



11th May 2017

To the Ministry of Business Innovation and Employment

Employment Relations Policy
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand Wellington

E-mail: EmploymentRelations@mbie.govt.nz

Re: Submission on the Draft Employment (Pay Equity and Equal Pay) Exposure Bill

The submission is from the NZ Federation of Business and Professional Women (BPW NZ) Inc.

Our Organisation

BPW (Business Professional Women) is an international organization with representatives in over 100 countries. Our organisation's aims are to link Professional and business women throughout the world so that they may provide support to each other, lobby for change and promote the ongoing advancement of women and girls. We work for equal opportunities and status for all women in economic, civil, and political life and for the removal of discrimination in all countries. We promote our aims and organise our operating structure without distinction as to race, language, or religion.

International Status:

BPW International has General Consultative Status at the United Nations through the UN Economic & Social Council (ECOSOC). This enables BPW International to appoint official representatives to UN agencies worldwide and to accredit members to attend specific UN meetings.

BPW International upholds the outcomes of the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW) Committee at state party level. BPW International upholds the outcome documents of the annual UN Commission on the Status of Women (CSW) which evaluates progress, identifies challenges, sets global standards and formulates policies to promote gender equality and women's empowerment worldwide. BPW International also upholds the UN Declaration on the Elimination of Violence Against Women which was adopted by the General Assembly in 1993 and affirms that under

Article 11

Shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

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- (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work

Our interest in this Bill is because we are committed to representing the interests of working women and advancing and empowering women in the workplace. This is reinforced by our promotion and administration of the UN Women's Empowerment Principles: Equality Means Business which holds as one of its principles "treat all women and men fairly at work - respect and support human rights and non-discrimination."

1. Executive Summary

1.1. BPW NZ strongly disagrees with several key clauses in this Bill and believes that this legislation, in its current form, would be a step backward for the pay equality/equity cause. We believe, for marginalised women in particular, that this legislation would result in further discrimination. We believe there should be a positive duty of care from employers to ensure pay equity, sufficient resourcing of the Employment Relations Authority and the Mediation Service to ensure compliance, and that the issue of occupational gender segregation (for which flexibility around comparators is key) must be addressed fairly.

1.1.1. We prefer to retain existing legislation rather than see this Bill proceed in its present form. We have summarised our reasoning below:

1.1.2. For the past sixty years, BPW NZ has supported and at times provided leadership to the movement to close the gender pay gap. This legislation would undo the historical efforts of hundreds of women and men who have worked to improve pay equality/equity in New Zealand.

1.1.3. This Bill does not honour the intent of New Zealand's historical pay equality/equity efforts and legislation, such as the Equal Pay Act 1972, the Human Rights Act 1993, the Employment Relations Act 2000, the State Sector Act 1988, and the Crown Entities Act 2004, the findings of the Human Rights Commission's (HRC) report Tracking Equality at Work, advice from the National Advisory Council on the Employment of Women (NACEW), nor recommendations from the Joint Working Group on Pay Equity Principles.

1.1.4. This legislation does not honour New Zealand's commitments to support international legislation, such as the International Labour Organisation (ILO) Convention concerning Equal Remuneration for Men and Women Workers of Equal Value (ILO 100), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Covenant on Economic, Social and Cultural Rights, the Universal Declaration of Human Rights, and the United Nations Women's Empowerment Principles.

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1.1.5. Particular clauses provide significant cause for concern, such as putting the onus on women, who are often marginalised and under-resourced, to facilitate pay equality/equity action. In addition, the lack of consideration for transparency in the Bill, such as around wage and salary rates, puts employees at a significant disadvantage.

1.1.6. BPW NZ supports bringing together in one place the currently fragmented work, responsibilities and expertise of government agencies, including the monitoring of gender pay inequity as recommended by the CEDAW committee in 2012.

