



11 May 2017

## Draft Employment (Pay Equity and Equal Pay) Bill

Feedback from: New Zealand College of Midwives  
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The New Zealand College of Midwives is the professional organisation for midwifery. Members are employed and self-employed and collectively represent 90% of the practising midwives in this country. There are around 2,900 midwives who hold an Annual Practising Certificate (APC). These midwives provide maternity care to on average 60,000 women and babies each year. New Zealand has a unique and efficient maternity service model which centres care around the needs of the woman and her baby. It provides women with the opportunity to have continuity of care from a chosen maternity carer (known as a Lead Maternity Carer or LMC) throughout pregnancy and for up to 6 weeks after the birth of the baby, and 92% of women choose a midwife to be their LMC. Primary maternity services provided by LMC midwives are integrated within the wider primary care and maternity services of their region or locality. The College offers information, education and advice to women, midwives, district health boards, health and social service agencies and the Ministry of Health regarding midwifery and maternity issues. Midwives interface with a multitude of other health professionals and agencies to support women to achieve the optimum outcome for their pregnancies, health and well-being.

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## **Draft Employment (Pay Equity and Equal Pay) Bill**

The New Zealand College of Midwives (the College) welcome the opportunity to make a submission on the 'Draft Employment (Pay Equity and Equal Pay) Bill'.

The College is currently engaged in a mediation process with the Ministry of Health in regards to a midwifery pay equity claim. We are particularly concerned about the implications of the proposed law change which signals a less than fair change to the equity claim process. Midwifery is a predominantly female profession and it was necessary for the College to look outside the profession at comparative roles to support their claim. The College considers that other predominantly female professions are also undervalued, and this effectively renders a comparison with them meaningless. Comparing one undervalued group of women professionals with another does not address the inherent gender inequity, but rather it continues to perpetuate the unsatisfactory and abusive situation. Women workers need to be supported to select the most appropriate comparator for their particular roles.

The full response from the College, to the proposed changes, is below. We have limited our response to general comments about the bill, issues of gender, pay equity and pay equality.

1. As mentioned above, the College considers that comparing one undervalued and exploited group of women professionals with another does not address the inherent gender inequity. We also consider that a male whose work has been systematically undervalued is also not a suitable comparator. The College supports pay equity and pay equality for women but we are also mindful about fair pay and justice for all workers.

2. This bill should remove and prevent discrimination, but in its proposed form it potentially exacerbates discrimination against women, because the skills and knowledge that women contribute in female dominated occupations will continue to be unrecognised and undervalued in comparison to male dominated work.
3. The College considers that if this draft Bill is not amended, women will face further, if not insurmountable, barriers to achieving pay equity. The arduous process proposed in this draft bill would effectively render future equal pay/pay equity claims unachievable. This would be a human rights breach.
4. This Bill, without amendments, will effectively prevent women from making equal pay/pay equity claims and as such it is contrary to the current Equal Pay Act and against the spirit and intent of the working group on pay equity.
5. The United Nations Convention on the Elimination of Discrimination against Women (CEDAW) states that Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular; (d) the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.
6. The College considers that the systematic undervaluation of work derived from current, historic, or structural gender discrimination, must be taken into account urgently to meet New Zealand's obligations under CEDAW.
7. In the Eighth Periodic Report by the Government of New Zealand on the United Nations Convention on the Elimination of All Forms of Discrimination against Women, article 4:27 stated; *"There remain some gender disparities in New Zealand that are reducing only slowly. In most cases (for example, the gender pay gap) comprehensive legislation has been in place for many years and this has achieved a significant reduction in gender discrepancies. The remaining gap is driven not by a conscious disregard for the law, but by a complex mix of factors, such as occupational and vertical segregation, patterns of employment and unconscious bias."* The College considers that the proposed Employment (Pay Equity and Equal Pay) Bill will obstruct further progress to meet CEDAW obligations, and this law would become a significant barrier to women's rights, pay equity and pay equality. As such, this will be recognised internationally and nationally as a backwards step by the New Zealand Government.
8. In the same report to the UN CEDAW committee the Government states in article 5:20 that *"Government is committed to women having equal opportunity and choice to participate fully in society and the economy. It recognises that underlying factors create barriers to achieving this goal, and addressing these forms a major part of the work programme of Ministry for Women."* The College respectfully points out once again that the proposed Employment (Pay Equity and Equal Pay) Bill does not address barriers, but rather, creates more.

