



CEVEP...coalition for equal value equal pay

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29 May 2017

Submission to the Health Select Committee on the Care and Support Workers (Pay Equity) Settlement Bill

Coalition for Equal Value Equal Pay

1. The Coalition for Equal Value Equal Pay (CEVEP) is a voluntary organisation committed to reducing the gender pay gap in New Zealand through policy and initiatives to advance pay equity in general and equal pay for work of equal value in particular.
2. Our members' expertise and experience spans the breadth and history of this important policy issue. CEVEP itself has campaigned for effective pay equity policy and legislation since 1986. Our activities include advocating to government and political parties, writing submissions and appearing before select committees, producing materials on pay equity for the public and the media, and organising tours of overseas experts to New Zealand.
3. In 2013, CEVEP was an 'intervening' party in the Employment Court in the pay equity test case taken under the Equal Pay Act 1972 by rest home caregiver Kristine Bartlett and the Service & Food Workers Union (E Tu). The Court directed CEVEP be served with a copy of the proceeding given its interest and expertise in the issue.

The Settlement Bill

4. We support the settlement for care and support workers. We are very pleased to see Kristine Bartlett and other carers finally get a well-deserved pay rise – after research by the Human Rights Commission, two years of clarifying what the Equal Act Pay was always intended for, a further two years of bargaining by the parties, and negotiations on funding. We support this Bill which will give the settlement wide application across the sector.

Extinguishing women's rights

5. Our concern with this Bill, however, is that it seeks to 'extinguish and bar' carers from their right to pay equity **by legislation** and **for a eleven year period** (at cl. 3(2)(a) and cl.7(1)(b)), rather than simply implementing an agreed settlement between the parties that includes agreement that it will hold until June 2022 (i.e. five years from settlement).

6. We are concerned that:
 - (i) This will create a legal precedent that constrains claims by other groups of women.
 - (ii) It is not a good look for a government to be seen to be extinguishing women's rights under ratified international Conventions.

7. Equal pay for work of equal value based on objective assessment is a human right for women under ILO Convention 100 and the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), both ratified by New Zealand in the 1980s. So pay equity is not just another bargaining issue.

8. The carers' settlement is the resolution of a particular claim but it should not constrain rights or outcomes for other groups of women. Extinguishing the Bartlett claim until 2022 may have been a purpose of some parties to the negotiations, but it should not be a purpose of government in legislation.

9. The parties to Kristine Bartlett's claim considered 14 different comparable male occupations from the same and different State sector jobs. Settlement was then *negotiated* without, to our knowledge, any mutual process of gender-neutral 'objective appraisal' (ILO 100, Art.3) of the 'skills, responsibilities, experience, effort and conditions of work' as required by s 3(1)(b) of the Equal Pay Act. So the new pay rate, although satisfactory, may or may not be a fully justified 'pay equity' rate.

10. Our intention is not to criticise the process or outcome of the Kristine Bartlett claim, as we support its wide application. But if a future claim made after 2022 demonstrates that the rates set out in this Bill do not represent pay equity for this group of workers, there must be an ability to claim back pay (subject to any limitation periods applying under the Limitation Act 2010). This is currently permitted under the Equal Pay Act 1972. For this reason, extinguishing the right to claim back pay over any period prior to 2022 is in principle wrong and is discriminatory contrary to s 19 of the New Zealand Bill of Rights Act 1990.¹

11. Our intention is also to point out that future 'bargained' settlements of other claims for other female-dominated work may be less satisfactory for the same reason. Other or later women employees should not have their human rights to pay equity constrained by a legal precedent, created by government, that bans any review or follow up claim for a whole eleven years.

12. To summarise, this Bill has two aspects:
 - (i) the settlement of pay rates between the parties and their agreement to no further pay equity claims for five years; and
 - (ii) the application of this settlement across a sector fragmented by funder/provider splits and contracts.

In (i) the government has an interest in its role as funder. In (ii) the government's role is as a legislator, with obligations under international Conventions in regard to equal pay and equal pay for work of equal value.

¹ Québec (*Procureure générale*) c. *Alliance du personnel professionnel et technique de la santé et des services sociaux* [2016] QCCA 1659.

As currently written, it is legislation, rather than the settlement, that is extinguishing carers' rights for an over-long period – and that may create legal precedents affecting pay equity claims by other women. This would further government's interests as employer, and is inappropriate.

Recommendations - Extinguishing women's rights

13. CEVEP recommends that a clear distinction be made in the Bill between the settlement itself and legislation to apply the settlement across the sector including in relation to new claims. As a matter of principle, CEVEP considers that it is completely inappropriate to legislate legal claims out of existence. The legal process and the political and Parliamentary process should be kept quite separate.
14. Consistent with that broad concern, it is particularly important that this Bill should not pre-empt what happens in other proposed legislation, or, if no new Bill is passed, the Equal Pay Act itself. The women (and men) covered by this settlement should not be worse off than those that come later. Nor should this Bill, which is to be passed under conditions of reasonable urgency, dictate the future, especially as what is being proposed in relation to future claims is discriminatory and contrary to New Zealand's international obligations.
15. CEVEP therefore recommends that cl. 7 be reworded so that:
 - (i) It represents only the settlement of the present claims but nothing more; and that
 - (ii) It does not, from 1 July 2022, prevent new pay equity claims for those covered by the settlement and, where it can be established those affected have been paid unlawfully between 1 July 2017 and 1 July 2022, the right to seek back pay in accordance with ordinary legal principles.

Employer Records

16. Cl. 19 of this Bill requires employers to keep certain records for care and support workers. Like the draft Employment (Pay Equity & Equal Pay) Bill, this should include a reference to the employer records required under s. 130 of the Employment Relations Act. And it should add the requirement to keep a record as to the 'sex of the employee' – which to this time s. 130 of the Employment Relations Act has omitted to do.

Recommendations - Employer Records

17. CEVEP recommends:
 - (i) That cl. 19 refer to the requirement under s.130 of the Employment Relations Act to keep records,
 - (ii) That cl. 19(1) include a record as to the 'sex of the employee'.

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