (2) A party may make a public statement about facilitation only if— <ul style="list-style-type: none"> (a) it is made in good faith; and (b) it is limited to the process of facilitation or the progress being made. <p>Compare: 2000 No 24 s 50F</p>	10
13W Proposals made or positions reached during facilitation	
<ul style="list-style-type: none"> (1) A proposal made by a party or a position reached by parties to a pay equity claim during facilitation is not binding on a party after facilitation has come to an end. (2) This section— <ul style="list-style-type: none"> (a) applies to avoid doubt; and (b) is subject to any agreement of the parties. <p>Compare: 2000 No 24 s 50G</p>	15
13X Recommendation by Authority	
<ul style="list-style-type: none"> (1) While assisting parties to resolve an issue related to a pay equity claim, the Authority may make a recommendation about any matter that relates to the pay equity claim, including, but not limited to, recommendations as to the following: <ul style="list-style-type: none"> (a) whether the pay equity claim is arguable; (b) the process the parties should follow to reach agreement; (c) terms and conditions of employment (including remuneration) that would no longer differentiate between male and female employees in the manner set out in section 2AAC(b). (2) The Authority may give public notice of a recommendation in any manner that the Authority determines. (3) A recommendation made by the Authority is not binding on a party, but a party must consider a recommendation before deciding whether to accept it. <p>Compare: 2000 No 24 s 50H</p>	30
13Y Parties must deal with Authority in good faith	
<p>During facilitation, the parties must deal with the Authority in good faith.</p> <p>Compare: 2000 No 24 s 50I</p>	35

Determination by Authority

13Z Parties may apply for determination by Authority

- (1) A party to a pay equity claim may apply to the Authority or the court for determination of any matter that relates to the pay equity claim, including, but not limited to, the following: 5
 - (a) a determination as to whether the pay equity claim is arguable (*see section 13C(2)*):
 - (b) a determination as to whether an employee’s claim relates to work that is the same as, or substantially similar to, work performed by another claimant for the purposes of consolidating those employees’ claims under **section 13H**: 10
 - (c) a determination as to whether the work to which the claim relates is currently undervalued or has historically been undervalued:
 - (d) a determination fixing terms and conditions of employment (including remuneration) that do not differentiate between male and female employees in the manner set out in **section 2AAC(b)**. 15
- (2) Where an application is made under **subsection (1)**, the Authority or the court—
 - (a) must first consider whether an attempt has been made to resolve the difficulties by the use of— 20
 - (i) mediation or further mediation under **section 13P**; or
 - (ii) facilitation under **sections 13R to 13Y**; and
 - (b) may direct the parties to try to resolve the difficulties by mediation or further mediation; but
 - (c) if 1 or both of the grounds in **section 13S(2)** exist, must direct that facilitation be used before the Authority or the court investigates the matter, unless the Authority or the court considers that use of facilitation— 25
 - (i) will not contribute constructively to resolve the difficulties; or
 - (ii) will not, in all the circumstances, be in the public interest; or 30
 - (iii) will undermine the urgent nature of the process; or
 - (iv) will be otherwise impractical or inappropriate in the circumstances.
- (3) If an application for a determination relates to whether the work to which the claim relates is currently undervalued or has historically been undervalued, the court may take into account the list of factors set out in **section 13C(3)**. 35
- (4) If an application for a determination relates to whether a claim may be raised despite **section 13C(4)**, the Authority or the court must make its determination—

- (a) having regard to the existing pay equity claim settlement to which the employer is a party; and
- (b) only if it is satisfied that there are exceptional circumstances.

Compare: 2000 No 24 s 50K

13ZA If Authority or court determines pay equity claim is arguable 5

If the Authority or the court determines that a pay equity claim is arguable, the parties must enter into the pay equity bargaining process in accordance with **sections 13H to 13ZD**.

13ZB Process on application to fix terms and conditions

- (1) If the Authority receives an application under **section 13Z(1)(d)** to fix terms and conditions of employment, and the Authority has not previously directed the parties to try to resolve the difficulties by mediation or further mediation, the Authority must— 10
 - (a) direct the parties to try to resolve the difficulties by mediation or further mediation; or 15
 - (b) recommend another process that the parties must follow to try to resolve the difficulties.
- (2) The Authority may accept an application for a determination that fixes terms and conditions of employment only if—
 - (a) the parties have first tried to resolve the difficulties by mediation, or by any other process recommended by the Authority; and 20
 - (b) the Authority is satisfied that all other reasonable alternatives for settling the pay equity claim have been exhausted.

