

Version
as at 30 November 2022



Equal Pay Amendment Act 2020

Public Act 2020 No 45
Date of assent 6 August 2020
Commencement see section 2

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The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Ministry of Business, Innovation, and Employment.

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Equal Pay Amendment Act 2020.

2 Commencement

This Act comes into force 3 months after the date on which it receives the Royal assent.

3 Principal Act

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

Part 1

Amendments to principal Act

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)

pay equity claim means a claim that an employer has breached section 2AAC(b)

pay equity claim settlement means a settlement of a pay equity claim that is recorded—

- (a) in a written agreement between the parties as described in section 13ZH(3); or
- (b) in a determination of the Authority or the Court as described in section 13ZH(1)(b)(ii)

predominantly performed by female employees has the meaning set out in section 13F(2)

- (2) In section 2(1), definition of **employee**,—
 - (a) delete “; but does not include—”; and
 - (b) repeal paragraphs (a) and (c).
- (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”.
- (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:

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.

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
- (b) there is no differentiation, on the basis of sex, 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—
 - (i) have the same, or substantially similar, skills, responsibility, and experience; and
 - (ii) work under the same, or substantially similar, conditions, and with the same, or substantially similar, degrees of effort.

8 Section 2A amended (Unlawful discrimination)

Repeal section 2A(2).

9 New section 2B inserted (Choice of proceedings)

After section 2A, insert:

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 pursue a personal grievance under the Employment Relations Act 2000, the employee may take 1, but not more than 1, of the following steps:
 - (a) the employee may pursue a claim under this Act; or
 - (b) the employee may make a complaint under the Human Rights Act 1993; or
 - (c) the employee may apply to the Authority for resolution of a personal grievance under the Employment Relations Act 2000.
- (2) For the purposes of subsection (1)(a), an employee pursues a claim under this Act if,—
 - (a) in the case of an unlawful discrimination claim, the employee makes a complaint under section 2A; and
 - (b) in the case of an equal pay claim, the employee commences proceedings for recovery of remuneration under section 131 of the Employment Relations Act 2000 (as provided for in section 13(2)); and

- (c) in the case of a pay equity claim raised by an individual employee, the employee—
 - (i) files an application with the Authority under section 13ZY(1)(d) for the Authority to fix remuneration; or
 - (ii) settles the claim in accordance with section 13ZH(1)(a); or
 - (iii) accepts an offer of the benefit of the pay equity claim settlement made under section 13ZL(4); and
- (d) in the case of a pay equity claim raised by 1 or more unions, the employee—
 - (i) is covered by the union-raised claim at the time when the claimant—
 - (A) files an application with the Authority under section 13ZY(1)(d) for the Authority to fix remuneration; or
 - (B) settles the claim in accordance with section 13ZH(1)(a); or
 - (ii) accepts an offer of the benefit of the pay equity claim settlement made under section 13ZL(2) or (5).
- (3) 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.
- (4) If an employee pursues 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 that the employee may have under the Human Rights Act 1993 or under the Employment Relations Act 2000.
- (5) 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.
- (6) If an employee applies to the Authority for resolution of 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 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)”.
- (3) In section 3(1)(b), replace “service” with “experience”.
- (4) 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:

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.

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”.

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**”.
- (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) 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”.
- (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:

- (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.

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)

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

13B Interpretation

In this Part, unless the context otherwise requires,—

affected employee means an employee who performs work that is the same as, or substantially similar to, the work performed by another employee of the same employer, if a pay equity claim has been raised with the employer in respect of that work (whether by an employee or by 1 or more unions)

claimant means—

- (a) an individual employee who raises a pay equity claim;
- (b) a union that raises a pay equity claim on behalf of the members of that union;
- (c) multiple unions that jointly raise a pay equity claim on behalf of the members of each union, or that pursue a pay equity claim that is consolidated in accordance with section 13M

covered by a pay equity claim settlement, in relation to an employee, means the employee—

- (a) is the claimant who raised the pay equity claim to which the settlement relates; or
- (b) in the case of a claim raised by 1 or more unions, was covered by the union-raised claim at the time that the claim was settled; or
- (c) has accepted an offer of the benefit of the pay equity claim settlement made under section 13ZL(2), (4), or (5)

covered by a union-raised claim, in relation to an employee, means the employee—

- (a) is covered by a claim raised by 1 or more unions in accordance with section 13W; and
- (b) has not opted out under section 13Y

employer means an employer in relation to whom a pay equity claim has been raised

multi-employer pay equity claim means a claim raised by 1 or more unions with multiple employers (including a claim raised with multiple employers to which section 13K applies and a claim raised with multiple employers that is consolidated in accordance with section 13N)

party, in relation to a pay equity claim, means—

- (a) the claimant;
- (b) the employer (or each employer, in the case of a multi-employer pay equity claim)

union—

- (a) means a union registered under Part 4 of the Employment Relations Act 2000; and
- (b) if 2 or more unions are joint claimants (whether because they jointly raised a pay equity claim or subsequently consolidated their pay equity claims), means those unions jointly.

13C Good faith in pay equity claim process

- (1) The duty of good faith in section 4 of the Employment Relations Act 2000 applies to the parties to a pay equity claim, as if references in that section to a collective agreement were references to a pay equity claim settlement.
- (2) The duty of good faith in section 4 of the Employment Relations Act 2000 requires the parties to, at least,—
 - (a) follow the process set out in this Part to resolve the pay equity claim; and
 - (b) in the case of multiple employer parties required by section 13K to enter into a multi-employer pay equity process agreement, use their best

- endeavours to enter into that agreement in an effective and efficient manner; and
- (c) in the case of multiple union parties required by section 13M to consolidate their claims, use their best endeavours to agree on how they will progress the consolidated claim; and
 - (d) 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
 - (e) use their best endeavours to settle the pay equity claim in an orderly, timely, and efficient manner; and
 - (f) 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
 - (g) not undermine, or do anything that is likely to undermine, the bargaining or the authority of another party in the bargaining.
- (3) The duty of good faith in section 4 of the Employment Relations Act 2000, which applies to the relationship between a union and a member of the union, also applies to the relationship between a union and an employee who is not a member of the union if the employee is covered by the union-raised claim.
- Compare: 2000 No 24 s 32

Raising pay equity claims

13D Union right to represent members

A union is entitled to raise a pay equity claim in accordance with section 13E on behalf of its members and to represent them in that claim.

13E Unions and employees may raise pay equity claims

- (1) The following may raise a pay equity claim with an employer if they consider that the claim is arguable:
- (a) a union, on behalf of 1 or more members of that union who perform the same or substantially similar work for the employer:
 - (b) 2 or more unions, acting jointly on behalf of the members of each union who perform the same or substantially similar work for the employer:
 - (c) an individual employee, other than an employee who—
 - (i) is covered by a union-raised claim; or
 - (ii) is barred from pursuing a pay equity claim under section 2B; or
 - (iii) is referred to in subsection (6).

- (2) A union may not raise a pay equity claim with an employer if no employee of the employer who performs the work to which the claim relates is a member of the union.
- (3) Subsection (2) does not limit a union's right to jointly raise a multi-employer pay equity claim with another union, or to consolidate a claim raised with multiple employers in accordance with section 13N, provided each employer with whom the multi-employer claim is raised employs at least 1 employee who—
 - (a) performs the work to which the claim relates; and
 - (b) is a member of 1 of the unions that jointly raise the claim.
- (4) Despite subsection (1), a union may not raise a multi-employer pay equity claim with employers in respect of work performed by members of the union if—
 - (a) 1 or more of the employers are already parties to a pay equity claim raised by another union or unions in respect of the same or substantially similar work; and
 - (b) 1 or more of the employers are not.
- (5) A union that is prevented from raising a multi-employer pay equity claim by subsection (4) may raise 2 separate claims in respect of the work, as follows:
 - (a) the union may raise a claim with the employer or employers who are already parties to a union-raised pay equity claim (in which case section 13M applies); and
 - (b) the union may raise a separate claim with the employer or employers who are not already parties to a union-raised pay equity claim (in which case section 13N(3)(b) applies).
- (6) An employee who is covered by a pay equity claim settlement may not raise a pay equity claim in respect of the work to which the settlement relates (unless the Authority or court determines otherwise in accordance with section 13ZY(5)).
- (7) Subsection (6)—
 - (a) does not apply to a pay equity claim settlement that has been cancelled by the Authority under section 13ZJ(1)(b);
 - (b) overrides subsection (1).

13F Meaning of arguable

- (1) A pay equity claim is **arguable** if—
 - (a) the claim relates to work that is or was predominantly performed by female employees; and
 - (b) it is arguable that the work is currently undervalued or has historically been undervalued.

- (2) For the purposes of this Act, work is or was **predominantly performed by female employees** if it is work that is currently, or that was historically, performed by a workforce of which approximately 60% or more members are female.
- (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:
- (a) the origins and history of the work, including the manner in which wages have been set:
 - (b) any social, cultural, or historical factors:
 - (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:
 - (e) any sex-based systemic undervaluation of the work as a result of any 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:
 - (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 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.

