



New Zealand
College of Midwives
TE KĀRETI O NGA KAIWHAKAWHANAU KI AOTEAROA

28th November 2018

Equal Pay Amendment 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.

Midwives undertake a four-year equivalent undergraduate degree to become registered followed by a first year of practice program that includes full mentoring by senior midwives. The undergraduate curriculum meets all international regulatory and education standards. Midwives are authorised prescribers in relation to their Scope of Practice as determined by the Midwifery Council.

Midwives provide an accessible and primary health care service for women in the community within a continuity of carer model as Lead Maternity Carers. Midwives can also choose to work within secondary and tertiary maternity facilities, providing essential care to women with complex maternity needs.

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 wellbeing.



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Education and Workforce Committee
Parliament Buildings
Wellington

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Equal Pay Amendment Bill

Introduction

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', and we applaud the introduction of this bill on Women's Suffrage Day.

The College is currently engaged in a long, over three year, negotiation process with the Ministry of Health over gender discrimination against self-employed midwives, in relation to pay equity that has been extraordinarily difficult to navigate. We are particularly concerned that there is a fairer change to the pay equity process to make claims simpler to make and the process more accessible. Midwifery is a predominantly female profession and as other predominantly female professions are also undervalued, addressing gender inequity is an urgent concern for New Zealand. Raising and progressing pay equity claims and eliminating and preventing discrimination within predominantly female professions is a just, practical, fair, equitable, women's rights and human rights goal.

The College agrees with the gender pay principles outlined by the Ministry for Women and the overarching aim which is to see working environments in the state sector free from gender based inequalities, with all employees able to achieve their full potential regardless of their gender, and gender pay gaps eliminated. These principles need to be reflected in any changes to legislation or law on gender equity.¹

¹ Gender Pay Principles <http://women.govt.nz/work-skills/income/gender-pay-gap/gender-pay-principles>
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1. Freedom from Bias and Discrimination Principle

Employment and pay practices are free from the effects of conscious and unconscious bias and assumptions based on gender.

2. Transparency and Accessibility Principle

Employment and pay practices, pay rates and systems are transparent. Information is readily accessible and understandable.

3. Relationship between Paid and Unpaid Work Principle

Employment and pay practices recognise and account for different patterns of labour force participation by workers who are undertaking unpaid and/or caring work.

4. Sustainability Principle

Interventions and solutions are collectively developed and agreed, sustainable and enduring.

5. Participation and Engagement Principle

Employees, their unions and agencies work collaboratively to achieve mutually agreed outcomes.

Feedback from the College is below.

- 1.0 The College welcomes the proposed amendment of the Equal Pay Act 1972 to establish a process for pay equity claims, while still retaining the rights and processes for claimants to raise equal pay and unlawful discrimination claims.
- 2.0 The College recognises the prohibition of differentiation based on sex in the rate of remuneration offered to employees for work that is predominately performed by women is very overdue, and we welcome this redress of the historic, and also, current, undervaluation of women's work and contribution.
- 3.0 The College anticipates a future where pay equality not only significantly improves the lives of New Zealand women in the workforce, but it also has a positive impact on the elimination of poverty. Pay equity is about the achievement of fundamental human rights for women.

- 4.0 The College has some concerns in regards to the pay comparators issues. We recommend that to avoid gender bias, female dominated work requires a comparison with male dominated work in male dominated sectors.
- 5.0 The College has some concerns about employee access to the resources necessary to prove gender discrimination and the difficulties involved with sourcing a pay comparator. We recommend this be addressed by the development of easily accessible, comprehensive information resources to support claimants.
- 6.0 The College recommend that a publicly available database of all pay equity claims could be provided to both inform the general public of gender equity issues, and to support those who are considering embarking on a claim process.
- 7.0 The College considers that permitting the courts or Authority to award back pay to employees represents a good incentive for employers to manage the process in a more timely fashion, and we recommend some more incentivisation in the form of stricter time frames for employers to address claims.
- 8.0 In regards to the issue of back pay the College considers that all current claims that are underway should continue, to avoid reducing women's rights to back pay. Alternatively claimants with a claim filed and in progress, could be given the choice of either progressing their claim, or refiling the claim.
- 9.0 The College considers that addressing claims in a timely manner is important, so recommend that a time frame for employer responses should be reduced from sixty-five days to a thirty-five to forty day period.
- 10.0 Fundamental to an equal pay regime is pay transparency and in order to raise a claim under the new bill workers will need to have this information to benchmark their individual pay situations. The College would like to see this included in the bill.
- 11.0 Full transparency also requires that full records of claims, assessments and comparisons are filed with the Authority and that employers be required to retain these records for the same length of time they are required to keep other wage records.
- 12.0 The College considers that the consolidation of claims and settlements should be agreed by those affected and not by a unilateral decision made by the employer.