13ZC Determination may provide for recovery of remuneration for past work

- (1) A determination fixing terms and conditions of employment may also provide for recovery of an amount of remuneration that relates to work performed before the date of the determination (**past work**). 25
- (2) When deciding whether to provide for recovery of an amount of remuneration for past work, and the amount to provide, the Authority must take into account the following factors: 30
 - (a) the conduct of the parties; and
 - (b) the ability of the employer to pay; and
 - (c) the nature and extent of resources (for example, information and advice) available to the employer and the employee in respect of the claim; and
 - (d) any other factors the Authority considers appropriate. 35
- (3) *See* **section 13ZD** for the periods for which remuneration for past work can be recovered.

13ZD Limitation periods for recovery of remuneration for past work

- (1) A determination may provide for recovery of an amount of remuneration that relates to work performed in the period—
 - (a) beginning on the applicable start date for the claim to which the determination relates; and
 - (b) ending on the date of the determination.
- (2) However, no determination may provide for recovery of an amount of remuneration that relates to a period that is longer than 6 years.
- (3) The **applicable start date** for a claim is as follows:

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When claim raised or notified	Applicable start date
Claim notified or proceedings commenced before the date on which this section comes into force	The earlier of— <ul style="list-style-type: none"> (a) the date on which the claim was notified to the employer; and (b) the date on which proceedings were commenced
Claim raised on or after the date on which this section comes into force, but no more than 5 years after the date on which this section comes into force	The date on which the claim is raised
Claim raised more than 5 years after the date on which this section comes into force	The date that is 5 years after the date on which this section comes into force

- (4) In this section, a claim is **notified** on the date on which the employee gives the employer notice in writing that the employee is making a claim to the effect that the employer has failed to ensure that there is no differentiation between the rates of remuneration offered and afforded by the employer for work that is exclusively or predominantly performed by female employees and the rate of remuneration that would be paid to male employees who—
 - (a) have the same, or substantially similar, skills, responsibility, and service; and
 - (b) work under the same, or substantially similar, conditions, and with the same, or substantially similar, degrees of effort.

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Obligation on employers to keep pay equity records

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13ZE Pay equity records

- Every employer who has received 1 or more pay equity claims must keep a record showing—
- (a) every pay equity claim lodged by an employee; and
 - (b) in relation to each pay equity claim,—
 - (i) the employer’s decision as to whether the claim is arguable and the consequent notice to the employee; and
 - (ii) the outcomes of any pay equity bargaining; and

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- (iii) all notifications to affected employees under **section 13E**; and
- (iv) any recommendation by the Authority during facilitation.

Pay equity claims by employees of education service

13ZF Pay equity claims by employees of education service

Employees other than employees of tertiary education institutions

- 5
- (1) For the purposes of a pay equity claim by 1 or more employees of the education service (other than employees of a tertiary education institution), the State Services Commissioner—
- (a) must be treated as the employer; and
 - (b) has the same rights, duties, and obligations under this Act as the Commissioner would have if the Commissioner were the employer. 10
- (2) If the Commissioner decides that a pay equity claim by 1 or more employees referred to in **subsection (1)** is arguable, or if the Authority or the court determines that such a claim is arguable, the Commissioner must enter into the pay equity bargaining process described in **sections 13H to 13ZD**— 15
- (a) with the employee or employees or their representative or representatives; and
 - (b) in consultation with—
 - (i) the chief executive of the Ministry of Education; and
 - (ii) representatives of the employer or employers who will be bound by the pay equity claim settlement agreement (which representatives must be employers, or organisations of employers, of persons employed in the education service). 20
- (3) Every pay equity claim settlement agreement entered into between the Commissioner and 1 or more employees in the education service is binding on the employer or employers of those employees. 25
- (4) An employer who is bound by a pay equity claim settlement agreement under **subsection (3)** has the rights, obligations, and duties that the employer would have, in respect of that pay equity claim settlement agreement, as if that employer were a party to that agreement. 30

Employees of tertiary education institutions

- (5) For the purposes of a pay equity claim by 1 or more employees of a tertiary education institution, the chief executive of the tertiary education institution is responsible (either individually or jointly through an organisation of employers of persons employed in tertiary education institutions) for determining whether the claim is arguable and, if so, entering into the pay equity bargaining process described in **sections 13H to 13ZD**. 35
- (6) Before entering into a pay equity settlement, the chief executive of a tertiary education institution, or an organisation of employers of persons employed in

tertiary education institutions, must consult with the State Services Commissioner.

