

- (2) In section 10, replace “instrument or proposed instrument” with “employment agreement or proposed employment agreement” in each place.
- (3) In section 10, replace “proposed collective agreement” with “proposed or existing collective agreement” in each place.
- (4) In section 10, replace “meet the requirements of sections 3 to 6” with “provide for equal pay” in each place. 5
- (5) In section 10, replace “meet such of the requirements of sections 3 to 7 as are applicable” with “provide for equal pay” in each place.
- (6) In section 10(1), replace “meet such of the requirements of sections 3 to 6 as are applicable” with “provide for equal pay”. 10
- (7) In section 10(2)(b)(ii), after “and”, insert “, in the case of a proposed collective agreement,”.
- (8) In section 10(4)(b)(i), replace “meet those requirements” with “provide for equal pay”.
- (9) Replace section 10(4)(b)(ii) with: 15
 - (ii) in the case of an existing employment agreement, amend it to the extent necessary to provide for equal pay, and the employment agreement as so amended has effect accordingly.

15 Section 11 repealed (Court may make partial award)

Repeal section 11. 20

16 Section 12 amended (Further powers of Employment Relations Authority)

- (1) Repeal section 12(a) and (b).
- (2) In section 12(d), replace “instrument” with “employment agreement” in each place.

17 Section 13 amended (Recovery of remuneration based on equal pay) 25

- (1) Repeal section 13(1).
- (2) In section 13(2) and (3), replace “instrument” with “employment agreement”.

18 New Part 4 inserted

After section 13 insert:

Part 4
Pay equity claims

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13A Purpose

The purpose of this Part is to facilitate resolution of pay equity claims, by—

- (a) setting a low threshold to raise a claim (while recognising that entry into the pay equity claim process does not predetermine an outcome); and

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- (b) providing a simple and accessible process to progress a pay equity claim.

13B Interpretation

In this Part, unless the context otherwise requires, **employer** means an employer in relation to whom a pay equity claim has been raised.

Employee's right to raise pay equity claim

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13C Employee may raise pay equity claim

- (1) An employee of an employer, or a group of employees who perform the same, or substantially similar, work for an employer, may raise a pay equity claim if that employee or group of employees considers that the claim is **arguable**.
- (2) A pay equity claim is **arguable** if—
 - (a) the claim relates to work that is predominantly performed by female employees; and
 - (b) **it is arguable that the work is currently undervalued or has historically been undervalued.**
- (3) In deciding whether it is **arguable** that work is currently undervalued or has historically been undervalued, consideration may be given to any relevant factor, including the following:
 - (a) the origins and history of the work, including the manner in which wages have been set;
 - (b) any social, cultural, or historical factors;
 - (c) characterisation of the work as women's work;
 - (d) that the nature of the work requires an employee to use skills or qualities that have been—
 - (i) generally associated with women; and
 - (ii) regarded as not requiring monetary compensation;
 - (e) any sex-based systemic undervaluation of the work as a result of the following factors:
 - (i) a dominant source of funding across the relevant market, industry, sector, or occupation;
 - (ii) a lack of effective bargaining in the relevant market, industry, sector, or occupation;
 - (iii) **occupational segregation or occupational segmentation in respect of the work;**
 - (iv) the failure by the parties to properly assess or consider the remuneration that should have been paid to properly account for the nature of the work, the levels of responsibility associated with the

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work, the conditions under which the work is performed, and the degree of effort required to perform the work:

- (v) any other feature of the relevant market, industry, sector, or occupation.

- (4) However, despite **subsections (1) to (3)**, a pay equity claim may not be raised if it relates to work that is covered by an existing pay equity claim settlement to which the employer is a party and the employer extends the benefit of that settlement to the claimant, unless the Authority or court determines otherwise in accordance with **section 13Z(3)**.

Process to raise pay equity claim

13D Requirements relating to pay equity claims

- (1) A pay equity claim must—
- (a) be in writing; and
 - (b) state that it is a pay equity claim made under the Equal Pay Act 1972; and
 - (c) state—
 - (i) the employee's name; and
 - (ii) the date on which the claim is made; and
 - (iii) the employee's occupation, position, and a brief description of the work performed by the employee; and
 - (iv) if the employee engages a union or any other representative to act on the employee's behalf in respect of the claim, the name and address for service of that representative; and
 - (d) briefly set out the elements required for an **arguable** pay equity claim (*see* **section 13C(2)**), and the evidence that the employee relies on in support of those elements.
- (2) The claim must be—
- (a) delivered in person to the employee's employer; or
 - (b) sent to the employee's employer by any form of electronic communication that is ordinarily used for formal communications; or
 - (c) notified to the employer in any manner specified in the employee's employment agreement.