13G Requirements relating to all pay equity claims

Every pay equity claim must—

- (a) be in writing; and
- (b) state that it is a pay equity claim made under this Act.

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

13H Requirements for claim raised by individual employee

A pay equity claim raised by an individual employee must—

- (a) state—

- (i) the employee's name and address for service; 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 has authorised a representative to act on the employee's behalf in respect of the claim, the name and address for service of that representative (*see* sections 18(3) and 236(3) of the Employment Relations Act 2000); and
- (b) briefly set out the information that the employee relies on in support of the elements required for an arguable pay equity claim under section 13F.

13I Requirements for claim raised by union or unions

- (1) A pay equity claim raised by a union or unions—
- (a) must—
 - (i) state the name and address for service of the union, or for each of the unions if more than 1 are acting jointly; and
 - (ii) state the date on which the claim is made; and
 - (iii) include a brief description of the work performed by the employees to be covered by the union-raised claim; and
 - (b) must briefly set out the information that the claimant relies on in support of the elements required for an arguable pay equity claim under section 13F; and
 - (c) in the case of a claim raised with multiple employers, must include a notice to each of the employers of their obligations under section 13K to enter a multi-employer pay equity process agreement with the other employers with whom the claim is raised.
- (2) A union that raises a pay equity claim with an employer is not required to name the employees who perform the work to which the claim relates.
- (3) A pay equity claim raised by 1 or more unions with multiple employers must also include—
- (a) the name of each employer with whom the claim is raised; and
 - (b) a brief explanation of how the work performed by the employees covered by the union-raised claim is considered to be the same or substantially similar.

13J Employer must acknowledge receipt of pay equity claim and notify unions

- (1) An employer who receives a pay equity claim from a claimant must, no later than 5 working days after receiving the claim,—

- (a) acknowledge receipt of the claim by giving a notice of receipt to the claimant; and
 - (b) give notice of the claim to every union (other than the claimant, if the claimant is a union) to which 1 or more of the employer's employees belong that represents persons who perform work that is the same as, or substantially similar to, the work to which the claim relates.
- (2) A notice to a union under subsection (1)(b) must—
- (a) be given in writing and expressed in plain language; and
 - (b) have attached to it a copy of the pay equity claim.
- (3) If the claimant is an individual employee, the notice to a union under subsection (1)(b), and the attached copy of the pay equity claim, must not include the claimant's name, their contact details, or any other information that identifies the claimant, unless the claimant has given written permission for those details to be shared.

Claims involving multiple employers

13K Union-raised claims raised with multiple employers: employers must enter into pay equity process agreement

- (1) This section applies if—
- (a) 1 union has raised a pay equity claim with 2 or more employers in respect of employees who are members of that union and who perform the same, or substantially similar, work; or
 - (b) 2 or more unions have jointly raised a pay equity claim with 2 or more employers in respect of employees who are members of any of those unions and who perform the same, or substantially similar, work.
- (2) Each employer who receives a pay equity claim raised by a union or unions with multiple employers must enter into a single multi-employer pay equity process agreement for the purposes of deciding whether the claim is arguable and for the purposes of the pay equity bargaining process.
- (3) The multi-employer pay equity process agreement must set out—
- (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.
- (4) If the employers cannot agree on a multi-employer pay equity process agreement, any of them may apply to the Authority for a direction.

13L Opting out of multi-employer pay equity claim*Employers may individually opt out*

- (1) An employer may opt out of a multi-employer pay equity claim by giving notice to all other parties only if the employer has genuine reasons, based on reasonable grounds, to do so.
- (2) If an employer opts out of a multi-employer pay equity claim, the claim in respect of that employer must be progressed as a separate claim.

Unions may jointly opt out of claim raised with individual employer

- (3) Subsection (4) applies if 2 or more unions have jointly raised a claim with an employer, or have consolidated their claims raised with an employer (as required by section 13M), and the claim raised with the employer is part of a multi-employer pay equity claim.
- (4) The unions may opt out of the multi-employer pay equity claim raised with the employer by giving notice to all other parties only if—
 - (a) the unions have genuine reasons, based on reasonable grounds, to do so; and
 - (b) the unions act jointly.

- (5) If 2 or more unions jointly opt out of a multi-employer pay equity claim in respect of an employer under subsection (4), the unions' joint claim in respect of that employer must be progressed as a separate claim.

Single union may opt out of claim raised with individual employer

- (6) A union may opt out of a multi-employer pay equity claim in respect of an employer only if—
 - (a) the union has genuine reasons, based on reasonable grounds, to do so; and
 - (b) the union is the only union that has raised a claim with that employer in respect of the work to which the claim relates.
- (7) If a union opts out of a multi-employer pay equity claim in respect of an employer under subsection (6), the union's claim in respect of that employer must be progressed as a separate claim.

Notice of opting out

- (8) A notice opting out of a multi-employer pay equity claim may be given by an employer under subsection (1), by unions jointly under subsection (4), or by a single union under subsection (6), at any time before the claim is settled.
- (9) A notice opting out of a multi-employer pay equity claim must be given in writing and must state the party's genuine reasons for opting out and the reasonable grounds on which those reasons are based.

Consolidation of claims

13M Multiple union claims raised with single employer: unions must consolidate

- (1) This section applies if a union raises (or multiple unions jointly raise) a pay equity claim with an employer (the **first claim**) and, before that claim is settled, another union raises a pay equity claim (the **subsequent claim**) with the same employer in respect of work that is the same as, or substantially similar to, the work to which the first claim relates.
- (2) The unions must consolidate the claims.
- (3) The employer must, within 5 working days of receiving the subsequent claim, give notice to each union that has raised a claim with the employer of the requirement to consolidate.
- (4) If the unions cannot agree on how the consolidated claim will be progressed, any of them may apply to the Authority for a direction.

13N Consolidation of claim raised with additional or new employer with existing union-raised claim

- (1) This section applies if 1 or more unions have raised a pay equity claim with 1 or more employers who have decided that the claim is arguable (an **existing claim**).
- (2) If the union or unions that raised the existing claim subsequently raise a claim with another employer that relates to work that is the same as, or substantially similar to, the work covered by the existing claim and the other employer decides that the claim is arguable (an **additional employer**), the claim raised with the additional employer may be consolidated with the existing claim only if the additional employer and all of the parties to the existing claim consent.
- (3) If 1 or more other unions subsequently raise a pay equity claim with 1 or more employers that relates to work that is the same as, or substantially similar to, the work covered by the existing claim (a **new claim**), and—
 - (a) if the new claim is raised with 1 or more employers who are already parties to the existing claim, section 13M applies and requires the unions to consolidate the existing claim and the new claim:
 - (b) if the new claim is raised with 1 or more employers who are not parties to the existing claim, and who decide that the claim is arguable (a **new employer**), the claim raised with the new employer may be consolidated with the existing claim only if the union that raised the new claim, the new employer, and all parties to the existing claim consent.
- (4) If the consent of all parties is not obtained to consolidate a claim raised with an additional employer or a new employer with an existing claim as required by subsection (2) or (3)(b), the union must progress the claim raised with the additional employer or the new employer separately.

13O Process to request consent to consolidate

- (1) This section applies to a request to consolidate a claim raised by a union with an additional employer (*see* section 13N(2)) or a new employer (*see* section 13N(3)(b)) with an existing pay equity claim.
- (2) A request to consolidate may be made by—
 - (a) a union who raised either of the claims; or
 - (b) an employer with whom either of the claims is raised.
- (3) A request to consolidate may be made at any time before the first of the claims is settled.
- (4) A request to consolidate must be made in writing and must include—
 - (a) a brief description of the work performed by the employees who are covered by each of the claims; and
 - (b) a brief explanation of how the work performed by the employees who are covered by each of the claims is considered to be the same or substantially similar.

13P Effect of consolidation

- (1) This section applies if—
 - (a) multiple union claims raised with a single employer are consolidated as required by section 13M; or
 - (b) all parties consent to a request under section 13O for consolidation of an existing claim with a claim raised by a union with an additional employer or a new employer.
- (2) The parties to each of the claims that are to be consolidated must carry out the assessment required by section 13ZD.
- (3) The parties to each of the claims that are to be consolidated must identify appropriate comparators as required by section 13ZE.

*Employers' obligations to give notice of arguable claims***13Q 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 45 working days after receiving it, decide whether, in the employer's view, the pay equity claim is arguable. (*See* section 13T for how this applies to multi-employer pay equity claims.)
- (2) An employer must act in a manner that is consistent with the purpose of this Part (to set a low threshold for raising a claim) by taking a light-touch approach when making the decision required under subsection (1).
- (3) 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
 - (b) there will be a pay equity claim settlement as a result of following the pay equity claim process.
- (4) The employer must give notice of the employer's decision to the claimant in accordance with section 13S—
- (a) as soon as is reasonably practicable, and not later than 45 working days after receiving the claim; or
 - (b) by a later date specified in a notice under section 13R extending the time limit.
- (5) The employer is deemed to have accepted that a pay equity claim is arguable if the employer fails to give notice to the claimant under section 13S—
- (a) within 45 working days of receiving the claim; or
 - (b) by the date specified in a notice under section 13R extending the time limit.

