

13 May 2025

By Email

The Right Honourable Mr Christopher Luxon
Prime Minister of New Zealand
Parliament Buildings
Wellington 6160
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By email: Christopher.Luxon@parliament.govt.nz

Dear Prime Minister and Members of Parliament

Immediate action needed to address concerns for the passing of the Equal Pay Amendment Bill under urgency and with retrospective effect

- 1 The Auckland Women Lawyers' Association writes to express its disapproval of the changes this Government has made, without due process, to the Equal Pay Act 1972 (**Act**). The Equal Pay Amendment Bill (**Bill**) raises the threshold for claims seeking to remedy entrenched pay discrimination in female-dominated sectors of the economy.
- 2 The Equal Pay Amendment Act 2020 (**Amendment Act**) amended the Act to improve the process for claimants to raise pay equity claims. The Amendment Act set a suitably low threshold for bringing a claim and provided a simple and accessible process for progressing such claims. Under the previous regime, a claim had to prove it was arguable to progress and merit was proved as part of the claim process. The Bill, passed under urgency, is a reversal of that hard-won progress.
- 3 Among the new criteria is the requirement for claims to "have merit". This means a claim must now relate to work that is predominantly performed by female employees, and show that there are reasonable grounds to believe that the work has been historically undervalued and that the work continues to be subject to systemic sex-based undervaluation. By significantly raising the entry threshold, the Bill is at real risk of shutting the door on legitimate claimants before they can get a foot in.
- 4 AWLA is concerned with the constitutional impropriety that comes with rushing this legislation through under urgency (within 24 hours of the Cabinet decision). There has been no justification established for the urgency. The people of Aotearoa's right to make submissions on the Bill to the Select Committee is an important tenant of the democratic process. However, that right was discarded in this case, despite the far-reaching impact it will have on many New Zealanders.

- 5 AWLA is equally concerned that the legislation has retrospective application. It is generally accepted that legislation should be forward-looking in its effect. If the legal status of past conduct is altered, there can be no certainty as to the legal status of current conduct. Furthermore, there is an inherent unfairness in changing the law after the event, as people cannot alter past actions to meet the requirements of a new law. The presumption in the Legislation Act 2019 is that legislation does not have retrospective effect, and the Legislation Design and Advisory Committee guidelines caution against drafting legislation that applies retrospectively as it cuts across accrued rights and duties. The principle against retrospectivity has been described by the courts as 'simple fairness' and is an important principle in the rule of law.
- 6 It is a concern that these constitutional norms are being ignored with impunity by this Government. It is telling that the Bill was missing its Regulatory Impact Statement from the Ministry of Business, Innovation and Employment, which would ordinarily summarise MBIE's advice to the minister and cabinet, along with a rationale. It is unclear whether MBIE has even had the time to prepare such advice.
- 7 Last year, when the Government disestablished the Pay Equity Taskforce, Public Service Minister Nicola Willis said "*the Government remains committed to pay equity and meeting its obligations under the Equal Pay Act 1972.*" This commitment is at direct odds with the urgent passing of the Bill which has actually extinguished 33 pay-equity claims in progress – representing hundreds of thousands of workers including carers, teachers, and nurses. Those claimants will need to reapply under the new regime, which for some cases, will result in years of wasted effort and expense.
- 8 Pay equity claims act as a powerful vehicle in reducing gender gaps and ethnic pay gaps for vulnerable employees. These claims are increasingly common in sectors where work is primarily undertaken by women and marginalised due to social, cultural and historical factors. For example, the teachers' pay equity claim handled more than 90,000 workers in the education sector. Thousands of care/support workers and health administrators are awaiting long overdue pay corrections.
- 9 It is important to note the impact of the Bill will hurt some women in society more than others. The national gender pay gap in New Zealand has reduced steadily from 16.3% in 1998, but progress has slowed. It is currently 8.2% (as at June 2024). The gender pay gap for wāhine Māori, Pacific, ethnic, and disabled women is significantly higher than the national gender pay gap. This is reflected by higher rates of unemployment, underutilisation, and underemployment, as well as persistent pay gaps when compared to men. In the face of this long accepted evidence, it is appalling to see this Government raising even more barriers to pay equity and closure of the gender pay gap.
- 10 Brooke van Velden, the Minister for Workplace Relations and Safety claims that the Act was not working as it was intended: "*Claims have been able to progress without strong evidence*

of undervaluation and there have been very broad claims where it is difficult to tell whether differences in pay are due to sex-based discrimination or other factors.” However, this assertion has not been evaluated by MBIE, the Law Commission, nor a Select Committee process. Arguably, these amendments simply underscore the fact that women are being systemically underpaid. If the just-extinguished pay-equity claims had no merit, the claims would have been rejected and there would be no need for this new legislation.

- 11 The justification for the Bill appears to be cost-saving, with the Prime Minister claiming the amendments will save the Government “*billions of dollars*”. Pay equity claim settlements have so far cost the Crown \$1.78 billion a year. This amendments will shift that financial burden on to workers in low-paid sectors staffed primarily by women. It will cost them up to \$17 billion of unpaid wages over the next four years. The changes brought about by the Bill effectively impose a gender penalty on those women.
- 12 Meanwhile, the Government introduced the Treaty Principles Bill (**TPB**), which was never going to be passed, just so that it could be referred to a Select Committee for a debate that did not need to be had. Millions of dollars was spent on a process for the redundant TPB, however here the Government has completely circumvented due process. No party campaigned on amending the Equal Pay Act, and bypassing the usual legislative process has meant that there has been no Regulatory impact Statement, no Select Committee process, no public consultation, no input from experts, and no opportunity for refinement of the amendments – let alone a debate about whether they were required in the first place.
- 13 The cost of equity should not and cannot be subject to negotiation. It is impossible to justify the saving of “*billions of dollars*” for society by consistently undervaluing the mahi of women and underrepresented groups. This Government is denying justice to women by denying the hard work and dignity to those who have been undervalued and underpaid for years; and by reinventing the process on specious grounds to save money.
- 14 AWLA is exploring all possible avenues to oppose these unconstitutional amendments which are an obvious attack on women, and especially on wāhine Māori and Pasifika women.
- 15 This Bill is not reform, it is regression.

Nāku noa, nā



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