2. BPW NZ

2.1. BPW NZ believes the role of women in the workforce to be integral to the future success of our country. We strive to ensure that young girls of today have equal footing in the workforce of tomorrow. The stagnation of the gender pay gap over the past ten years (<http://women.govt.nz/work-skills/income/gender-pay-gap>) is evidence that New Zealand needs strong and effective leadership alongside legislation, to improve outcomes for future female workers.

3. BPW NZ and the Gender Pay Gap

3.1. BPW NZ has a long history of working to improve conditions for women in employment. Examples of our work are:

3.1.1. **1959**, the National Council for Equal Pay and Opportunity was set up by the Public Service, trade unions, the Federation of University Women (NZFUW), the National Council of Women (NCW) and the New Zealand Federation of Business & Professional Women (BPW NZ), to work for equal pay for work of equal value, and equal opportunity in employment.

3.1.2. **1960**, representatives of BPW NZ worked on the Council, lobbying, discussing and making submissions to the Minister of Labour on behalf of working women. This was instrumental in persuading the Government of the day to pass the Government Services Equal Pay Act, which provided for most women working in government positions to receive the same pay as their male counterparts.

3.1.3. **1969**, BPW NZ prepared and presented submissions to the Commission of Enquiry into Equal Pay.

3.1.4. **1972**, BPW NZ worked towards the establishment of the Equal Pay Act for equity of pay in the private sector.

3.1.5. **1989**, BPW NZ adopted a policy that urged the Prime Minister, the Minister of Labour and the Minister of Women's Affairs to enact legislation before the end of that year,

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embodying the principles of equal opportunity in appointment, training and promotion, and pay equity in the workforce. Further, that measures be taken to ensure that the necessary resources be available and mechanisms in place, to implement the provision of the Act immediately upon legislation being passed. (Policy 14.4.5.)

- 3.1.6. **1992**, BPW NZ adopted a policy that requested the Ministers of Women’s Affairs, Labour and Employment to undertake a study of how equal pay is being retained within the public and private sectors, given that employment contracts are now required. (Policy 14.4.2.)
- 3.1.7. **2000**, BPW NZ adopted a policy which recognised that the gender pay gap is continuing to widen, to the disadvantage of women. (Policy 14.4.4.)
- 3.1.8. **2012**, BPW NZ with UN Women Aotearoa New Zealand launched the Women’s Empowerment Principles: Equality Means Business.
- 3.1.9. **2012**, BPW International announced its collaboration as a Gender Expert with the International Organisation of Employers (IOE) to bring the voice of women of business as an expert resource on gender diversity.

4. National Gender Pay Gap Commitments

4.1. Historically, the New Zealand government has been working to address the gender pay gap for over fifty years. We believe this legislation not only fails to meet the recommendations of the work below, but undermines efforts that have been achieved to date.

4.1.1. Initial legislation introduced to address the gender pay gap was the **Government Service Equal Pay Act (1960)**, which was intended to ensure “women were to be paid the same as men for doing the same work under the same conditions”. Further legislation that addressed the gender pay gap includes the **Equal Pay Act (1972)**, the **Human Rights Act (1993)**, the **Employment Relations Act (2000)**, the **State Sector Act (1988)**, and the **Crown Entities Act (2004)**. The broad intent of all of this legislation was to “reduce the gender pay gap”. (<http://women.govt.nz/work-skills/income/gender-pay-gap/what-government-doing>)

4.1.2. In 1967, the National Advisory Council on the Employment of Women (NACEW) was established and its **Committee of Inquiry into the Implementation of Equal Pay** in New Zealand provided recommendations which led to the Equal Pay Act. The Committee noted that the narrow distribution of women’s work across occupations contributed to the gender pay gap by enforcing societal views about the value of women’s labour. Fifty years ago, it was identified that it is important to allow flexibility

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in the use of comparators when addressing an equal pay claim. The proposed Bill does not recognise such flexibility, albeit that this is still relevant and necessary today.

