

Departmental Disclosure Statement

Equal Pay Amendment Bill 2025

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Business, Innovation and Employment.

The Ministry of Business, Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

1 May 2025.

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Part One: General Policy Statement

The purpose of this Bill is to achieve a better regulatory framework for parties to a pay equity claim to assess whether there is sex-based undervaluation, by ensuring that there are: a robust process for raising claims; clarity on the appropriateness of comparators to assess sex-based undervaluation; sustainability for employers to meet their obligations; and the right incentives to encourage parties to resolve pay equity claims.

In 2020, the Equal Pay Act 1972 (the **Act**) was amended to provide a process for claimants to raise and settle pay equity claims to address undervaluation in remuneration in female-dominated occupations, rather than a court-based claim system.

The legislative settings introduced in 2020 included a low entry threshold, limited tools for employers to contest broadly-scoped claims, and insufficient requirements for comparator choice and comparison methodology. These settings have resulted in claims progressing through the entry threshold without strong evidence of undervaluation and made it difficult for parties to attribute differences in remuneration to sex-based undervaluation.

The proposed changes to the Act will improve the process for raising and resolving a pay equity claim and provide a better framework for assessing whether there is sex-based undervaluation. Changes are being made to ensure the process is workable and sustainable. There will be a better framework for parties to use to assess whether there is sex-based undervaluation when a pay equity claim is made.

The Bill will amend the process for raising and responding to pay equity claims by—

- increasing the threshold for raising pay equity claims by requiring claims to have merit and by increasing the threshold for what qualifies as work that is “predominantly performed by female employees”; and
- requiring unions raising a claim on behalf of multiple employees to provide evidence to demonstrate how the work covered by a pay equity claim is the same or substantially similar; and
- making it clear that employers can give notice to claimants during the assessment phase if they consider that the work that is the subject of a claim is not the same or substantially similar. The claim would be discontinued and would need to be raised again; and
- allowing employers to opt out of a multi-employer claim without needing to provide a reason; and
- introducing a hierarchy of comparators so that comparators in closer proximity to the employer must be selected, where they exist, and allowing parties to agree to use a pay equity settlement (if settled under the Act as amended by this Bill) as an additional comparator; and
- making it clearer that parties must assess market factors that affect remuneration but are not related to sex-based discrimination; and
- requiring parties to only assess whether the workforce that is the subject of the claim has experienced sex-based undervaluation since the work became predominantly performed by females; and
- removing the ability (and requirement) for settlements to include a review clause; and

- restricting the ability to re-raise a claim so that a claim can only be re-raised 10 years after a settlement (unless there are exceptional circumstances) and only if it meets the new requirements for raising a claim; and
- allowing parties to agree to phase in remuneration over a maximum period of 3 years; and
- allowing parties to seek a determination on phasing if they cannot agree on phasing (but have agreed on remuneration); and
- requiring the Employment Relations Authority (the **Authority**), when it fixes the remuneration of a pay equity claim, to phase in remuneration in 3 equal instalments, a year apart from each other, starting from the date of the determination; and
- removing the ability of the Authority to award back pay when it is fixing remuneration.

These changes are intended to ensure that—

- the process for raising a claim is robust and employers have more tools to ensure claims are appropriately scoped to only cover work that is the same or substantially similar; and
- there is better clarity in the Act on the appropriateness of comparators used in assessments of sex-based undervaluation and on comparison methodology; and
- employers can meet their pay equity obligations in a manner that is sustainable; and
- the parameters for the Authority relating to fixing remuneration provide the right incentives for parties to resolve pay equity claims.

All existing claims that have not been finally settled or determined before this Bill comes into force will be discontinued. Claimants can raise a new claim under the amended Act, if they meet the new requirements for raising a claim. Existing pay equity settlements, including those that were treated as settled under the 2020 Amendment Act, will only be able to be re-raised after 10 years.

All review clauses under existing settlement agreements will become unenforceable.

This will bring the changes into effect immediately, so that all existing and future claims are considered under the new framework.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>Secondary Review of Methodology to Determine Sex-Based Undervaluation of Care and Support Work: https://www.tewhatauora.govt.nz/publications/secondary-review-of-methodology-to-determine-sex-based-undervaluation-of-care-and-support-work</p> <p>The Value of care: Understanding the impact of the 2017 pay equity settlement on the residential aged care, home and community care and disability support sectors https://workresearch.aut.ac.nz/data/assets/pdf_file/0019/258130/Pay-Equity-Report_Digital_final.pdf</p> <p>Impacts of a pay equity settlement: Summary of research findings: https://www.publicservice.govt.nz/assets/DirectoryFile/Impacts-of-a-pay-equity-settlement.pdf</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO
Due to ministerial time constraints, no regulatory impact analysis was undertaken.	