Compare: 1990 No 57 s 5I; 2000 No 24 s 69AAE

13R Notice extending time limit for employer's decision as to whether claim arguable

- (1) Despite section 13Q, an employer may, by notice to the claimant, extend the time limit for making and notifying the employer's decision as to whether a pay equity claim is arguable if the employer has reasonable grounds for requiring the extension.
- (2) A notice extending the time limit must—
- (a) be given as soon as is reasonably practicable and not later than 45 working days after the employer receives the claim; and
 - (b) specify the extended date by which the employer will notify the claimant of the employer's decision; and
 - (c) set out the grounds for requiring the extension.
- (3) A notice extending the time limit must not extend the time limit by more than—
- (a) 20 working days in the case of a claim raised with a single employer; or
 - (b) 80 working days in the case of a claim raised with multiple employers, unless all parties agree to a longer extension.

13S Employer's obligations after deciding whether claim is arguable

- (1) This section applies to an employer who makes the decision required by section 13Q(1) or who is deemed by section 13Q(5) to have accepted that a pay equity claim is arguable.
- (2) An employer who decides that the claim is arguable must—

- (a) give notice to the claimant advising that the employer has decided that the claim is arguable; and
 - (b) provide information to the claimant about the pay equity bargaining process under sections 13ZC to 13ZZE; and
 - (c) enter into the pay equity bargaining process with the claimant.
- (3) An employer who decides that the claim is not arguable must give notice to the claimant that—
- (a) sets out the reasons for the employer’s decision; and
 - (b) explains the steps that the claimant may take to challenge the employer’s decision, including advice that—
 - (i) the claimant may seek further details of the reasons for the employer’s decision:
 - (ii) the claimant may refer the question of whether the claim is arguable to mediation under section 13ZO:
 - (iii) the parties may refer the question of whether the claim is arguable to the Authority for facilitation under sections 13ZP to 13ZX if all of the parties agree and if 1 or both of the grounds in section 13ZR(2) exist:
 - (iv) the claimant may apply to the Authority under section 13ZY for a determination as to whether the pay equity claim is arguable and that, if the claimant does so, the Authority will first consider whether an attempt has been made to resolve the question by facilitation or mediation.
- (4) An employer must, as soon as is practicable after becoming aware that they have been deemed to have accepted that a pay equity claim is arguable under section 13Q(5),—
- (a) give notice to the claimant advising that the employer is deemed to have accepted that the pay equity claim is arguable under section 13Q(5); and
 - (b) provide information to the claimant about the pay equity bargaining process under sections 13ZC to 13ZZE; and
 - (c) enter into the pay equity bargaining process with the claimant.

13T Deciding if multi-employer pay equity claim is arguable

Sections 13Q to 13S and 13V apply to employers who have entered a multi-employer pay equity process agreement in accordance with section 13K as follows:

- (a) the employers must make a joint decision under section 13Q(1) as to whether the claim is arguable and must give joint notice of that decision to the claimant under section 13S(2)(a) or (3) (as applicable):

- (b) the employers may give joint notice to the claimant under section 13R extending the time limit:
- (c) if the employers decide the claim is arguable, or are deemed to have decided the claim is arguable,—
 - (i) each employer must individually give notice to affected employees as required by section 13V; and
 - (ii) the employers must jointly enter into the pay equity bargaining process in accordance with the multi-employer pay equity process agreement.

13U Employer must give notice of first arguable pay equity claim raised by individual employee

- (1) If an employer decides that a pay equity claim raised by an individual employee in respect of work performed by the employee is arguable, the employer must give notice of that claim to each affected employee.
- (2) Subsection (1) does not apply if a pay equity claim has already been raised with the employer in respect of work that is the same as, or substantially similar to, the work performed by the individual employee.
- (3) A notice to affected employees under subsection (1) must—
 - (a) contain the information set out in Part 1 of Schedule 2; and
 - (b) state the date on which it is given; and
 - (c) be given in writing and expressed in plain language; and
 - (d) be given as soon as is reasonably practicable and not later than 20 working days after the date on which the employer decides that the claim is arguable.
- (4) Despite subsection (3)(d), the employer may, by notice to the claimant, extend the time limit for notifying affected employees if the employer has reasonable grounds for requiring the extension.
- (5) A notice extending the time limit must not extend the time limit by more than 25 working days, and must—
 - (a) be given as soon as is reasonably practicable and not later than 20 working days after the date on which the employer decides that the claim is arguable; and
 - (b) specify the extended date by which the employer will notify affected employees of the claim; and
 - (c) set out the grounds for requiring the extension.

13V Employer must give notice of first arguable pay equity claim raised by union

- (1) If an employer decides that a pay equity claim raised by 1 or more unions in respect of work performed by 1 or more of the employer's employees is arguable, the employer must give notice of that claim to each affected employee.
- (2) Subsection (1) does not apply to a subsequent claim raised by another union to which section 13M applies.
- (3) A notice to affected employees under subsection (1) must—
 - (a) contain the information set out in Part 2 of Schedule 2; and
 - (b) state the date on which it is given; and
 - (c) be given in writing and expressed in plain language; and
 - (d) be given as soon as is reasonably practicable and not later than 20 working days after the date on which the employer decides that the claim is arguable.
- (4) Despite subsection (3)(d), the employer may, by notice to the claimant, extend the time limit for notifying affected employees if the employer has reasonable grounds for requiring the extension.
- (5) A notice extending the time limit must not extend the time limit by more than 25 working days, and must—
 - (a) be given as soon as is reasonably practicable and not later than 20 working days after the date on which the employer decides that the claim is arguable; and
 - (b) specify the extended date by which the employer will notify affected employees of the claim; and
 - (c) set out the grounds for requiring the extension.

Affected employees automatically covered by union claims

13W Affected employees automatically covered by union claims

- (1) If a union raises a pay equity claim with an employer, every employee of the employer who performs work that is the same as, or substantially similar to, the work to which the claim relates is covered by the union-raised claim on and from the date specified in subsection (2).
- (2) The date is—
 - (a) the date on which the claim is raised, if the employee is employed by the employer and is a member of the union on that date; or
 - (b) the date on which the employee is notified of the claim under section 13V(1) or 13ZA(2), in any other case.
- (3) Subsection (1) does not apply to an employee who—
 - (a) is barred from raising a pay equity claim under section 2B; or

- (b) has already, before receiving notice of the claim raised by the union,—
 - (i) raised or settled a pay equity claim with the employer in respect of the work to which the union claim relates; or
 - (ii) accepted an offer of the benefit of a pay equity settlement from the employer in respect of the work to which the union claim relates under section 13ZL(2), (4), or (5).
- (4) This section overrides section 236(1) and (3) of the Employment Relations Act 2000.

13X Union may not require fees from non-members

- (1) A union may not require an employee who is not a member of the union, but who is covered by a union-raised claim, to pay a fee to the union to be covered by the union-raised claim or to have the benefit of the settlement of the claim offered to them.
- (2) Subsection (1) does not prevent a union from requesting a voluntary contribution towards the costs of bargaining a pay equity claim from an employee who is not a member of the union and who is covered by the union-raised claim.

13Y Employees may opt out of pay equity claim raised by union

- (1) An employee who is covered by a union-raised claim and is not a member of the union (or of any of the unions) that raised the claim may opt out by giving notice in writing—
 - (a) to the employee’s employer within 20 working days after the date of the notice under section 13V(1) or 13ZA(2) (as applicable); or
 - (b) to both the employee’s employer and the claimant after that time.
- (2) A notice opting out must be given before the earlier of—
 - (a) the final date for voting on a proposed pay equity claim settlement (*see* section 13ZF(4)(c)(ii)); and
 - (b) the day before the date on which the claimant applies to the Authority for a determination under section 13ZY(1)(d) that fixes remuneration.
- (3) An employee who is a member of the union may not opt out of a claim raised by the union with the employee’s employer while remaining a member of the union (but may cancel membership of the union and then opt out).

13Z Employer must notify union of employees covered by union-raised claim

- (1) This section applies if—
 - (a) 1 or more unions raise a pay equity claim with an employer; and
 - (b) 1 or more employees are covered by the union-raised claim and do not opt out under section 13Y within 20 working days after the date of the notice under section 13V(1).

- (2) The employer must provide the union or unions with the following information about each employee who is covered by the union-raised claim:
 - (a) the employee's name; and
 - (b) the employee's contact details for the provision of written information.
- (3) The employer must provide the information in subsection (2) to the union or unions as soon as is reasonably practicable after the date that is 20 working days after the date of the notice under section 13V(1).