9. The College notes the gender bias discussed in the Eighth Periodic Report by the Government of New Zealand on the United Nations Convention on the Elimination of All Forms of Discrimination against Women described in article 5:30—36. Rather than recognising the value of women-dominated professions and the work they do, the positive ‘work’ focus appeared to be directed towards male dominated professions such as the army and police, as if the only government commitment was to supporting women to ‘break into’ male dominated workforces. The College is not undermining the work of women within those professions by any means, but rather we are drawing attention to a perceived lack of serious commitment to pay equity by this government, and the continued systematic undervaluing of women’s work.
10. As pointed out by Zwi (2016)<sup>1</sup> female-dominated occupations represent essential labour in the community and therefore women should not be penalised for carrying out these jobs merely because a distorted market has failed to accurately account for their value.
11. Zwi (2016) describes how pay for predominately male jobs is determined by market forces, but unlike female-dominated occupations, male jobs are not negatively affected by discriminatory societal and cultural norms resulting in undervaluation. Zwi also suggests that once it has been determined that a female-dominated occupation has been affected by systemic undervaluation, the next step is to use a gender neutral job evaluation tool to establish a non-discriminatory wage rate based on a comparable male-dominated occupation.
12. In article 11:94 of the Eighth Periodic Report by the Government of New Zealand on the United Nations Convention on the Elimination of All Forms of Discrimination against Women, the government states, *“A large number of women in New Zealand work in female-dominated industries where pay tends to be low. Better utilisation of women’s talents in the labour force will help meet New Zealand’s current and projected skill shortages.”* The College would be interested to explore this comment further. Does *“better utilisation of women’s talents in the labour force”* imply a disregard for female dominated workforces? The midwifery workforce is a highly professional, postgraduate educated, skilled, trained, invaluable, and indispensable labour force. Current and projected skill shortages in the essential maternity services, provided to women and their whānau, will be exacerbated by the continued lack of recognition of the need to value female dominated professions such as midwives and pay them accordingly. Pay equity is essential and needs to be addressed urgently before New Zealand descends further into a crisis of skill shortage in essential services.

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<sup>1</sup> Zwi, L. (2016) *Combating the undervaluation of women’s work: Why New Zealand should have pay equity legislation*. Dissertation, Bachelor of Laws, University of Otago, Dunedin.

## **Conclusion**

The College considers that the equal pay legislation should be consistent with both the Court of Appeal Judgement on the recent Terranova Case, and the agreed Joint Working Group recommended principles. We recommend that the proposed Employment (Pay Equity and Equal Pay) Bill be discarded in its current form, and consider the current Equal Pay Act 1972 should remain in force.

New Zealand could step up, make a commitment to, and fully implement new pay equity legislation to prevent the further exploitation of women. A comprehensive new act to adequately address the complexities of the issues involved is necessary. Issues about pay equity need to be fully recognised by government and society as human rights and social justice issues. Preventing women from making comparator claims represents a significant backwards step away from equal pay and pay equity. This bill in its current form signifies a serious lack of commitment towards an equal society where women's work is counted, valued and rewarded appropriately.

The College does not support the Draft Employment (Pay Equity and Equal Pay) Bill and recommend urgent consideration of its amendment.

Yours sincerely

A handwritten signature in cursive script that reads "Carol Bartle".

Carol Bartle  
**Policy Analyst**