4.1.3. In 2016, the Human Rights Commission issued the *Tracking Equality at Work* report. Specific recommendations that the Employment (Pay Equity and Equal Pay) Bill fails to meet include:

4.1.3.1. that the New Zealand Government legislates pay transparency by requiring companies with more than 250 workers to publicly report on their gender pay and bonus gaps on an annual basis

4.1.4. In 2016, the Joint Working Group on Pay Equity Principles provided recommendations that included:

4.1.4.1. requiring employers to “immediately” notify any other employees that may be similarly affected by (or benefit from) the claim

4.1.4.2. recognising that it is essential that parties have access to adequate resources and information that assists them in their deliberations

4.1.4.3. the provision of information on pay rates by occupation

BPW NZ believes that the above recommendations are not met in the draft Bill.

5. International Gender Pay Gap Commitments

5.1. BPW International has General Consultative Status at the United Nations through the UN Economic & Social Council (ECOSOC). This enables BPW International to appoint official representatives to UN agencies worldwide and to accredit members to attend specific UN meetings.

5.1.1. We present that the New Zealand government has adopted a number of international gender pay gap initiatives. BPW NZ believes achieving the goals of these initiatives will be more difficult under the provisions of the draft Employment (Pay Equity and Equal Pay) Bill because female employees will be further disadvantaged when making pay equity claims than they are under present legislation (discussed in greater detail in the Clauses and Recommendations section of this Submission).

5.1.2. The **International Labour Organisation (ILO) Convention concerning Equal Remuneration for Men and Women Workers of Equal Value (ILO 100)** was ratified by MBIE in 2015. ILO 100 requires equal remuneration to be paid to men and women workers for work of equal value without discrimination based on sex and notes that differential wage rates that correspond to differences in job content are not contrary to the principle of equal remuneration.

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- 5.1.3. BPW International upholds the outcomes of the **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**. The New Zealand government signed CEDAW in 1980 and ratified the Convention in 1985. Article 11 (d) of the Convention, states that parties shall ensure, on a basis of equality of men and women, the same rights, in particular “The right to equal remuneration, including benefits”.
- 5.1.4. The **International Covenant on Economic, Social and Cultural Rights** was signed by New Zealand in 1968 and ratified in 1978. Article 7 recognises the right of everyone to “fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work”.
- 5.1.5. Ratified by New Zealand in 1948, Article 7 of the **Universal Declaration of Human Rights** states that “All are equal before the law and are entitled without any discrimination to equal protection of the law.” Article 23 states that “(2) Everyone, without any discrimination, has the right to equal pay for equal work.”

6. Clauses and Recommendations

6.1. There are a number of clauses that are of particular concern to BPW NZ:

Clause 10. Equal pay or unlawful discrimination (non-remuneration) claims

Clause 14. Employee may make pay equity claim

Clause 15. Requirements relating to pay equity claims

- 6.1.1. These clauses allow an employee (or in the case of pay equity claim, one or more employee) to come forward with an equal pay or pay equity claim and specifies how a pay equity claim must be made. However, this puts the onus on the employee/s to know a) that they may have a basis for a claim; b) to find the time to prepare and submit a claim; and c) risk damaging their relationship with their employer by submitting a claim.
- 6.1.2. Marginalised women in New Zealand work in low-paid jobs, which may include shift-work and casual employment agreements. They are often the primary provider of childcare in their household and often are limited by job-security, lack of discretionary income, time and energy.
- 6.1.3. BPW NZ recommends that the Government put the onus on employers to close the pay gap between men and women; this is reflected in Clause 8 which states that “an employer must ensure”, however the legislation doesn’t require or incentivise the employer to take any initiative.

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6.1.4. The HRC's *Tracking Equality at Work* report put forward a recommendation regarding transparency, requiring businesses to report annually on gender pay gaps. This is an approach we believe would be a far more effective way of achieving progress with the gender pay gap and aligns with the Joint Working Group's recommendation that all parties have access to "resources and information" to assist them with their deliberations.