13ZA New employees covered by union-raised claim

- (1) This section applies if—
 - (a) 1 or more unions raise a pay equity claim with an employer; and
 - (b) the claim has not been settled; and
 - (c) a person (the **new employee**) is employed to perform work that is the same as, or substantially similar to, the work that is the subject of the pay equity claim.
- (2) The employer must give notice of the pay equity claim to the new employee as soon as practicable and no later than 20 working days after the new employee commences employment.
- (3) The notice must—
 - (a) contain the information set out in Part 2 of Schedule 2; and
 - (b) state the date on which it is given; and
 - (c) be given in writing and expressed in plain language.
- (4) If the new employee does not opt out by giving the employer notice in writing under section 13Y within 20 working days of the date of the notice under subsection (2), the employer must give notice to the union or unions of the name of the new employee and the employee's contact details for the provision of written information.

Pay equity bargaining process

13ZB Process applies to arguable claims

Sections 13ZC to 13ZZE apply to a pay equity claim if—

- (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.

13ZC 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 in those provisions to the union and employer were references to the parties.

Compare: 2000 No 24 s 34

13ZD Matters to be assessed

- (1) The parties to a pay equity claim must determine whether the employee's work is 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 degree of effort required to perform the work;
 - (v) the level of experience required to perform the work;
 - (vi) any other relevant work features; and
 - (b) terms and conditions of employment (other than remuneration) of the persons who perform the work to which the claim relates; and
 - (c) terms and conditions of employment (other than remuneration) of persons who perform comparable work; and
 - (d) the remuneration that is paid to the persons who perform the work to which the claim relates; and
 - (e) the remuneration that is paid to persons who perform comparable work; and
 - (f) any other matters prescribed by regulations made under section 19 for the purpose of this section.

- (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
 - (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
 - (c) must consider the list of factors in section 13F(3).

13ZE Identifying appropriate comparators

- (1) For the purpose of identifying 1 or more appropriate comparators against which to assess a pay equity claim as required by section 13ZD, **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:
 - (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:
 - (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 the 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 claim settlement.
- (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 13ZD(1) if there are reasonable grounds to believe that the work performed by that male comparator—
- (a) has been historically undervalued for 1 or more of the reasons set out in section 13F(3)(a) to (d); and
 - (b) continues to be undervalued for the reasons set out in section 13F(3)(e).

- (3) When identifying appropriate comparators against which to assess a pay equity claim, the parties must take into account any matters prescribed by regulations made under section 19 for the purpose of this section.

Settling pay equity claim

13ZF Requirement for union to obtain mandate before settling pay equity claim

- (1) This section applies to—
- (a) a union that is the claimant in a pay equity claim; and
 - (b) each employee who is covered by the union-raised claim (**proposed settlement employee**).
- (2) The union must establish a process for proposed settlement employees to vote on whether to approve or decline a proposed pay equity claim settlement.
- (3) The union must, before the process begins, give notice of the process to—
- (a) the proposed settlement employees; and
 - (b) the employer or employers who are parties to the claim.
- (4) The process must ensure that—
- (a) each proposed settlement employee is entitled to vote and all votes have equal weight; and
 - (b) each proposed settlement employee is provided with a copy of a proposed pay equity claim settlement within a reasonable time before voting starts; and
 - (c) each proposed settlement employee is given reasonable notice—
 - (i) that they are entitled to vote; and
 - (ii) of the final date by which their vote must be cast; and
 - (iii) of the method by which votes may be cast; and
 - (iv) that, if the proposed pay equity claim settlement is approved, the union must sign it; and
 - (v) of the consequences of the union entering into the settlement (including that the employee’s employment contract will be varied and the employee will lose the ability to bring their own claim relating to pay equity); and
 - (vi) that the final date by which their vote must be cast is also the final date on which employees who are not members of the union may opt out under section 13Y.
- (5) A union may not enter into a pay equity claim settlement unless—
- (a) a vote has been taken in accordance with the process established under subsection (2); and

- (b) a simple majority of those proposed settlement employees who voted, voted in favour of approving the proposed pay equity claim settlement.

13ZG Application of section 63A of Employment Relations Act 2000 to pay equity bargaining

- (1) The obligations in section 63A of the Employment Relations Act 2000 apply to pay equity bargaining only if—
 - (a) an employer is bargaining for settlement of a pay equity claim raised by an individual employee; or
 - (b) an employer offers the benefit of a pay equity claim settlement to an individual employee under section 13ZL(2), (4), or (5).
- (2) If subsection (1) applies, the obligations in section 63A of the Employment Relations Act 2000 apply as if references in that section to an intended agreement were references to a proposed pay equity claim settlement.

13ZH 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
 - (ii) a process is agreed to review the employee's remuneration 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
 - (b) when the Authority or the court—
 - (i) determines that an employee's remuneration does not differentiate between male and female employees in the manner set out in section 2AAC(b); or
 - (ii) issues a determination that,—
 - (A) if the parties have agreed a review process but have not agreed remuneration, fixes remuneration that does not differentiate between male and female employees in the manner set out in section 2AAC(b); or
 - (B) if the parties have agreed remuneration but have not agreed a review process, specifies a process to review that remuneration to ensure that pay equity is maintained, including the frequency of reviews; or
 - (C) fixes remuneration that does not differentiate between male and female employees in the manner set out in section

- 2AAC(b) and specifies a process to review that remuneration to ensure that pay equity is maintained, including the frequency of reviews.
- (2) A pay equity claim settlement may also include terms and conditions of employment other than remuneration, if the parties agree, but an employer may not reduce any terms and conditions of employment of an employee who has raised a pay equity claim or who is covered by a union-raised claim for the purpose of settling that claim.
- (3) A pay equity claim settlement agreed between the parties must—
- (a) be in writing; and
 - (b) state—
 - (i) that it is a pay equity claim settlement for the purposes of this Act; and
 - (ii) the name of the employer; and
 - (iii) the name of the claimant to whom the settlement relates; and
 - (iv) in the case of a settlement of a union-raised pay equity claim, a description of the work to which the settlement relates; and
 - (v) in the case of a pay equity claim settlement with an individual employee, the employee's occupation and position; and
 - (vi) the remuneration that the parties agree does not differentiate between male and female employees in the manner set out in section 2AAC(b); and
 - (vii) terms and conditions of employment other than remuneration that the parties have agreed to include (if any); and
 - (viii) the process for reviewing that remuneration (which may include requirements to reconsider the matters set out in sections 13F(3) (undervaluation factors), 13ZD (assessment of the work), and 13ZE (assessment of comparators) if the parties agree) to ensure that pay equity is maintained; and
 - (ix) the frequency of those reviews, which must be—
 - (A) aligned with any applicable collective bargaining rounds; or
 - (B) if no collective bargaining round applies, at least every 3 years; and
 - (c) include a summary of the method used to assess the pay equity claim and a description of the comparators that were considered by the parties.
- (4) Settlement of a multi-employer pay equity claim must be recorded in a single multi-employer pay equity claim settlement that is signed by each union and each employer who is a party to the claim at the time of the settlement.

- (5) Settlement of a pay equity claim raised by multiple unions with a single employer must be recorded in a single pay equity claim settlement that is signed by the employer and by each union that is a party to the claim at the time of the settlement.

13ZI Unfair bargaining for pay equity claim settlement

- (1) Bargaining for a pay equity claim settlement is unfair if—
- (a) the pay equity claim was raised by an individual employee (not by a union); and
 - (b) 1 or more of paragraphs (a) to (d) of subsection (2) apply to the employee; and
 - (c) the employer, or the employer's representative,—
 - (i) knows of the circumstances described in the paragraph or paragraphs that apply to the employee; or
 - (ii) ought to know of the circumstances in the paragraph or paragraphs that apply to the employee because the employer or the employer's representative is aware of facts or other circumstances from which it can be reasonably inferred that the paragraph or paragraphs apply to the employee.
- (2) The circumstances are that the employee, at the time of bargaining for or entering into the pay equity claim settlement,—
- (a) is unable to understand adequately the provisions or implications of the settlement by reason of diminished capacity due (for example) to—
 - (i) age; or
 - (ii) sickness; or
 - (iii) mental or educational disability; or
 - (iv) a disability relating to communication; or
 - (v) emotional distress; or
 - (b) reasonably relies on the skill, care, or advice of the employer or a person acting on the employer's behalf; or
 - (c) is induced to enter into the settlement by oppressive means, undue influence, or duress; or
 - (d) had not been given a reasonable opportunity to seek independent advice about the agreement.
- (3) In this section, **pay equity claim settlement** includes a term or condition of a pay equity claim settlement.
- (4) Except as provided in this section, an employee must not challenge or question a pay equity claim settlement on the ground that it is unfair or unconscionable.

Compare: 2000 No 24 s 68

13ZJ Remedies for unfair bargaining

- (1) If an employer or employer's representative is found to have bargained unfairly under section 13ZI, the Authority may do 1 or more of the following things:
 - (a) make an order that the employer pay to the employee such sum, by way of compensation, as the Authority thinks fit;
 - (b) make an order cancelling or varying the pay equity claim settlement;
 - (c) make such other order as it thinks fit in the circumstances.
- (2) The Authority must not make an order under subsection (1)(b) unless the requirements in section 164 of the Employment Relations Act 2000 have been met, and that section applies accordingly with all necessary modifications.