Interpretation

(7) In this section,—

education service has the same meaning as in section 2 of the State Sector Act 1988 5

State Services Commissioner or **Commissioner** means the State Services Commissioner appointed under section 3 of the State Sector Act 1988

tertiary education institution means an institution within the meaning of section 159(1) of the Education Act 1989. 10

Compare: 1988 No 20 s 74

19 Section 14 repealed (Procedure and jurisdiction of Employment Relations Authority)

Repeal section 14.

20 New Part 5 heading inserted 15

Before section 15, insert:

**Part 5
General provisions**

Penalties and enforcement

21 Section 15 replaced (When dismissal or reduction of employee an offence) 20
Replace section 15 with—

15 Claimant employee must not be treated adversely

(1) An employer must not treat adversely any employee who raises a claim under this Act.

(2) In this section, an employer treats an employee adversely if the employer— 25

(a) refuses or omits to offer or provide to that employee the same terms and conditions of employment (including the same remuneration, conditions of work, fringe benefits, or opportunities for training, promotion, and transfer) as are offered or provided to other employees of the same, or substantially similar, qualifications, experience, or skills employed in the same, or substantially similar, circumstances; or 30

(b) dismisses that employee or subjects that employee to any detriment, in circumstances in which other employees employed by that employer on work of that description are not or would not be dismissed or subjected to such detriment; or 35

<p>(c) retires that employee, or requires or causes that employee to retire or resign.</p> <p>(3) An employee may raise a claim against the employee’s employer or former employer for a contravention of subsection (1).</p> <p>(4) A claim referred to in subsection (3) is to be treated as a personal grievance under section 103(1) of the Employment Relations Act 2000 and, if an employer alleges that any of the actions described in subsection (2) were not related to the employee’s raising of a claim but were justifiable on other grounds, section 103A of that Act applies and the employer must establish that the employer’s actions were justifiable.</p> <p>Compare: 1990 No 57 s 5K; 2000 No 24 s 67F</p>	<p>5</p> <p>10</p>
<p>22 Sections 16 to 17A repealed</p> <p>Repeal sections 16 to 17A.</p>	
<p>23 Section 18 replaced (Offences)</p> <p>Replace section 18 with:</p>	
<p>18 Penalty for non-compliance</p> <p>(1) A person who fails to comply with a provision listed in subsection (2), and every person who is involved in the failure to comply, is liable,—</p> <p>(a) if the person is an individual, to a penalty not exceeding \$10,000;</p> <p>(b) if the person is a company or another body corporate, to a penalty not exceeding \$20,000.</p> <p>(2) The provisions are as follows:</p> <p>(a) section 2AAC(a) (which imposes a duty on employers to not differentiate on the basis of sex in the remuneration paid to employees who perform the same, or substantially similar, work):</p> <p>(b) section 2A (which relates to unlawful discrimination):</p> <p>(c) section 13F(5)(b) (which imposes a duty on an employer who decides that a pay equity claim is arguable to enter into pay equity bargaining):</p> <p>(d) section 13J (which imposes a duty to deal with the Authority in good faith during facilitation):</p> <p>(e) section 13ZE (which imposes a duty on employers to keep records relating to pay equity claims).</p> <p>(3) For the purposes of subsection (1), a person is involved in a failure to comply if the person would be treated as a person involved in a breach within the meaning of section 142W of the Employment Relations Act 2000.</p>	
	<p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p>

18A	Proceedings by Labour Inspector or employee concerned for penalty	
(1)	An Inspector and the employee concerned are the only persons who may bring an action in the Authority against an employer to recover a penalty under section 18 .	
(2)	However, only a Labour Inspector may bring an action in the Authority against a person involved in a failure to comply in order to recover a penalty under section 18 .	5
(3)	A claim for 2 or more penalties against the same employer may be joined in the same action.	
(4)	A claim for a penalty may be heard in conjunction with any other claim under this Act.	10
(5)	After hearing an action for recovery of a penalty, the Authority may—	
	(a) give judgment for the amount claimed; or	
	(b) give judgment for an amount that is less than the amount claimed; or	
	(c) dismiss the action.	15
(6)	The Authority or the court may order payment of a penalty by instalments, but only if the financial position of the person paying the penalty requires it.	
(7)	An action for the recovery of a penalty must be commenced within 12 months after the earlier of when the cause of action became known, or should reasonably have become known, to the Labour Inspector or employee concerned.	20
(8)	A penalty that is recovered must be paid,—	
	(a) if, and to the extent, ordered by the Authority, to any person the Authority specifies; or	
	(b) in any other case, into court and then into a Crown Bank Account.	
	Compare: 2003 No 129 s 76; 2000 No 24 s 135	25
	<i>Powers of Inspectors and procedure and jurisdiction of Employment Relations Authority and Employment Court</i>	
18B	Powers of Inspectors	
	For the purposes of this Act, every Inspector has, in addition to any powers conferred by this Act, all the powers that the Inspector has under the Employment Relations Act 2000.	30
18C	Procedure and jurisdiction of Employment Relations Authority and Employment Court	
	In performing its functions under this Act, or in respect of any breach of this Act,—	35
	(a) the Employment Relations Authority has all the powers and functions it has under the Employment Relations Act 2000; and	