BPW NZ recommends that Clause 14 be amended to provide resourcing to support women in the process of making a claim as well as requiring employers to provide reporting on occupational pay rates by gender.

6.1.5. *Clause 13. Criteria to be applied*

Clause 22. Matters to be assessed

Clause 23. Identifying appropriate comparators

6.1.5.1. Clause 13 and 22 state the criteria that must be considered when assessing an equal pay or pay equality claim. It includes areas such as skills, effort, experience, and responsibility. Clause 23 provides guidelines around the use of comparators, requiring that comparators must first be selected from within the employer's business, secondly from within a similar business, and thirdly from within the same industry or sector (Clause 23(2)). This ignores the significant occupational gender segregation that exists in New Zealand and will severely limit the options women will have for the basis of their claims. This hamstring the ability to assess claims across industries and sectors, with the result being the perpetuation of institutional pay discrimination.

BPW NZ recommends that claimants be able to select comparators regardless of whether it is in the same business, sector or industry.

6.1.6. *Clause 17. Employer must form view as to whether pay equity claim has merit*

6.1.6.1. This allows up to 90 days for employers to determine whether a pay equity claim has merit. This is unduly long.

BPW NZ recommends this be shortened to up to six working days.

6.1.7. *Clause 39. Limitation period where pay equity claim is resolved by determination*

6.1.7.1. This clause states that the recovery of pay is only allowable up to the date on which the pay equity claim was delivered. Clause 12 allows for a six-year limitation period for equal pay claims. This discriminates against pay equity claimants. Further, should the employer's actions amount to negligence or malicious intent, Clause 39 severely limits a wronged employee's ability to be

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paid compensation and the ability of the Authority to penalise the employer through compensation.

BPW NZ recommends Clause 39 be changed to a six-year limitation period.

6.1.8. Clause 42. Penalties for non-compliance

6.1.8.1. The penalties listed in Clause 42 are far too low. Significantly higher penalties are required to discourage employers from delaying or frustrating claims.

7. The Employment Relations Authority and the Mediation Service must be properly resourced by government to respond to current and future pay equity claims. Staff will require specialist training on pay equity issues in order to support and advise claimants and employers. The Authority must have access to expert in-house research and evaluation, made available to claimants prior to its use in any determinations.

8. *Clause 44. Regulations*

8.1.1. Clause 44 allows the Crown to make regulation related to what matters must be taken into account when determining whether a claim has merit, when a claim is being assessed and when identifying appropriate comparators.

8.1.2. BPW NZ does not find the explanatory note satisfactory in explaining why this clause is necessary. We believe this Clause gives rise to the risk that subsequent regulation could change the process and intent of the legislation.

BPW NZ recommends this Clause is removed or changed to ensure the intent of the legislation is protected.

9. Transparency of pay

9.1.1. BPW New Zealand recommends that a clause be added to ensure that the data provided to the Ministry of Business Innovation and Employment by employers under Section 130 of the Employment Relations Act 2000 also includes gender. The clause should also enable any employee to demand their employer to provide the information as per Section 130 (2) of the Employment Relations Act 2000.

10. Concluding summary

10.1.1. Historically, New Zealand has led the world in the introduction of legislation to support equal rights for women, beginning with the signing of the Electoral Act (1893). Work to close the gender pay gap has come a long way in the past fifty years, but

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stagnation in the rate of change to this pay gap indicates that there is still more to do. BPW NZ believe this legislation in its current form, would be counterproductive and harmful to women who are victims of pay discrimination. For BPW NZ to support this legislation, we would like it to address New Zealand's domestic and international commitments to the gender pay gap and honour the findings of the recent Joint Working Group on Pay Equity Principles.

Thank you for the opportunity to submit our submission and we hope that our comments are of use to you.

On behalf of

New Zealand Federation of Business and professional Women Inc.

Hellen Swales

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