Compare: 2000 No 24 s 69

13ZK Copy of pay equity claim settlement to be delivered to chief executive

- (1) This section applies if a pay equity claim settlement is reached (whether that settlement is reached by the parties recording an agreement in writing as described in section 13ZH(3) or by the Authority or the court making a determination described in section 13ZH(1)(b)(ii)).
- (2) Each employer who is a party to a pay equity claim settlement must ensure that, as soon as practicable after the settlement is reached, a copy of the settlement agreement or determination (as applicable) is delivered to the chief executive of the department of State that is responsible for the administration of this Act.
- (3) The copy of the settlement delivered to the chief executive must include any document referred to, or incorporated by reference, in the settlement, unless the document is publicly available.
- (4) The information contained in the copies of pay equity claim settlements delivered to the chief executive under subsection (2) may not be used by the chief executive for purposes other than statistical or analytical purposes.

13ZL Offers of benefit of pay equity claim settlement to other employees

- (1) In this section, **offered the benefit of a settlement**, in the case of an employee, means that the employee is—
 - (a) offered the same remuneration (and other terms and conditions of employment included in the settlement, if any) as the other employee or employees who are covered by the pay equity claim settlement; and
 - (b) offered the same offer of remuneration for past work, if remuneration for past work is included in the settlement, and if the employee would qualify for that offer; and
 - (c) advised that acceptance of the offer will have the effect that the employee is barred from raising a claim in relation to pay equity in accordance with sections 2B and 13E(6).

Existing employees

- (2) An employer who is a party to a pay equity claim settlement with a union must offer the benefit of that settlement to each employee of the employer who, on the date of the settlement,—
- (a) is employed to perform the same, or substantially similar, work as the work to which the pay equity claim settlement relates; and
 - (b) is not covered by the union-raised claim; and
 - (c) is not barred from raising a pay equity claim under section 2B; and
 - (d) has not already—
 - (i) settled a pay equity claim with the employer in respect of the work to which the union claim relates; or
 - (ii) accepted an offer of the benefit of a pay equity settlement from the employer in respect of the work to which the union claim relates.
- (3) The offer of the benefit of the settlement under subsection (2) must be made as soon as is reasonably practicable after the date of the settlement of the union-raised claim.
- (4) An employer who is a party to a pay equity claim settlement with an individual employee may offer the benefit of that settlement to 1 or more other employees who, on the date of the settlement,—
- (a) are employed to perform the same, or substantially similar, work as the work to which the pay equity claim settlement relates; and
 - (b) are not barred from raising a pay equity claim under section 2B; and
 - (c) have not already—
 - (i) settled a pay equity claim with the employer in respect of the work to which the claim relates; or
 - (ii) accepted an offer of the benefit of a pay equity settlement from the employer in respect of the work to which the claim relates.

New employees

- (5) An employer who is a party to a pay equity claim settlement with a union must offer the benefit of that settlement to each new employee who, after the date of the settlement, is employed to perform the same, or substantially similar, work as the work to which the pay equity claim settlement relates.
- (6) The offer of the benefit of the settlement under subsection (5) must be made at the same time as the offer of employment.
- (7) An employer who is a party to a pay equity claim settlement with an individual employee may offer the same remuneration and other terms and conditions of employment agreed in that settlement to a new employee, but that offer is not an offer of the benefit of a settlement for the purposes of this Act.

General

- (8) Nothing in this section prevents an employer and an employee from agreeing to a term or condition of employment in an employment agreement that is more favourable to the employee than the terms and conditions of employment in a pay equity claim settlement.

13ZM Effect of pay equity claim settlement on employment agreements

- (1) A pay equity claim settlement binds—
- (a) every employer who was a party to the claim; and
 - (b) every employee who is covered by the pay equity claim settlement.
- (2) The employment agreement (whether individual or collective) of an employee who is covered by a pay equity claim settlement is deemed to be varied to—
- (a) require the employer to pay the employee the remuneration agreed in the pay equity claim settlement, if that remuneration exceeds the amount specified in the employment agreement before the variation required by this section; and
 - (b) include any other terms or conditions that are included in the pay equity claim settlement and that are more favourable to the employee than the terms and conditions of employment in the employee's employment agreement before the variation required by this section.
- (3) The variation referred to in subsection (2) is effective from—
- (a) the date of the pay equity claim settlement; or
 - (b) in the case of an employee who accepts an offer of the benefit of the pay equity claim settlement, the date on which the employee accepts that offer.
- (4) A pay equity claim settlement that contains a term or condition that excludes, restricts, or reduces an employee's entitlements under the employee's employment agreement has no effect to the extent that it does so.
- (5) Nothing in this Act prevents an employer and an employee from agreeing to a term or condition of employment in an employment agreement that is more favourable to the employee than the terms and conditions of employment in a pay equity claim settlement.

13ZN Relationship between pay equity claims and collective bargaining

- (1) The entry into a collective agreement in accordance with the collective bargaining provisions of the Employment Relations Act 2000 by an employer and a union does not settle or extinguish an unsettled pay equity claim to which the employer is a party.
- (2) The existence of an unsettled pay equity claim between an employer and an employee, or of an uncompleted review of a pay equity claim settlement, is not a genuine reason for failing to conclude collective bargaining between that

employer and a union representing the employer's employees for the purposes of section 33 of the Employment Relations Act 2000.

Mediation

13ZO Parties may refer issues to mediation

- (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.
- (2) Issues that may be referred to mediation services include, but are not limited to, the following:
 - (a) a dispute as to whether the pay equity claim is arguable (*see* section 13F):
 - (b) a dispute as to whether an employee's work is the same as, or substantially similar to, work that is the subject of a pay equity claim raised by a union with the employee's employer, for the purposes of determining whether or not the employee is, or is to be, covered by the union-raised claim:
 - (c) a dispute as to whether work performed by others is comparable work for the purposes of the assessment required by section 13ZD:
 - (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:
 - (e) a dispute as to whether exceptional circumstances exist for the purposes of section 13ZY(5)(b) (which relates to an application for a determination that a pay equity claim may be raised that would otherwise be barred by section 13E(6)).
- (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.

Facilitation

13ZP Purpose of facilitating pay equity claim

- (1) The purpose of sections 13ZQ to 13ZX 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 13ZQ to 13ZX do not—
 - (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.

Compare: 2000 No 24 s 50A

13ZQ Reference to Authority

- (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:
 - (a) a dispute as to whether an employee's work is the same as, or substantially similar to, work that is the subject of a pay equity claim raised by a union with the employee's employer, for the purposes of determining whether or not the employee is, or is to be, covered by the union-raised claim:
 - (b) a dispute as to whether work performed by others is comparable work for the purposes of the assessment required by section 13ZD:
 - (c) 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.
- (3) Despite subsections (1) and (2), the following disputes may only be referred to the Authority for facilitation if all of the parties to the claim agree to do so:
 - (a) a dispute as to whether a pay equity claim is arguable:
 - (b) a dispute as to whether exceptional circumstances exist for the purposes of section 13ZY(5)(b) (which relates to an application for a determination that a pay equity claim may be raised that would otherwise be barred by section 13E(6)).
- (4) A reference for facilitation must be made on 1 or both of the grounds specified in section 13ZR(2).

Compare: 2000 No 24 s 50B

13ZR 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.
- (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:

- (b) that sufficient efforts (including mediation) have failed to resolve an issue relating to the claim.
 - (3) The Authority must not accept a reference for facilitation 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
 - (b) the circumstances relating to the pay equity claim have changed; or
 - (c) the bargaining since the previous facilitation has been protracted.
- Compare: 2000 No 24 s 50C

13ZS 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

13ZT 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.
- (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.
- (4) The provision of facilitation by the Authority may not be challenged or called in question in any proceedings on the ground—
 - (a) that the nature and content of the facilitation were inappropriate; or
 - (b) that the manner in which the facilitation was provided was inappropriate.

Compare: 2000 No 24 s 50E

13ZU Statements made by parties during facilitation

- (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—
 - (a) it is made in good faith; and

(b) it is limited to the process of facilitation or the progress being made.

Compare: 2000 No 24 s 50F

13ZV Proposals made or positions reached during facilitation

- (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—
 - (a) applies to avoid doubt; and
 - (b) is subject to any agreement of the parties.

Compare: 2000 No 24 s 50G

13ZW Recommendation by Authority

- (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:
 - (a) whether the pay equity claim is arguable;
 - (b) the process the parties should follow to reach agreement;
 - (c) 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.

Compare: 2000 No 24 s 50H

13ZX Parties must deal with Authority in good faith

During facilitation, the parties must deal with the Authority in good faith.