Compare: 1990 No 57 s 5J; 2000 No 24 s 69AAC

13E Employer must notify certain other employees

- (1) An employer who receives a pay equity claim from an employee (the **claimant**) must—

- (a) acknowledge receipt of the claim by giving a notice of receipt to the claimant not later than 5 working days after receiving it; and
 - (b) give notice of the claim to the persons referred to in **subsection (2)** as soon as is reasonably practicable and not later than 20 working days after receiving it.
- (2) The persons are all of the employer's other employees who perform work that is the same as, or substantially similar to, the work performed by the claimant (the **affected employees**).
- (3) The notice must—
 - (a) be in writing; and
 - (b) state that a pay equity claim has been made by an employee who performs work that is the same as, or substantially similar to, the work performed by the affected employees; and
 - (c) provide information about the steps that affected employees may take to join the claim or raise their own pay equity claim.
- (4) **The notice must not identify the claimant without the claimant's prior written consent.**
- (5) The notice must be—
 - (a) delivered to the affected employee in person; or
 - (b) sent to the affected employee by any form of electronic communication that is ordinarily used for formal communications; or
 - (c) given in any manner specified in the affected employee's employment agreement.
- (6) **Subsection (1)(b)** does not apply in respect of an affected employee if—
 - (a) the employer has given notice to that employee of another claim that relates to the same, or substantially similar, work; and
 - (b) that other claim has not been rejected or settled; and
 - (c) the claimant's claim is to be consolidated under **section 13H** with an existing claim and the requirements of **section 13H** are complied with (which requires that a joinder notice be provided to the claimant, information about the claimant be provided to other claimants (unless confidentiality is requested), and information about other claimants be provided to the claimant).
- (7) Despite **subsection (1)(b)**, the employer may, by notice to the claimant, extend the time limit for notifying affected employees if the employer has genuine reasons, based on reasonable grounds, for requiring the extension.
- (8) A notice extending the time limit must—
 - (a) be given as soon as is reasonably practicable and not later than 20 working days after the employer receives the claim; and

- (b) specify the extended date by which the employer will notify affected employees of the claim; and
- (c) set out the reasons and grounds for requiring the extension.

13F Employer must form view as to whether pay equity claim is arguable

- (1) An employer who receives a pay equity claim must, as soon as is reasonably practicable and not later than 65 days after receiving it, decide whether, in the employer's view, the pay equity claim is arguable.
- (2) An employer's decision that a pay equity claim is arguable does not mean that—
 - (a) the employer agrees that there is a pay equity issue; or
 - (b) there will be a pay equity settlement as a result of following the pay equity claim process.
- (3) The employer must notify the employee who made the claim of the employer's decision under **subsection (1)** as soon as is reasonably practicable, and not later than 65 days after receiving the claim.
- (4) If the employer decides that the claim is not arguable, the notice under **sub-section (3)** must—
 - (a) set out the reasons for the employer's decision; and
 - (b) provide an explanation of the steps that the employee may take to challenge the employer's decision, including advice that—
 - (i) the employee may seek further details of the reasons for the employer's decision;
 - (ii) the employee may refer the question of whether the claim is arguable to mediation under **section 13P**;
 - (iii) the employee may refer the question of whether the claim is arguable to the Authority for facilitation under **sections 13Q to 13Y**, if one of the grounds in **section 13S(2)** exists;
 - (iv) the employee may apply to the Authority under **section 13Z** for a determination as to whether the pay equity claim is arguable and that, if the employee does so, the Authority will first consider whether an attempt has been made to resolve the question by facilitation or mediation.
- (5) If the employer decides that the claim is arguable,—
 - (a) the notice under **subsection (3)** must provide information about the pay equity bargaining process under **sections 13H to 13ZD**; and
 - (b) the employer and the employee must enter into the pay equity bargaining process.
- (6) If the employer fails, within 65 days of receiving the claim, to give notice to the employee under **subsection (3)**,—