- (b) the Employment Court has all the powers and functions it has under the Employment Relations Act 2000.

Regulations

24 Section 19 amended (Regulations)

In section 19, after “administration”, insert “, including regulations for the following purposes:”, and insert: 5

- (a) prescribing matters that must be taken into account when assessing a pay equity claim; and
- (b) prescribing matters that must be taken into account when identifying comparable work under **section 13M**. 10

25 New Schedule 1 inserted

Insert the **Schedule 1** set out in **Schedule 1** of this Act as the first schedule to appear after the last section of the principal Act.

Part 2

Related amendments and repeals

15

Amendments to Employment Relations Act 2000

26 Related amendments to Employment Relations Act 2000

Sections 27 to 29 amend the Employment Relations Act 2000.

27 Section 100A amended (Codes of employment practice)

- (1) In section 100A(4), replace “this Act” with “any of the Acts specified in section 223(1) or any regulations made under those Acts”. 20
- (2) After section 100A(4), insert:
- (5) A code of employment practice approved under this section is not a legislative instrument but is a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act. 25

28 Section 100C replaced (Authority or court may have regard to code of practice)

Replace section 100C with:

100C Authority or court may have regard to code of employment practice 30

- (1) A code of employment practice is admissible in any civil or criminal proceedings as evidence of whether the enactment to which it relates has been complied with.
- (2) The Authority or court may—

- (a) have regard to the code as evidence of compliance with the provisions of the enactment to which it relates; and
- (b) rely on the code in determining what is required to comply with those provisions.

Compare: 2015 No 70 s 226

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29 Consequential amendments to Employment Relations Act 2000

Amend the Employment Relations Act 2000 as set out in **Schedule 2**.

Repeal

30 Repeal of Government Service Equal Pay Act 1960

The Government Service Equal Pay Act 1960 (1960 No 117) is repealed.

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Schedule 1
New Schedule 1 inserted

s 25

Schedule 1
Transitional, savings, and related provisions

5

s 2AAA

Part 1
Provisions relating to Equal Pay Amendment Act 2018

1 Interpretation

(1) In this Part,—

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amendment Act means the Equal Pay Amendment Act **2018****existing pay equity claim** means a claim that—

(a) is to the effect that an employer has failed to ensure that there is no differentiation between the rates of remuneration offered and afforded by the employer for work that is exclusively or predominantly performed by female employees and the rate of remuneration that would be paid to male employees who—

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(i) have the same, or substantially similar, skills, responsibility, and service; and

(ii) work under the same, or substantially similar, conditions, and with the same, or substantially similar, degrees of effort; and

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(b) either—

(i) was formally commenced by lodging an application to the Authority or a court before the date on which the amendment Act came into force, but not determined by the Authority or court before that date; or

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(ii) was notified by an employee to an employer before the date on which the amendment Act came into force, but not formally commenced by application to the Authority or a court before that date.

(2) In this Part, a claim is **notified** on the date on which the employee gives the employer notice in writing that the employee is making a claim to the effect that the employer has failed to ensure that there is no differentiation between the rates of remuneration offered and afforded by the employer for work that is exclusively or predominantly performed by female employees and the rate of remuneration that would be paid to male employees who—