Compare: 2000 No 24 s 50I

Determination by Authority

13ZY Parties may apply for determination by Authority

- (1) A party to a pay equity claim may apply to the Authority for determination of any matter that relates to the pay equity claim, including, but not limited to, the following:
 - (a) a determination as to whether the pay equity claim is arguable (*see* section 13F);
 - (b) a determination as to whether an employee's work is the same as, or substantially similar to, work that is the subject of a pay equity claim raised

- by a union with the employee's employer, for the purposes of determining whether or not the employee is, or is to be, covered by the union-raised claim:
- (c) a determination as to whether the work to which the claim relates is undervalued;
 - (d) a determination that—
 - (i) fixes remuneration that does not differentiate between male and female employees in the manner set out in section 2AAC(b); and
 - (ii) specifies a process to review that remuneration to ensure that pay equity is maintained, including the frequency of reviews.
- (2) Where an application is made under subsection (1), the Authority—
- (a) must first consider whether an attempt has been made to resolve the difficulties by the use of—
 - (i) mediation or further mediation under section 13ZO; or
 - (ii) facilitation under sections 13ZQ to 13ZX; and
 - (b) may direct the parties to try to resolve the difficulties by mediation or further mediation; and
 - (c) may, if 1 or both of the grounds in section 13ZR(2) exist, direct that facilitation be used before the Authority investigates the matter, unless the Authority considers that use of facilitation—
 - (i) will not contribute constructively to resolve the difficulties; or
 - (ii) will not, in all the circumstances, be in the public interest; or
 - (iii) will undermine the urgent nature of the process; or
 - (iv) will be otherwise impractical or inappropriate in the circumstances.
- (3) Subsection (2)(c) does not apply to an application for a determination that relates to—
- (a) whether a pay equity claim is arguable; or
 - (b) whether exceptional circumstances exist for the purposes of subsection (5)(b).
- (4) If an application for a determination relates to whether the work to which the claim relates is undervalued, the Authority or the court may take into account the list of factors set out in sections 13F(3) and 13ZD.
- (5) If an application for a determination relates to whether a claim may be raised despite section 13E(6), the Authority or the court must make its determination—
- (a) having regard to the existing pay equity claim settlement that covers the employee; and

(b) only if it is satisfied that there are exceptional circumstances.

Compare: 2000 No 24 s 50K

13ZZ Union must notify employees covered by union-raised claim before applying for determination by Authority

- (1) Before a union applies to the Authority for a determination under section 13ZY(1)(d) that fixes remuneration, the union must notify each employee who is covered by the union-raised claim.
- (2) The notice must—
 - (a) specify the date on which the union proposes to file the application for a determination; and
 - (b) advise the employee—
 - (i) of the consequences of the Authority making a determination fixing remuneration (including that the employee's employment agreement will be varied and the employee will lose the right to bring their own claim relating to pay equity); and
 - (ii) that the day before the date on which the union proposes to file the application for a determination is the final date on which the employee may opt out under section 13Y.
- (3) The notice must be given a reasonable time before the date on which the union proposes to file the application.

13ZZA If Authority or court determines pay equity claim is arguable

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 13S to 13ZZE.

13ZZB Process on application to fix remuneration

- (1) If the Authority receives an application under section 13ZY(1)(d) to fix remuneration and the parties have not previously tried to resolve the difficulties by mediation or further mediation, the Authority must—
 - (a) direct the parties to try to resolve the difficulties by mediation or further mediation; or
 - (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 remuneration only if—
 - (a) the parties have first tried to resolve the difficulties by mediation, or by any other process recommended by the Authority; and
 - (b) the Authority is satisfied that—

- (i) all other reasonable alternatives for settling the pay equity claim have been exhausted; or
- (ii) 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.

13ZZC Limitation on challenge to determination of Authority fixing remuneration

- (1) This section applies to an application for a determination of the Authority that fixes remuneration under section 13ZY(1)(d)(i).
- (2) A party may not elect, under section 179(1) of the Employment Relations Act 2000, to have the matter heard by the court, unless the matter is whether there are grounds under section 13ZZB(2) for the Authority to accept the application.

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

- (1) A determination by the Authority fixing remuneration may also provide for recovery of an amount of remuneration that relates to work performed before the date of the determination (**past work**).
- (2) When deciding whether to provide for recovery of an amount of remuneration for past work, and the amount to provide, the Authority or the court must take into account the following factors:
 - (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 claimant in respect of the claim; and
 - (d) any other factors the Authority or the court considers appropriate.
- (3) *See* section 13ZZE for the periods for which remuneration for past work can be recovered.

13ZZE 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:

| When claim raised or notified | Applicable start date |
|---|------------------------------|
| Existing pay equity claim as defined in Schedule 1, clause 1(1) (whether raised | The earlier of— |

| When claim raised or notified | Applicable start date |
|---|--|
| anew in accordance with clause 2(2)(a) or progressed under clause 3 of that schedule) | (a) the date on which the existing pay equity claim was notified to the employer; and (b) the date on which the proceedings discontinued under Schedule 1, clause 2(1) 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 |
| <p>(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—</p> <p>(a) have the same, or substantially similar, skills, responsibility, and experience; and</p> <p>(b) work under the same, or substantially similar, conditions, and with the same, or substantially similar, degrees of effort.</p> | |
| <p>Example 1</p> | |
| <p>Employee A notifies their employer of a pay equity claim as set out in subsection (4) on 28 October 2018 (before the commencement of this section). After the commencement of this section, Employee A raises a pay equity claim by following the processes set out in Part 4 (see Schedule 1, clause 2(2)(a)). A determination of Employee A's claim may provide for recovery of an amount of remuneration for the period that runs back from the date of determination to 28 October 2018 (but with a maximum of 6 years).</p> | |
| <p>Example 2</p> | |
| <p>Employee B formally files an application in respect of a pay equity claim with the Authority on 1 February 2019 (before the commencement of this section), without having first notified Employee B's employer of the claim. That claim remains unresolved on the date of commencement of this section, and it is discontinued under Schedule 1, clause 2. Two weeks later, Employee B raises a new pay equity claim by following the processes set out in Part 4 (see Schedule 1, clause 2(2)(a)). A determination of the new pay equity claim raised under Part 4 may provide for recovery of an amount of remuneration for the period that runs back from the date of the determination to 1 February 2019 (but with a maximum of 6 years).</p> | |
| <p>Example 3</p> | |
| <p>Union C raises a claim 2 months after the commencement of this section, and that claim is resolved by a determination made 2 years later. That determination may provide for recovery of an amount of remuneration that relates to the 2-year period</p> | |

that runs back from the date of determination to the date on which the claim was raised.

Example 4

Employee D raises a claim 4 years and 11 months after the commencement of this section, and that claim is resolved by a determination made 2 years later. That determination may provide for recovery of an amount of remuneration that relates to the 2-year period that runs back from the date of determination to the date on which the claim was raised.

Example 5

Employee E raises a claim 6 years after the commencement of this section, and that claim is resolved by a determination made 2 years later. That determination may provide for recovery of an amount of remuneration that relates to the 3-year period that runs back from the date of determination to the date that is 5 years after the date of commencement of this section.

Example 6

Union F raises a claim 11 years after the commencement of this section, and that claim is resolved by a determination made 1 year later. That determination may provide for recovery of an amount of remuneration that relates to the 6-year period that runs back from the date of determination (being the maximum period allowed under subsection (2)).

- (5) The examples in subsection (4) are only illustrative and do not limit subsections (1) to (3).

Obligation on employers to keep pay equity records

13ZZF 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 a claimant; 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 claimant; and
 - (ii) the outcomes of any pay equity bargaining; and
 - (iii) all notifications to affected employees under section 13V; and
 - (iv) any recommendation by the Authority during facilitation.

Pay equity claims by employees in education service

13ZZG Pay equity claims by employees in education service

Employees other than employees of tertiary education institutions

- (1) For the purposes of a pay equity claim by 1 or more employees in the education service (other than employees of a tertiary education institution), or by a union representing those employees, (an **education service claimant**), the Public Service 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.
- (2) If the Commissioner decides that a pay equity claim by an education service claimant 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 13ZC to 13ZZE—
 - (a) with the education service claimant; 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).
- (3) Every pay equity claim settlement agreement entered into between the Commissioner and an education service claimant is binding on the employer or employers of the persons whose work is covered by the agreement.
- (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, if that employer were a party to that agreement.

Employees of tertiary education institutions

- (5) For the purposes of a pay equity claim by 1 or more employees of a tertiary education institution or by a union representing those employees, 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 13ZC to 13ZZE.
- (6) Before entering into a pay equity claim 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 Public Service Commissioner.

Interpretation

(7) In this section,—

education service has the same meaning as in section 10(7) of the Education and Training Act 2020

Public Service Commissioner or **Commissioner** means the Public Service Commissioner appointed under section 42 of the Public Service Act 2020

tertiary education institution means an institution within the meaning of section 10 of the Education and Training Act 2020.

Compare: 1988 No 20 s 74

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

Repeal section 14.

20 New section 14A and Part 5 heading inserted

Before section 15, insert:

Part 5
General provisions

Notices, penalties, and enforcement

14A Notices

- (1) A notice under this Act that is required to be given to a claimant must,—
- (a) if the claimant is an employee who has authorised a representative to act on the employee's behalf in respect of the claim, be given to that representative at the address for service of the representative; or
 - (b) if the claimant is an employee who has not authorised a representative to act on the employee's behalf in respect of the claim, be—
 - (i) delivered to the employee in person; or
 - (ii) sent to the employee by any form of electronic communication that is ordinarily used for formal communications; or
 - (iii) notified to the employee in any manner specified in the employee's employment agreement; or
 - (c) if the claimant is a union, be given to the union at the union's address for service.
- (2) A notice under this Act that is required to be given to an employee's employer 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.