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	<ul style="list-style-type: none"> (a) the employer is deemed to have accepted that the claim is arguable; and (b) the employer must provide the employee with a notice containing information about the pay equity bargaining process under sections 13H to 13ZD; and (c) the employer and the employee must enter into the pay equity bargaining process. 	5
(7)	<p>Notices under this section must be in writing and be—</p> <ul style="list-style-type: none"> (a) delivered in person to the employee; or (b) sent to the employee by any form of electronic communication that is ordinarily used for formal communications; or (c) given in any manner specified in the employee's employment agreement. 	10
Compare: 1990 No 57 s 5I; 2000 No 24 s 69AAE		
<i>Pay equity bargaining process</i>		
13G	Process applies to arguable claims	
	Sections 13H to 13ZD apply to a pay equity claim if—	15
	<ul style="list-style-type: none"> (a) the employer decides, or is deemed to have accepted, that the claim is arguable; or (b) the Authority or the court determines that the claim is arguable. 	
13H	Consolidation of claims by multiple employees	
(1)	If, before settling a pay equity claim, the employer receives 1 or more other claims that relate to the same, or substantially similar, work, the employer must—	20
	<ul style="list-style-type: none"> (a) treat all claims as 1 joint claim for the purposes of this Act, unless the employer has genuine reasons, based on reasonable grounds, for not treating the claims as a joint claim; and 	25
	<ul style="list-style-type: none"> (b) notify all claimants as to whether their claims will be dealt with jointly or separately. 	
<i>Joinder notice</i>		
(2)	A notice that a claimant's claim will be dealt with jointly (a joinder notice) must—	30
	<ul style="list-style-type: none"> (a) include advice that, unless the claimant requests confidentiality, the information in respect of the claimant set out in subsection (3) will be provided to all other claimants; and 	
	<ul style="list-style-type: none"> (b) specify a reasonable date by which a request for confidentiality under paragraph (a) must be received by the employer. 	35

- (3) If the employer decides to treat a number of claims jointly, the employer must provide to every claimant, as and when each new claim is added to the consolidated claim, the following information in respect of every other claimant:
- (a) the claimant's name and address for service; or
 - (b) in the case of a claimant who has notified the employer of a representative under **section 13D(1)(c)(iv)**,—
 - (i) the claimant's name; and
 - (ii) the name of the claimant's representative; and
 - (iii) the address for service of the claimant's representative.
- (4) Despite **subsection (3)**, if, before the date specified in the joinder notice, an employer receives a request to keep a claimant's name and address confidential, the employer—
- (a) must not provide the information referred to in **subsection (3)(a) and (b)(i)** to the other claimants; but
 - (b) must advise the other claimants that a new claim has been joined and, if the claimant has notified the employer **that the employee has a representative** under **section 13D(1)(c)(iv)**, provide details of the name and address for service of the claimant's representative; and
 - (c) must keep the claimant, or the claimant's representative, informed of all significant issues arising and steps taken in respect of the joint claim. 20
- (5) Notices to claimants under this section must be in writing and be—
- (a) delivered to the claimant in person; or
 - (b) sent to the claimant by any form of electronic communication that is ordinarily used for formal communications; or
 - (c) given in any manner specified in the claimant's employment agreement. 25
- Process for consolidated claims*
- (6) Claimants who have been notified that their claim will be dealt with jointly must seek to reach an agreement as to how the consolidated claim will be progressed, including—
- (a) whether there will be 1 or more representatives for the claimants, and who that representative or those representatives will be; and 30
 - (b) how decisions relating to the claim will be made.
- (7) If the claimants cannot agree on how the consolidated claim will be progressed, any of them may apply to the Authority for a direction.
- (8) The Authority may give any of the following directions that it considers appropriate: 35
- (a) a direction as to representation of the claimants:
 - (b) a direction as to how decisions relating to the claim must be made:

- (c) any related direction that it considers useful to foster the efficient and just resolution of the claims.

13I Consolidation of claims against multiple employers

Consolidation of claims by multiple employers

- (1) If 2 or more employers receive pay equity claims made by employees who perform the same, or substantially similar, work, the employers may agree to consolidate those claims for the purposes of the pay equity bargaining process.

Process for consolidated claims

- (2) An employer's agreement to consolidate pay equity claims must include provisions that set out—
 - (a) whether there will be 1 or more representatives for the employers and who that representative or those representatives will be; and
 - (b) how decisions relating to the claim will be made.
- (3) If 2 or more employers decide to consolidate pay equity claims for the purposes of the pay equity bargaining process, each employer must provide to each employee who has made a claim against that employer—
 - (a) the name of every other employer that is a party to the consolidated claim; and
 - (b) the name and address for service of the nominated representative of each employer.
- (4) At the conclusion of the pay equity bargaining process in respect of a consolidated pay equity claim, each employer must enter into a separate pay equity claim settlement with its employees who were parties to the claim.