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p>(a) The size of the financial implications for the public sector has been assessed, however, this information is budget sensitive.</p> <p>(b) Due to ministerial time constraints, no analysis on the potential impact of the Bill on any specific group of persons was undertaken.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO
<p><i>(a) Level of effective compliance or non-compliance with applicable obligations or standards</i></p> <p>The Ministry of Business, Innovation and Employment considers there is a low risk of non-compliance. MBIE will provide updated guidance, in line with its role of publishing employment law information and guidance for employers, employees and unions. The Act provides avenues for addressing non-compliance with the parties' obligations through the dispute resolution process.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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The policy was assessed by the Ministry of Business, Innovation and Employment and the Ministry of Foreign Affairs and Trade respectively against New Zealand's International Labour Organization (ILO) and international trade obligations.
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Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Due to ministerial time constraints, no analysis on whether the Bill is consistent with the principles of the Treaty of Waitangi was undertaken.
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Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
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The Ministry of Justice has undertaken an assessment of whether the Bill is consistent with the Bill of Rights Act 1990 and has provided advice to the Attorney-General.
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Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of the Bill: http://www.justice.govt.nz/policy/constitutional-law-and-humanrights/human-rights/bill-of-rights .
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Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
<p><i>(a) Offences or penalties</i></p> <p>The Act currently allows for a penalty if an employer fails to comply with section 13ZZA, which requires the employer to enter into a pay equity bargaining process if the Authority or court determines that a pay equity claim is arguable.</p> <p>As a consequence of extending the situations when an employer is required to enter into, or continue with bargaining, under section 13ZZA, the Bill amends the provisions that are subject to a penalty to include where an employer fails to continue bargaining when the Authority or court has determined that the pay equity claim cannot be discontinued as:</p> <ul style="list-style-type: none"> • an appropriate comparator is available for use in assessing the claim or • all the employees covered by the claim perform work that is the same or substantially similar (refer clause 46). <p>The values of the maximum penalties are unchanged.</p> <p><i>(b) Jurisdiction of a court or tribunal</i></p> <p>The current jurisdiction of the Employment Relations Authority (and the Employment Court on a challenge) in relation to disputes relating to a pay equity claim has been amended. The details of these changes are summarised in Annex One.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	NO
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Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	NO
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Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>The policy details were tested with the Public Service Commission, Health NZ, the Ministry of Education, and the Treasury based on their experience with pay equity.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	YES
All review clauses under existing pay equity settlement agreements, including a term or condition of a review clause incorporated into an employment agreement, will become unenforceable (refer Schedule 1 Part 2). The rationale is that all claims should be working within the same framework, rather than having two systems operating at once.	

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>The Bill includes an empowering provision to enable regulations to be made that prescribe:</p> <ol style="list-style-type: none"> the evidence unions are required to provide to demonstrate how the work set out in a pay equity claim is the same or substantially similar (refer clause 13 and 17) and for individual employees, the information about the work performed (refer clause 12). any other feature of the relevant labour market, industry, sector, or occupation that should be considered as part of the assessment of whether the claim has merit (in particular, as part of the assessment of whether there has been continued systemic sex-based undervaluation of the work covered by the claim) (refer clause 11). <p>These regulation-making powers will be used if, in future, they could provide greater clarity to support employers to determine if the claim has merit and/or whether the scope of a claim is appropriate when raised.</p> <p>The Bill removes the restriction on the making of regulations that would require the comparators against which a pay equity claim is to be assessed to be ranked or weighted (refer clause 47). This restriction is no longer relevant, as the changes in the Bill will introduce a hierarchy that will apply to the selection of comparators.</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	YES
<p>All existing pay equity claims that have not been finally settled or determined will be discontinued (refer Schedule 1 Part 2). Claimants can raise a new pay equity claim under the amended Act, if they meet the new requirements for raising a claim. Existing pay equity settlements, including those that were treated as settled under the 2020 Amendment Act, will only be able to be re-raised after 10 years from their settlement date. The Bill will commence the day after Royal Assent, meaning the changes will come into effect immediately, so that all existing and future claims are considered under the new framework.</p> <p>Additionally, upon commencement any proceedings about a review clause are discontinued.</p>	

Appendix One: Further Information Relating to Part Three

Impact on the jurisdiction of a court or tribunal – question 3.4(b)

The current jurisdiction of the Employment Relations Authority (and the Employment Court on a challenge) in relation to disputes relating to a pay equity claim has been amended to:

- Remove its current jurisdiction to make determinations on:
 - whether to provide for the recovery of an amount of remuneration for past work, and the amount to provide (refer clause 38 and 43)
 - the inclusion of a review clause in a settlement (as parties are no longer able to agree to include a review clause, refer clause 30)
 - any dispute relating to an existing review clause in a settlement (and existing review clauses in settlements will no longer be enforceable) (refer Schedule 1, Part 2).
- Newly restrict its jurisdiction to preclude it from making a determination on:
 - an employer's decision to opt out of a multi-employer pay equity claim (refer clause 15 and 38)
 - the selection of a previously settled pay equity claim as an appropriate comparator (refer clause 38)
 - the recovery of an amount of remuneration for past work that relates to work performed before the date of the determination (refer clause 38)
 - the inclusion of a review clause in a settlement (refer clause 38).
- Give it additional jurisdiction to:
 - make determinations on matters related to the phasing of remuneration in a pay equity settlement (within a maximum period of three years) where the parties cannot agree on phasing (but they have agreed on remuneration), however, it must consider certain criteria when making such a determination (refer clause 38).
 - require the phasing of remuneration (in three equal instalments, a year apart from each other, starting from the date of the determination) when it fixes the remuneration relating to a pay equity claim (refer clause 38).
- Change the threshold to apply to it for a determination:
 - the threshold to apply to the Employment Relations Authority to fix the remuneration for a pay equity settlement has been raised by removing the ability to apply to fix if 'a reasonable period has elapsed within which the parties have used their best endeavours to identify and use reasonable alternatives to settle the pay equity claim' (refer clause 41).