21 Section 15 replaced (When dismissal or reduction of employee an offence)

Replace section 15 with:

15 Claimant employee must not be treated adversely

- (1) An employer must not treat adversely any employee who raises or is covered by a claim under this Act (including an employee who is covered by a union-raised claim).
- (2) In this section, an employer treats an employee adversely if the employer—
 - (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
 - (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
 - (c) retires that employee, or requires or causes that employee to retire or resign.
- (3) An employee may raise a claim against the employee's employer or former employer for a contravention of subsection (1).
- (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.
- (5) For the purposes of subsection (2)(b), **detriment** includes anything that has a detrimental effect on that employee's employment, job performance, or job satisfaction.

Compare: 1990 No 57 s 5K; 2000 No 24 s 67F

22 Sections 16 to 17A repealed

Repeal sections 16 to 17A.

23 Section 18 replaced (Offences)

Replace section 18 with:

18 Penalty for non-compliance

- (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,—
 - (a) if the person is an individual, to a penalty not exceeding \$10,000;
 - (b) if the person is a company or another body corporate, to a penalty not exceeding \$20,000.
- (2) The provisions are as follows:
 - (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);
 - (b) section 2A (which relates to unlawful discrimination);
 - (c) section 13S(2)(c) or 13ZZA (which impose a duty on an employer to enter into pay equity bargaining if the employer decides or the Authority or court determines that a pay equity claim is arguable);
 - (d) section 13C (which imposes a duty on parties to deal with one another in good faith during the pay equity claim process);
 - (e) section 13ZZF (which imposes a duty on employers to keep records relating to pay equity claims).
- (3) The penalties specified in subsection (1) also apply to—
 - (a) an employer who, knowingly or recklessly,—
 - (i) fails to comply with the duty under section 13V to notify affected employees of a union-raised pay equity claim that the employer has decided is arguable; or
 - (ii) provides misleading information in a notice given under section 13V; and
 - (b) a union that knowingly or recklessly fails to comply with the requirements of section 13ZF(3).
- (4) Any action for the recovery of a penalty may be brought,—
 - (a) in the case of a breach described in subsection (2)(a) or (b),—
 - (i) by the employee in relation to whom the breach is alleged to have taken place; or
 - (ii) by a Labour Inspector; or
 - (b) in the case of a breach described in subsection (2)(d), by any person in relation to whom the breach is alleged to have taken place; or

- (c) in the case of a breach described in subsection (2)(c) or (e) or (3), by an employee who is a claimant in, or who is covered by, the relevant pay equity claim.
- (5) 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.

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.
- (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.
- (5) In determining whether to give judgment for a penalty, and the amount of that penalty, the Authority must consider whether the person against whom the penalty is sought has previously failed to comply with an improvement notice issued under section 223D of the Employment Relations Act 2000.
- (6) 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.
- (7) The Authority may order payment of a penalty by instalments, but only if the financial position of the person paying the penalty requires it.
- (8) 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.
- (9) 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

Powers of Inspectors and procedure and jurisdiction of Employment Relations Authority and Employment Court

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.

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,—

- (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)

- (1) In section 19, after “administration”, insert “, including regulations for the following purposes:”, and insert:

- (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 13ZE.

- (2) *[Repealed]*

Section 24(2): repealed, on 30 November 2022, by section 36 of the Statutes Amendment Act 2022 (2022 No 75).

25 New Schedules 1 and 2 inserted

Insert the Schedules 1 and 2 set out in Schedule 1 of this Act as the first and second schedules to appear after the last section of the principal Act.

Part 2

Related amendments and repeals

Amendments to Employment Relations Act 2000

26 Related amendments to Employment Relations Act 2000

Sections 27 and 28 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”.
- (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.

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

- (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 a 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

Amendments to Public Service Act 2020

29 Related amendments to Public Service Act 2020

Sections 30 to 32 amend the Public Service Act 2020.

30 Sections 81 to 83 replaced

Replace sections 81 to 83 with:

81 Interpretation

In sections 82 to 83B,—

facilitation of bargaining means facilitation of bargaining under sections 13ZP to 13ZX of the Equal Pay Act 1972

pay equity claim means a pay equity claim within the meaning of section 2(1) of the Equal Pay Act 1972 that is raised with the chief executive of a department or, as the case may be, the board of an interdepartmental venture as employer

pay equity claim settlement has the same meaning as in section 2(1) of the Equal Pay Act 1972.

82 Pay equity claims

- (1) The Commissioner is responsible for dealing with a pay equity claim as if the Commissioner were the employer.
- (2) When a pay equity claim is raised with the chief executive of a department or the board of an interdepartmental venture, the chief executive or board must, as soon as practicable, give notice in writing of the pay equity claim to the Commissioner.
- (3) The Commissioner's responsibility under subsection (1)—
 - (a) includes, without limiting that subsection, responsibility for acknowledging receipt of and giving notice of the claim, forming a view on whether the claim is arguable, conducting the pay equity bargaining process, and settling a pay equity claim; but
 - (b) does not include responsibility for the following, unless the Commissioner thinks it appropriate to continue the Commissioner's responsibility during that time:
 - (i) attendance in mediation under the Employment Relations Act 2000 in relation to the claim or any aspect of the claim; or
 - (ii) participation in any facilitation of bargaining or participation in relation to any application lodged in the Employment Relations Authority or filed in a tribunal or a court in relation to the claim or any aspect of the claim.
- (4) The Commissioner's responsibility under this section arises in relation to a pay equity claim—
 - (a) on the date on which the Commissioner receives notice under subsection (2); or
 - (b) on any later date that the Commissioner notifies to the chief executive or board.
- (5) Subsection (3) is subject to subsection (4).

83 Application of section 13K of Equal Pay Act 1972 where more than 1 department or interdepartmental venture involved in pay equity claim

- (1) In relation to the requirements under section 13K of the Equal Pay Act 1972,—
 - (a) if a pay equity claim involves more than 1 department or interdepartmental venture but there are no other employers involved in the claim, the Commissioner is not required (and the departments or interdepartmental ventures involved in the claim are not required) to enter into a multi-employer pay equity process agreement:
 - (b) if a pay equity claim involves more than 1 department or interdepartmental venture and there are also other employers involved in the claim, the Commissioner must enter into a multi-employer pay equity process agreement in the Commissioner's name (and the departments and inter-

departmental ventures involved are not required to enter into the agreement).

- (2) If the Commissioner has delegated the powers to negotiate a pay equity claim to any chief executive of a department or board of an interdepartmental venture involved in the claim,—
- (a) subsection (1) does not apply; and
 - (b) the requirements in section 13K of the Equal Pay Act 1972 apply to the department or interdepartmental venture.

83A Commissioner to enter negotiations in consultation with affected department or interdepartmental venture

When the Commissioner enters into the pay equity bargaining process under sections 13ZC to 13ZZE of the Equal Pay Act 1972, the Commissioner must do so in consultation with the chief executive or board of each affected department or interdepartmental venture.

83B Pay equity settlement binding on chief executive or board affected

- (1) Every pay equity claim settlement agreement entered into between the Commissioner and 1 or more unions or between the Commissioner and 1 or more employees of the public service is binding on the chief executive of each department and the board of each interdepartmental venture in which any of the employees are employed.
- (2) A chief executive of a department who, or board of an interdepartmental venture that, is bound by a pay equity claim settlement agreement under subsection (1) has the rights, functions, and obligations that the chief executive or board would have, in respect of that pay equity claim settlement, if that chief executive or board were a party to that settlement.
- (3) Responsibility for giving effect to any pay equity claim settlement between the Commissioner and 1 or more public service employees lies with the chief executive of each department and the board of each interdepartmental venture in which any of the employees are employed.

31 Section 84 amended (Delegation of Commissioner’s function and powers to negotiate pay equity claim)

In section 84, replace “81” with “81 and 83”.

32 Section 77 amended (Personal grievances and disputes)

In section 77, replace “81 to 83” with “81 to 83B”.

Consequential amendments to Employment Relations Act 2000

33 Consequential amendments to Employment Relations Act 2000

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

Repeal

34 Repeal of Government Service Equal Pay Act 1960

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

Schedule 1 New Schedules 1 and 2 inserted

s 25

Schedule 1 Transitional, savings, and related provisions

s 2AAA

Part 1 Provisions relating to Equal Pay Amendment Act 2020

1 Interpretation

(1) In this Part,—

amendment Act means the Equal Pay Amendment Act 2020

existing equal pay claim means a claim that—

- (a) is to the effect that an employer has differentiated, 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
- (b) 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

existing pay equity claim means a claim, whether under this Act or under the Government Service Equal Pay Act 1960, that—

- (a) is to the effect that an employer has failed to ensure that there is no differentiation on the basis of sex 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—
 - (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
- (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

- (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

existing unlawful discrimination claim means a claim—

- (a) under section 2A of the principal Act that does not fall within the definition of an existing pay equity claim or an existing equal pay claim; and
 - (b) that 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.
- (2) In this Part, a claim is **notified** by an employee to an employer 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 on the basis of sex 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.