Notices

- (5) Notices to claimants under this section must be in writing and be—
 - (a) delivered in person to the claimant; or
 - (b) sent to the claimant by any form of electronic communication that is ordinarily used for formal communications; or
 - (c) given in any manner specified in the claimant's employment agreement.

13J Good faith in pay equity bargaining process

The duty of good faith in section 4 of the Employment Relations Act 2000 requires the parties, at least, to—

- (a) follow the process set out in this section, and in **sections 13K to 13ZD**, to resolve the pay equity claim; and
- (b) use their best endeavours to enter into an arrangement, as soon as possible after the start of pay equity bargaining, that sets out a process for conducting the bargaining in an effective and efficient manner; and

- (c) use their best endeavours to settle the pay equity claim in an orderly, timely, and efficient manner; and
- (d) recognise the role and authority of any person chosen by each of the parties to be that person's representative or advocate, and not (directly or indirectly) bargain about matters relating to the pay equity claim with the person for whom a representative or advocate acts (unless the parties agree otherwise); and 5
- (e) not undermine, or do anything that is likely to undermine, the bargaining or the authority of another party in the bargaining. 10

Compare: 2000 No 24 s 32

13K Duty to provide information

- (1) The parties to a pay equity claim must provide to each other, on request, information that is reasonably necessary to support or substantiate claims or responses to claims made for the purposes of the bargaining. 15
- (2) A request by a party to another party for information must—
 - (a) be in writing; and
 - (b) specify the nature of the information requested in sufficient detail to enable the information to be identified; and
 - (c) specify the claim, or the response to a claim, in respect of which information to support or substantiate the claim, or the response, is requested; 20
 - and
 - (d) specify a reasonable time within which the information must be provided. 25
- (3) A party who receives an information request may provide the information to an independent reviewer, instead of to the requesting party, if the party reasonably considers that the information requested should be treated as confidential information. 25
- (4) If information is provided to an independent reviewer, section 34(4) to (9) of the Employment Relations Act 2000 applies as if references to the union and employer were references to the parties. 30

Compare: 2000 No 24 s 34

13L Matters to be assessed

- (1) The parties to a pay equity claim must **determine whether the employee's work is currently undervalued, or has historically been undervalued**, by assessing—
 - (a) the nature of the work to which the claim relates, and the nature of comparators, including, in each case, the following: 35
 - (i) the skills required:
 - (ii) the responsibilities imposed:
 - (iii) the conditions of work:

	(iv) the terms and conditions of employment:	
	(v) the degree of effort required to perform the work:	
	(vi) the level of experience required to perform the work:	
	(vii) any other relevant work features; and	
	(b) the remuneration that is paid to the persons who perform the work to which the claim relates; and	5
	(c) the remuneration that is paid to persons who perform comparable work.	
(2)	In making the assessments required by subsection (1) , the parties—	
	(a) must consider matters objectively and without assumptions based on sex (and prevailing views as to the value of work must not be assumed to be free of assumptions based on sex); and	10
	(b) must recognise the importance of skills, responsibilities, effort, and conditions that are or have been commonly overlooked or undervalued in female-dominated work (for example, social and communication skills, taking responsibility for the well-being of others, cultural knowledge, and sensitivity); and	15
	(c) may consider the list of factors at section 13C(3) .	
(3)	Despite subsection (1) , the parties to a pay equity claim may enter a written agreement that sets out an alternative process that they will use and that they agree is suitable and sufficient to settle the claim.	20
(4)	If the parties enter a written agreement under subsection (3) , they must follow the alternative process specified in that agreement to assess the claim, and subsections (1) and (2) and section 13M do not apply (except to the extent set out in the written agreement).	
13M	Identifying appropriate comparators	25
(1)	For the purpose of identifying 1 or more appropriate comparators against which to assess a pay equity claim as required by section 13L , comparable work may include any of the following:	
	(a) work performed by male comparators that is the same as, or substantially similar to, the work to which the claim relates:	30
	(b) work performed by male comparators that is different to the work to which the claim relates, if the comparators' work involves 1 or more of the following:	
	(i) skills and experience that are the same as, or substantially similar to, those required to perform the work to which the claim relates:	35
	(ii) responsibilities that are the same as, or substantially similar to, those involved in the work to which the claim relates:	
	(iii) working conditions that are same as, or substantially similar to, those involved in the work to which the claim relates:	