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<ul style="list-style-type: none"> (a) have the same, or substantially similar, skills, responsibility, and service; and (b) work under the same, or substantially similar, conditions, and with the same, or substantially similar, degrees of effort. 	
2 Existing pay equity claims must transition to Part 4 process	5
(1) Every existing pay equity claim that was formally commenced by lodging an application with the Authority or a court before the date on which the amendment Act came into force is discontinued.	
(2) An employee whose claim is discontinued under subclause (1) may raise a new claim with the employee’s employer in accordance with the processes set out in Part 4 of this Act.	10
(3) Except to the extent that clause 3 applies, every existing pay equity claim that was notified to an employer before the date on which the amendment Act came into force, but not formally commenced before that date, must be raised in accordance with the processes set out in Part 4 of this Act.	15
3 Claims to which existing written pay equity bargaining agreement applies	
(1) This clause applies to an existing pay equity claim if, before the date on which the amendment Act came into force, the parties signed a written agreement that—	
(a) requires them to undertake a pay equity bargaining process that includes an assessment of the matters set out in section 13L based on comparators identified in accordance with section 13M ; or	20
(b) specifies a pay equity bargaining process that the parties will use and that they agree is suitable and sufficient to settle the claim.	
(2) If this clause applies,—	25
(a) the pay equity claim is deemed to have been made in accordance with the requirements of section 13D ; and	
(b) the employer is deemed to have complied with the requirement in section 13E(1)(a) ; and	
(c) if the employer has not already done so, the employer must give notice of the claim to other affected employees (as required by section 13E(1)(b)) as soon as is reasonably practicable and not later than 20 working days after the date on which the amendment Act came into force; and	30
(d) the employer is deemed to have decided that the claim is arguable in accordance with the requirement in section 13F ; and	35
(e) sections 13H to 13ZB apply accordingly.	

- (3) Any pay equity bargaining that took place before the amendment Act came into force may be taken into account for the purposes of **sections 13S(2)(b), 13Z(2), and 13ZB(2)(b)**.
- 4 Appeals**
- (1) This clause applies to an application— 5
- (a) that is an existing pay equity claim that was formally commenced before the date on which the amendment Act came into force; and
- (b) in relation to which the Authority, or the court in which the application was commenced, made a determination on the application before the date on which the amendment Act came into force. 10
- (2) Any appeal against, or challenge to the determination must be determined in accordance with the provisions of this Act as if it had not been amended by the amendment Act.
- 5 Existing Equal Pay Act 1972 claim settlements**
- Section 13C(4)** applies to the following: 15
- (a) a written settlement agreement entered into between 1 or more employers and 1 or more employees before the date on which the amendment Act came into force, if the process undertaken by the parties to reach that settlement involved—
- (i) an assessment of the matters set out in **section 13L** based on comparators identified in accordance with **section 13M**; or 20
- (ii) a pay equity bargaining process that the parties agreed in writing was suitable and sufficient to settle the claim:
- (b) a claim settled under the Care and Support Workers (Pay Equity) Settlement Act 2017. 25

Schedule 2

Consequential amendments to Employment Relations Act 2000

s 29

Section 4

After section 4(4)(e), insert:

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- (ea) making pay equity claims, responding to pay equity claims, and participating in the pay equity claim resolution process under **Part 4** of the Equal Pay Act 1972:

Section 4A

Replace section 4A(b) with:

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- (b) the failure was intended to—
 - (i) undermine bargaining for an individual employment agreement or a collective agreement; or
 - (ii) undermine an individual employment agreement or a collective agreement; or
 - (iii) undermine an employment relationship; or
 - (iv) undermine the pay equity claim resolution process under **Part 4** of the Equal Pay Act 1972; or

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Section 5In section 5, definition of **employment standards**, replace paragraph (b) with:

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- (b) the requirements of **section 2AAC(a)** and 2A of the Equal Pay Act 1972:

Section 50F

Replace section 50F(1) with:

- (1) A statement made by a party for the purposes of facilitation is not admissible against the party in proceedings under this Act or under the Equal Pay Act 1972.

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Section 137

After section 137(1)(a)(iib), insert:

- (iic) any terms of a pay equity claim settlement under **section 13N** of the Equal Pay Act 1972; or

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Section 161

After section 161(1)(m)(iia), insert:

- (iib) under **section 18** of the Equal Pay Act 1972:

After section 161(1)(qc), insert:

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Section 161—*continued*

- (qd) all matters arising under the Equal Pay Act 1972 and, in particular,—
- (i) determining equal pay claims and discriminatory treatment claims:
 - (ii) determining disputes as to whether a pay equity claim is arguable:
 - (iii) determining disputes as to whether work is comparable work for the purpose of assessing a pay equity claim: 5
 - (iv) determining disputes as to whether the claimant’s work is in fact undervalued:
 - (v) fixing terms and conditions, including remuneration, that is consistent with pay equity under that Act: 10
 - (vi) determining whether to provide for recovery of an amount of remuneration for past work, and the amount to provide, under **section 13ZC** of that Act:
 - (vii) determining the applicable start date for the purposes of **section 13ZD** of that Act: 15

In section 161(2), replace “and (f)” with “(f), and **(qd)**”.