- 13.0 The College notes a comment made by the Equal Employment Opportunities Commissioner Jackie Blue, regarding a requirement for employers to do regular pay equity audit checks. We would also recommend this inclusion and further suggest that employers who have been involved with employee gender discrimination claims be required to submit annual reports to the Employment Relations Authority.
- 14.0 The College also considers that employers have an obligation to prevent gender discrimination occurring within the employment process.
- 15.0 The College notes that the legislation as it is currently worded does not enable self-employed, women dominated professions (community midwives) and workers (child care, hospitality, housekeepers), who are individually contracted, to raise a claim. The conditions under which community midwives have been working does not meet the basic human rights and standards set out in employment legislation. For example, the right to negotiate and freedom from discrimination and coercion.
- 16.0 Community midwives are contracted directly to the Ministry of Health and although self-employed for taxation purposes, are unable to negotiate or set the terms and conditions of their work, or charge co-payments. They do not have any of the benefits of self-employment, nor are they covered by the pay equity legislation as it is proposed.
- 17.0 The College submits that all workers, not just those who come under employment law, are entitled to basic human rights that protect against gender discrimination and which actively eliminate and prevent gender discrimination, and therefore strongly recommend that these principles should be outlined clearly within the legislation.
- 18.0 The College strongly urges the select committee and those working on the Equal Pay Amendment Bill to ensure that legislation achieves the objective of the Bill, which is to, *“improve the process for raising and progressing pay equity claims and eliminate and prevent discrimination, on the basis of sex, in the remuneration and employment terms and condition of work done within female dominated jobs.”*²
- 19.0 The International Labour Organisation (ILO) report in 2018 highlighted the undervaluation of women’s work in highly feminised occupations and enterprises. The report showed that wages of women and men with similar levels of education

² Equal Pay Amendment Bill, p, 103-1

tended to be lower in highly feminised occupations than in other occupations. The ILO also noted that, “a number of countries have embraced proactive pay equity laws, which require employers to regularly examine their compensation practices, assess the gender pay gaps and take action to eliminate the portion of the gap due to discrimination in pay.”³

20.0 The right to equal pay and pay equity is established within the Universal Declaration of Human Rights⁴, the Convention on the Elimination of Discrimination against Women (CEDAW)⁵, the International Convention on the Elimination of All Forms of Racial Discrimination⁶, and the Convention on the Rights of Persons with Disabilities.⁷ State parties who are signatories to human rights documents have obligations to uphold the tenets of these conventions.

21.0 The College notes that the CEDAW Expert Committee noted areas of concern in terms of pay equity in their concluding observations on the eighth periodic report of New Zealand, and in recommendation 34(c) stated that New Zealand should, “Adopt and enforce the principle of equal pay for work of equal value in a revised employment relations legislation covering both public and private workplaces, including through analytical job classification and evaluation methods and regular pay surveys, and regularly review wages in sectors in which women are concentrated” (CEDAW 2018).⁸

Conclusion

Taking into the account the long history of pay discrimination based on gender, the College consider that this Equal Pay Amendment Bill, which takes a stronger stance against discrimination, is a very positive move towards meeting obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which outlines under Article 11(d); “The right to equal remuneration, including benefits, and to equal treatment in

³ International Labour Organisation (2018). *Global Wage Report 2018/19: What lies behind gender pay gaps*. https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_650553.pdf

⁴ The Universal Declaration of Human Rights, Article 23 <http://www.un.org/en/universal-declaration-human-rights/>

⁵ The Convention on the Elimination of Discrimination against Women, Article 11

<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

⁶ International Convention on the Elimination of All Forms of Racial Discrimination, Article 5(i)

<https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>

⁷ The Convention on the Rights of Persons with Disabilities, Article 27.

http://www.un.org/disabilities/documents/convention/convention_accessible_pdf.pdf

⁸ CEDAW Concluding observations on the eighth periodic report of New Zealand.

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CEDAW/C/NZL/CO/8&Lang=En

respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work."

The midwifery workforce is a highly professional, postgraduate educated, skilled, trained, invaluable, and indispensable labour force. Current and projected further skill shortages in essential maternity services, provided to women and their whānau, have been exacerbated by the continued lack of recognition of the need to value female dominated professions such as midwives and to 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, including midwifery. Therefore we have high expectations that this Equal Pay Amendment Bill will address the issues of equal pay and discrimination adequately and also speedily.

Thank you for the opportunity to provide feedback.

Ngā mihi

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New Zealand College of Midwives