- (iv) degrees of effort that are the same as, or substantially similar to, those involved in the work to which the claim relates:
 - (c) work performed by any other comparators that the parties or the Authority or court considers useful and relevant, including comparators who perform work that has previously been the subject of a pay equity settlement. 5
 - (2) Despite **subsection (1)**, work performed by a male comparator may not be selected for the purposes of assessing a pay equity claim under **section 13L(1)** if there are reasonable grounds to believe that the work performed by that male comparator— 10
 - (a) has been historically undervalued for 1 or more of the reasons set out in **section 13C(3)(a) to (d)**; and
 - (b) continues to be undervalued for the reasons set out in **section 13C(3)(e)**.
- Settling pay equity claim* 15
- 13N Settling pay equity claim**
- (1) A pay equity claim is settled—
 - (a) when—
 - (i) remuneration is determined that the parties agree does not differentiate between male and female employees in the manner set out in **section 2AAC(b)**; and 20
 - (ii) a process is agreed to review the employee's terms and conditions of employment to ensure that pay equity is maintained, including the agreed frequency of reviews; and
 - (iii) those matters are recorded in writing in accordance with **subsection (3)**; or 25
 - (b) when the Authority or the court—
 - (i) determines that an employee's terms and conditions of employment do not differentiate between male and female employees in the manner set out in **section 2AAC(b)**; or 30
 - (ii) issues a determination that fixes terms and conditions of employment that do not differentiate between male and female employees in the manner set out in **section 2AAC(b)**.
 - (2) An employer may not reduce any terms and conditions of employment of an employee who has made a pay equity claim for the purpose of settling that claim. 35
 - (3) A pay equity claim settlement must—
 - (a) be in writing; and

<p>(b) state—</p> <ul style="list-style-type: none"> (i) that it is a pay equity claim settlement for the purposes of this Act; and (ii) the name of the employer; and (iii) the name of the employee to whom the settlement relates; and (iv) the employee’s occupation and position; and (v) the terms and conditions of employment, including remuneration, that the parties agree do not differentiate between male and female employees in the manner set out in section 2AAC(b); and (vi) the process for reviewing those terms and conditions to ensure that pay equity is maintained; and (vii) the frequency of those reviews, which must be aligned with any applicable collective bargaining rounds. 	
<p>(4) If the requirements of subsections (2) and (3) are met, a settlement agreement is a pay equity claim settlement for the purposes of this Act (regardless of whether the parties followed the processes set out in this Act to reach that settlement).</p>	<p>5</p> <p>10</p> <p>15</p>
<p>13O Relationship between pay equity claims and collective bargaining</p>	
<p>(1) The entry into a collective agreement by an employer and a union does not settle or extinguish an unsettled pay equity claim between that employer and 1 or more of the employer’s employees.</p> <p>(2) The existence of an unsettled pay equity claim between an employer and an employee is not a genuine reason for failing to conclude collective bargaining between that employer and a union representing the employer’s employees.</p>	<p>20</p> <p>25</p>
<p style="text-align: center;"><i>Mediation</i></p>	
<p>13P Parties may refer issues to mediation</p>	
<p>(1) Any party to a pay equity claim may refer any 1 or more issues relating to that claim to mediation services provided under Part 10 of the Employment Relations Act 2000.</p> <p>(2) Issues that may be referred to mediation services include, but are not limited to, the following:</p> <ul style="list-style-type: none"> (a) a dispute as to whether the pay equity claim is arguable (see section 13C(2)); (b) a dispute as to whether an employee’s claim relates to work that is the same as, or substantially similar to, work performed by another claimant for the purposes of consolidating those employees’ claims under section 13H: 	

