AUCKLAND WOMEN LAWYERS' ASSOCIATION

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Submissions on the passing of the Equal Pay Amendment Bill for the People's Select Committee on Pay Equity

1 The Auckland Women Lawyers' Association (**AWLA**) welcomes the opportunity to submit on the passing of the Equal Pay Amendment Act 2025 by the Government under urgency and with retrospective effect.

2 AWLA is a representative charitable organisation for lawyers identifying as women in the Auckland region. Our constitution sets out, inter alia, the following objectives:

a) to advocate for and work toward the reform of the law and its administration, particularly as it affects women and children; and
b) to participate as a collective body in matters of interest to the legal profession.

3 AWLA firmly opposes the changes this Government has made, without due process, to the Equal Pay Act 1972 (**Act**). The Equal Pay Amendment Act 2025 (**2025 Act**) has raised the threshold for claims seeking to remedy entrenched pay discrimination in female-dominated sectors of the economy. AWLA submits this is unjustifiable, particularly in light of the lack of due process including public consultation and parliamentary debate.

4 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 claimant had to identify an arguable basis to progress and merit was then subsequently proved as part of the claim process. The 2025 Act, passed under urgency, is a reversal of that hard-won progress.

5 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 2025 Act is at real risk of shutting the door on legitimate claimants before they can get a foot in.

6 The amendments brought into effect with the passing of the 2025 Act require claimants to identify a comparator – a job in a male-centric workforce requiring a similar level of skill, responsibility, experience and effort under the same employer or within the same industry (or if a male-centric comparator cannot be found, a female-dominated profession whose pay equity claims have been settled). This requirement will have the effect of limiting the ability to compare women's work to other better paid, male-dominated roles, and will reinforce low pay as claimants attempt to find similar professions that fit this criteria. Individual workers and small unions may not have the money or expertise to compile the sophisticated comparator cases that are now required. It appears almost certain that they will instead be

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forced to use female-centric comparators, which will ensure pay equity across these groups remains stagnant.

7 Brooke van Velden, the Minister for Workplace Relations and Safety has stated that, where possible, pay comparison will now be "between female employees and male employees at the same employer" and to similar employers if that is not possible. This shows a concerning lack of appreciation or even understanding of the difference between equal pay (about ensuring men and women are paid at the same rate in a specific occupation) and pay equity. They are not the same thing. Pay equity aims to establish pay relativities between female-dominated industries and other sectors using specific criteria. Using a proxy method of comparison between types of work in different industries or sectors remains central to any pay equity claim. This is because pay equity seeks to make visible the deep, structural inequalities that have historically seen women's work undervalued compared to men's work. It's about ensuring jobs that are different, but of equal value, are paid similarly as a way to achieve gender equality.

8 Additionally, the amendments now give employers increased powers to resist claims, and will allow employers to give notice to claimants during the assessment phase if they consider that the work that is the subject of a claim is not the same or substantially similar. This would result in the claim being discontinued, meaning it would need to be raised again. The amendments further allow employers to opt out of a multi-employer claim without needing to give reasons, and have removed the ability of the Employment Relations Authority to award back pay when it is fixing remuneration.

9 AWLA is particularly concerned with the constitutional impropriety that comes with rushing this legislation through under urgency (within 24 hours of the Cabinet decision). There has still been no satisfactory justification provided for the urgency. An important tenet of the democratic process is the right New Zealanders have to make submissions on Parliament's bills to the Select Committee. That right has been discarded in this case, despite the far-reaching impact the legislative changes will have on many New Zealanders.

10 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.

11 It is a concern that these constitutional norms are being ignored with impunity by this Government. The 2025 Act has undermined key legal principles, such as fairness, legal

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certainty and the rule of law. It is telling that the 2025 Act was missing its Regulatory Impact Statement from the Ministry of Business, Innovation and Employment (**MBIE**), which would ordinarily summarise MBIE's advice to the minister and cabinet, along with a rationale. MBIE has not published any such advice, resulting in an inference that it was not given sufficient time to prepare it before the 2025 Act was passed.

12 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 2025 Act 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.

13 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.

14 It is important to note the impact of the amendments under the 2025 Act 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, under-utilisation, and underemployment. 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.

15 Minister Brooke van Velden 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 Parliamentary 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.

16 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. These amendments will shift that financial burden on to workers in low-paid sectors staffed primarily by women by costing them up to $17 billion of unpaid wages over the next four years. The changes brought about by the 2025 Act effectively impose a gender penalty on those women.

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17 The Government's economic argument also ignores the fact that without pay equity, there is less economic activity in general. Focusing exclusively on reducing fiscal cost risks other costs rising instead. Women who are paid less than they should, or excluded as a result of the heightened threshold, may struggle to put food on the table, pay back student loans, get onto the property ladder, contribute to Kiwisaver and afford their retirement.

18 In the case of the 2025 Act, the Government has completely circumvented due process. No political 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.

19 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, and simply shifting that cost onto them. 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.

20 The 2025 Act is not reform, it is regression. AWLA opposes the 2025 Act, which amounts to a constitutionally dubious and obvious attack on women, especially on wāhine Māori and Pasifika women who will feel the effects of these amendments more than any other group.

Nāku noa, nā

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