2 Existing pay equity claims must transition to Part 4 process

- (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, unless the Authority or court had begun hearing the claim before that date.
- (2) An employee who has an existing pay equity claim (whether formally commenced and discontinued under subclause (1), or notified to the employee's employer but not formally commenced) may—
 - (a) raise a new claim under Part 4 of this Act, by following the processes set out in that Part; or
 - (b) resolve the existing pay equity claim by following a pay equity bargaining process as required by a written pay equity bargaining agreement in accordance with clause 3.

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 comes into force, the parties signed a written agreement that states that the parties agree that the pay equity claim is arguable and—
 - (a) requires them to undertake a pay equity bargaining process that includes an assessment of the matters set out in section 13ZD based on comparators identified in accordance with section 13ZE; or

- (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,—
 - (a) a pay equity claim is deemed to have been made in accordance with the requirements of section 13G and either section 13H or 13I (as applicable); and
 - (b) the employer is deemed to have complied with the requirement in section 13J(1)(a); and
 - (c) the employer must give notice of the claim to every union to which 1 or more of the employer’s employees belong that represents persons who perform work that is the same as, or substantially similar to, the work to which the claim relates, as soon as is reasonably practicable and no later than 5 working days after the date on which the amendment Act comes into force; and
 - (d) the employer must give notice of the claim to all affected employees in accordance with section 13U or 13V (as applicable) as soon as is reasonably practicable and not later than 20 working days after the date on which the amendment Act comes into force or a later date in accordance with an extension notified under section 13U(4) or 13V(4); and
 - (e) the employer is deemed to have decided that the claim is arguable in accordance with the requirement in section 13Q; and
 - (f) sections 13C, 13D, 13K to 13P, 13W to 13ZA, and 13ZC to 13ZZE apply accordingly.
- (3) The requirement in subclause (2)(d) to notify all affected employees of the claim applies irrespective of any prior notification of the claim that the employer may have given to affected employees.
- (4) Any pay equity bargaining that took place before the amendment Act came into force may be taken into account for the purposes of sections 13ZR(2)(b), 13ZY(2), and 13ZZB(2)(b).

4 Appeals

- (1) This clause applies to an application—
 - (a) that is an existing pay equity claim that was formally commenced in the Authority or the court 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, had started to hear the claim or had made a determination on the application before the date on which the amendment Act came into force.
- (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, or the provisions of the Government Service Equal Pay Act 1960 as if it had not been repealed by the amendment Act (as applicable).

5 Existing Equal Pay Act 1972 claim settlements

The following are to be treated as a pay equity claim settlement for the purpose of section 13E(6):

- (a) a written settlement agreement entered into between 1 or more employers and 1 or more employees or a union representing 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 13ZD based on comparators identified in accordance with section 13ZE; or
 - (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 Support Workers (Pay Equity) Settlements Act 2017:
- (c) the settlement of the claim raised by the New Zealand Educational Institute Te Riu Roa Incorporated and others with the Chief Executive of the Ministry of Education in respect of support workers, recorded in the Education Support Workers, Behaviour Support Workers and Communication Support Workers Pay Equity Settlement Agreement dated 1 July 2018:
- (d) the settlement of the claim raised by the New Zealand Educational Institute Te Riu Roa Incorporated with the Secretary for Education in respect of teacher aides, recorded in the Teacher Aide Pay Equity Settlement Agreement dated 12 February 2020.

6 Effect of amendment Act on other existing claims

An existing equal pay claim or existing unlawful discrimination claim must be determined in accordance with the provisions of this Act as if it had not been amended by the amendment Act.

Schedule 2

Content of notice to affected employees of pay equity claim

ss 13U(3)(a), 13V(3)(a), 13ZA(3)

Part 1

Claim raised by individual employee

A notice to an affected employee under section 13U(1) (which relates to a claim raised by an individual employee) must include the following:

1. A statement that a pay equity claim has been raised by a claimant in respect of work that is the same as, or substantially similar to, the work performed by the affected employee.
2. An explanation of the steps that the affected employee may take to raise their own pay equity claim.
3. A statement that,—
 - (a) if the employer settles the claim with the claimant, the employer may offer the benefit of the settlement to the affected employee; and
 - (b) if the employee accepts an offer of the benefit of the settlement, they will be barred from raising their own claim (*see* sections 2B and 13E(6)); and
 - (c) if the employee declines the offer of the benefit of the settlement, they will retain the right to raise their own claim.

Part 2

Claim raised by union or unions

A notice to an affected employee under section 13V(1) (which relates to a claim raised by 1 or more unions) must include the following:

1. A statement that a pay equity claim has been raised by the union or unions in respect of work that is the same as, or substantially similar to, the work performed by the affected employee.
2. A statement that the employee is covered by the union-raised claim, even if the employee is not a union member, unless,—
 - (a) before receiving the notice, the employee had already raised or settled a pay equity claim with the employer, or accepted an offer of the benefit of a pay equity settlement from the employer, in respect of the work; or
 - (b) the employee is barred from raising a pay equity claim under section 2B; or
 - (c) the employee opts out, by giving notice in writing under section 13Y.
3. A statement that, if the employee does not opt out of the union-raised claim within 20 working days after the date of the notice, the employer will provide

- the employee's name and contact details for the provision of written information to the union or unions.
4. The date before which the employee must give notice opting out in order to prevent their name and contact details for the provision of written information being provided to the union or unions.
 5. Advice about opting out of the union-raised claim, including,—
 - (a) if the employee is not a member of the union, or 1 of the unions, how to opt out; and
 - (b) if the employee is a member of the union, or 1 of the unions, that it is not possible to opt out without first cancelling membership of the union.
 6. A statement that employees who are not members of a union that has raised the claim are not required to pay fees to the union to be covered by the union-raised claim or to have the benefit of a settlement of the claim offered to them.
 7. An explanation of the consequences of being covered by the union-raised claim, including that, if the claim is settled,—
 - (a) the settlement of the claim will apply to the employee and may result in a change to their terms and conditions of employment; and
 - (b) the employee will be barred from raising their own claim (*see* sections 2B and 13E(6)).
 8. A statement that if the employee has raised a claim with the employer and that claim has not been settled, the employee may—
 - (a) withdraw the claim by giving notice in writing to the employer; and
 - (b) join the union-raised claim by giving notice in writing to the union or unions that raised the claim.
 9. A statement that, if the employee wants to raise their own pay equity claim, the employee must opt out of the union-raised claim before—
 - (a) the claimant files an application with the Authority under section 13ZY(1)(d) for the Authority to fix remuneration; or
 - (b) the final date for voting on a proposed pay equity claim settlement under section 13ZF(4)(c)(ii).
 10. A statement that if the employee opts out of the union-raised claim, the employee must be offered the benefit of a settlement of that claim and,—
 - (a) if the employee accepts the offer of the benefit of the settlement, they will be barred from raising their own claim (*see* sections 2B and 13E(6));
 - (b) if the employee declines the offer of the benefit of the settlement, they will retain the right to raise their own claim.
 11. An explanation of the steps that the affected employee may take to raise their own pay equity claim.

12. A recommendation that the employee seek independent legal advice.

Schedule 1: amended, on 7 August 2020, by section 24(2) of the Support Workers (Pay Equity) Settlements Amendment Act 2020 (2020 No 50).

Schedule 2

Consequential amendments to Employment Relations Act 2000

s 33

Section 4

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

- (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:

- (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

Section 5

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

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

Section 33

After section 33(2)(b), insert:

- (c) the existence of an unsettled pay equity claim between an employer and a claimant under the Equal Pay Act 1972; or
- (d) the existence of a requirement to review a pay equity claim settlement under 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.

Section 137

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

Section 137—*continued*

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

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:

- (qd) all matters arising under the Equal Pay Act 1972 and, in particular,—
 - (i) determining equal pay claims and unlawful discrimination 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:
 - (iv) determining disputes as to whether work is in fact undervalued:
 - (v) fixing remuneration that is consistent with pay equity under that Act:
 - (vi) determining whether the terms and conditions of employment in an employee’s employment agreement are more or less favourable than the terms and conditions of employment in a pay equity claim settlement for the purposes of section 13ZM of that Act:
 - (vii) determining whether to provide for recovery of an amount of remuneration for past work, and the amount to provide, under section 13ZZD of that Act:
 - (viii) determining the applicable start date for the purposes of section 13ZZE of that Act:

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

Notes

1 *General*

This is a consolidation of the Equal Pay Amendment Act 2020 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Statutes Amendment Act 2022 (2022 No 75): section 36

Support Workers (Pay Equity) Settlements Amendment Act 2020 (2020 No 50): section 24