(c)	a dispute as to whether work performed by others is comparable work for the purposes of the assessment required by section 13L :	
(d)	a dispute as to whether proposed remuneration no longer differentiates between male and female employees in the manner set out in section 2AAC(b) for the purposes of settling a pay equity claim.	5
(3)	If an issue relating to a pay equity claim is referred to mediation services, sections 145 to 154 of the Employment Relations Act 2000 apply, with all necessary modifications.	
	<i>Facilitation</i>	
13Q	Purpose of facilitating pay equity claim	10
(1)	The purpose of sections 13R to 13Y is to provide a process that enables 1 or more parties to a pay equity claim who are having difficulties in resolving that claim to seek the assistance of the Authority in resolving the difficulties.	
(2)	Sections 13R to 13Y do not—	
(a)	prevent the parties from seeking assistance from another person in resolving the difficulties; or	15
(b)	apply to any agreement or arrangement with the other person providing such assistance.	
	Compare: 2000 No 24 s 50A	
13R	Reference to Authority	20
(1)	Any party to a pay equity claim may refer any 1 or more issues relating to that claim to the Authority for facilitation to assist in resolving the claim.	
(2)	Issues that may be referred to the Authority include, but are not limited to, the following:	
(a)	a dispute as to whether the pay equity claim is arguable (see section 13C(2)):	25
(b)	a dispute as to whether an employee's claim relates to work that is the same as, or substantially similar to, work performed by another claimant for the purposes of consolidating those employees' claims under section 13H :	30
(c)	a dispute as to whether work performed by others is comparable work for the purposes of the assessment required by section 13L :	
(d)	a dispute as to whether proposed remuneration no longer differentiates between male and female employees in the manner set out in section 2AAC(b) for the purposes of settling a pay equity claim.	35
(3)	A reference for facilitation must be made on 1 or more of the grounds specified in section 13S(2) .	
	Compare: 2000 No 24 s 50B	

13S When Authority may accept reference

- (1) The Authority must not accept a reference for facilitation unless—
 - (a) the Authority is satisfied that facilitation may be useful to resolve the issue referred; and
 - (b) 1 or both of the grounds in **subsection (2)** exist.
- (2) The grounds are—
 - (a) that a party has failed to comply with the duty of good faith in section 4 of the Employment Relations Act 2000 and the failure—
 - (i) was serious and sustained; and
 - (ii) has undermined the progress of the pay equity claim:
 - (b) that sufficient efforts (including mediation) have failed to resolve an issue relating to the claim.
- (3) The Authority must not accept a reference in relation to a pay equity claim for which the Authority has already acted as a facilitator unless—
 - (a) the earlier facilitation related only to the issue of whether the claim is **arguable** and the subsequent reference relates to the pay equity bargain-ing process; or
 - (b) the circumstances relating to the pay equity claim have changed; or
 - (c) the bargaining since the previous facilitation has been protracted.

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Compare: 2000 No 24 s 50C

13T Limitation on which member of Authority may provide facilitation

A member of the Authority who facilitates resolution of an issue relating to a pay equity claim must not be the member of the Authority who accepted the reference for facilitation.

Compare: 2000 No 24 s 50D

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13U Process of facilitation

- (1) The process to be followed during facilitation—
 - (a) must be conducted in private; and
 - (b) is otherwise determined by the Authority.
- (2) During facilitation, any pay equity bargaining in respect of the claim to which the facilitation relates continues subject to the process determined by the Authority.
- (3) During facilitation, the Authority—
 - (a) is not acting as an investigative body; and
 - (b) may not exercise the powers it has for investigating matters.
- (4) The provision of facilitation by the Authority may not be challenged or called in question in any proceedings on the ground—

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- (a) that the nature and content of the facilitation were inappropriate; or
 - (b) that the manner in which the facilitation was provided was inappropriate.
- Compare: 2000 No 24 s 50E

13V Statements made by parties during facilitation

- (1) A statement made by a party for the purposes of facilitation is not admissible against the party in proceedings under this Act or under the Employment Relations Act 2000. 5
- (2) A party may make a public statement about facilitation only if—
 - (a) it is made in good faith; and
 - (b) it is limited to the process of facilitation or the progress being made. 10

Compare: 2000 No 24 s 50F

13W Proposals made or positions reached during facilitation

- (1) A proposal made by a party or a position reached by parties to a pay equity claim during facilitation is not binding on a party after facilitation has come to an end. 15
- (2) This section—
 - (a) applies to avoid doubt; and
 - (b) is subject to any agreement of the parties.

Compare: 2000 No 24 s 50G

13X Recommendation by Authority

- (1) While assisting parties to resolve an issue related to a pay equity claim, the Authority may make a recommendation about any matter that relates to the pay equity claim, including, but not limited to, recommendations as to the following:
 - (a) whether the pay equity claim is **arguable**; 25
 - (b) the process the parties should follow to reach agreement;
 - (c) terms and conditions of employment (including remuneration) that would no longer differentiate between male and female employees in the manner set out in **section 2AAC(b)**.
- (2) The Authority may give public notice of a recommendation in any manner that the Authority determines. 30
- (2) A recommendation made by the Authority is not binding on a party, but a party must consider a recommendation before deciding whether to accept it. Compare: 2000 No 24 s 50H

13Y Parties must deal with Authority in good faith

During facilitation, the parties must deal with the Authority in good faith. 35

Compare: 2000 No 24 s 50I

*Determination by Authority***13Z Parties may apply for determination by Authority**

- (1) A party to a pay equity claim may apply to the Authority or the court for determination of any matter that relates to the pay equity claim, including, but not limited to, the following:
 - (a) a determination as to whether the pay equity claim is arguable (see **section 13C(2)**):
 - (b) a determination as to whether an employee's claim relates to work that is the same as, or substantially similar to, work performed by another claimant for the purposes of consolidating those employees' claims under **section 13H**:
 - (c) a determination as to whether the work to which the claim relates is currently undervalued or has historically been undervalued:
 - (d) a determination fixing terms and conditions of employment (including remuneration) that do not differentiate between male and female employees in the manner set out in **section 2AAC(b)**.
- (2) Where an application is made under **subsection (1)**, the Authority or the court—
 - (a) must first consider whether an attempt has been made to resolve the difficulties by the use of—
 - (i) mediation or further mediation under **section 13P**; or
 - (ii) facilitation under **sections 13R to 13Y**; and
 - (b) may direct the parties to try to resolve the difficulties by mediation or further mediation; but
 - (c) if 1 or both of the grounds in **section 13S(2)** exist, must direct that facilitation be used before the Authority or the court investigates the matter, unless the Authority or the court considers that use of facilitation—
 - (i) will not contribute constructively to resolve the difficulties; or
 - (ii) will not, in all the circumstances, be in the public interest; or
 - (iii) will undermine the urgent nature of the process; or
 - (iv) will be otherwise impractical or inappropriate in the circumstances.
- (3) If an application for a determination relates to whether the work to which the claim relates is currently undervalued or has historically been undervalued, the court may take into account the list of factors set out in **section 13C(3)**.
- (4) If an application for a determination relates to whether a claim may be raised despite **section 13C(4)**, the Authority or the court must make its determination—

- (a) having regard to the existing pay equity claim settlement to which the employer is a party; and
- (b) only if it is satisfied that there are exceptional circumstances.

Compare: 2000 No 24 s 50K

13ZA If Authority or court determines pay equity claim is arguable

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If the Authority or the court determines that a pay equity claim is **arguable**, the parties must enter into the pay equity bargaining process in accordance with **sections 13H to 13ZD**.

13ZB Process on application to fix terms and conditions

- (1) If the Authority receives an application under **section 13Z(1)(d)** to fix terms and conditions of employment, and the Authority has not previously directed the parties to try to resolve the difficulties by mediation or further mediation, the Authority must—
 - (a) direct the parties to try to resolve the difficulties by mediation or further mediation; or
 - (b) recommend another process that the parties must follow to try to resolve the difficulties.
- (2) The Authority may accept an application for a determination that fixes terms and conditions of employment only if—
 - (a) the parties have first tried to resolve the difficulties by mediation, or by any other process recommended by the Authority; and
 - (b) the Authority is satisfied that all other reasonable alternatives for settling the pay equity claim have been exhausted.

13ZC Determination may provide for recovery of remuneration for past work

- (1) A determination fixing terms and conditions of employment may also provide for recovery of an amount of remuneration that relates to work performed before the date of the determination (**past work**).
- (2) When deciding whether to provide for recovery of an amount of remuneration for past work, and the amount to provide, the Authority must take into account the following factors:
 - (a) the conduct of the parties; and
 - (b) the ability of the employer to pay; and
 - (c) the nature and extent of resources (for example, information and advice) available to the employer and the employee in respect of the claim; and
 - (d) any other factors the Authority considers appropriate.
- (3) See **section 13ZD** for the periods for which remuneration for past work can be recovered.

13ZD Limitation periods for recovery of remuneration for past work

(1) A determination may provide for recovery of an amount of remuneration that relates to work performed in the period—

- (a) beginning on the applicable start date for the claim to which the determination relates; and
- (b) ending on the date of the determination.

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(2) However, no determination may provide for recovery of an amount of remuneration that relates to a period that is longer than 6 years.

(3) The **applicable start date** for a claim is as follows:

When claim raised or notified

Claim notified or proceedings commenced before the date on which this section comes into force

Claim raised on or after the date on which this section comes into force, but no more than 5 years after the date on which this section comes into force

Claim raised more than 5 years after the date on which this section comes into force

Applicable start date

The earlier of—

- (a) the date on which the claim was notified to the employer; and
- (b) the date on which proceedings were commenced

The date on which the claim is raised

The date that is 5 years after the date on which this section comes into force

(4) In this section, a claim is **notified** on the date on which the employee gives the employer notice in writing that the employee is making a claim to the effect that the employer has failed to ensure that there is no differentiation between the rates of remuneration offered and afforded by the employer for work that is exclusively or predominantly performed by female employees and the rate of remuneration that would be paid to male employees who—

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- (a) have the same, or substantially similar, skills, responsibility, and service; and
- (b) work under the same, or substantially similar, conditions, and with the same, or substantially similar, degrees of effort.

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Obligation on employers to keep pay equity records

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13ZE Pay equity records

Every employer who has received 1 or more pay equity claims must keep a record showing—

- (a) every pay equity claim lodged by an employee; and
- (b) in relation to each pay equity claim,—
 - (i) the employer's decision as to whether the claim is **arguable** and the consequent notice to the employee; and
 - (ii) the outcomes of any pay equity bargaining; and

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- (iii) all notifications to affected employees under **section 13E**; and
- (iv) any recommendation by the Authority during facilitation.

Pay equity claims by employees of education service

13ZF Pay equity claims by employees of education service

Employees other than employees of tertiary education institutions

- (1) For the purposes of a pay equity claim by 1 or more employees of the education service (other than employees of a tertiary education institution), the State Services Commissioner—
 - (a) must be treated as the employer; and
 - (b) has the same rights, duties, and obligations under this Act as the Commissioner would have if the Commissioner were the employer.
- (2) If the Commissioner decides that a pay equity claim by 1 or more employees referred to in **subsection (1)** is **arguable**, or if the Authority or the court determines that such a claim is **arguable**, the Commissioner must enter into the pay equity bargaining process described in **sections 13H to 13ZD**—
 - (a) with the employee or employees or their representative or representatives; and
 - (b) in consultation with—
 - (i) the chief executive of the Ministry of Education; and
 - (ii) representatives of the employer or employers who will be bound by the pay equity claim settlement agreement (which representatives must be employers, or organisations of employers, of persons employed in the education service).
- (3) Every pay equity claim settlement agreement entered into between the Commissioner and 1 or more employees in the education service is binding on the employer or employers of those employees.
- (4) An employer who is bound by a pay equity claim settlement agreement under **subsection (3)** has the rights, obligations, and duties that the employer would have, in respect of that pay equity claim settlement agreement, as if that employer were a party to that agreement.

Employees of tertiary education institutions

- (5) For the purposes of a pay equity claim by 1 or more employees of a tertiary education institution, the chief executive of the tertiary education institution is responsible (either individually or jointly through an organisation of employers of persons employed in tertiary education institutions) for determining whether the claim is arguable and, if so, entering into the pay equity bargaining process described in **sections 13H to 13ZD**.
- (6) Before entering into a pay equity settlement, the chief executive of a tertiary education institution, or an organisation of employers of persons employed in

tertiary education institutions, must consult with the State Services Commissioner.

Interpretation

(7) In this section,—

education service has the same meaning as in section 2 of the State Sector Act 1988

State Services Commissioner or **Commissioner** means the State Services Commissioner appointed under section 3 of the State Sector Act 1988

tertiary education institution means an institution within the meaning of section 159(1) of the Education Act 1989.

Compare: 1988 No 20 s 74

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19 Section 14 repealed (Procedure and jurisdiction of Employment Relations Authority)

Repeal section 14.

20 New Part 5 heading inserted

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Before section 15, insert:

Part 5
General provisions

Penalties and enforcement

21 Section 15 replaced (When dismissal or reduction of employee an offence)

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Replace section 15 with—

15 Claimant employee must not be treated adversely

(1) An employer must not treat adversely any employee who raises a claim under this Act.

(2) In this section, an employer treats an employee adversely if the employer—

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(a) refuses or omits to offer or provide to that employee the same terms and conditions of employment (including the same remuneration, conditions of work, fringe benefits, or opportunities for training, promotion, and transfer) as are offered or provided to other employees of the same, or substantially similar, qualifications, experience, or skills employed in the same, or substantially similar, circumstances; or

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(b) dismisses that employee or subjects that employee to any detriment, in circumstances in which other employees employed by that employer on work of that description are not or would not be dismissed or subjected to such detriment; or

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