

# ACHIEVING PAY EQUITY

## WHAT NEEDS TO HAPPEN?

Achieving pay equity – What needs to happen?  
Centre for Labour, Employment and Work (CLEW)  
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*The recent decisions in the Terranova case have focused attention once again on the gender pay gap.*

*How is it that women now make up more than 50% of graduates, have supposedly broken the glass ceiling in many industries and yet their pay still lags behind men at all levels of the workforce?*

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## WHAT IS PAY AND EMPLOYMENT EQUITY?

Pay and employment equity exists when employees' pay and work experiences are not affected by their gender. **Employment equity is about fairness at work.** It means that women have the same opportunity as men to participate fully in employment.

**Pay equity means gender does not affect what people are being paid.** It means women receive the same pay as men for doing the same work and for doing work that is different but of equal value. The value of work is assessed in terms of skills, knowledge, responsibility, effort, and working conditions.

## WHAT IS THE GENDER PAY GAP?

**In June 2009 women's average hourly earnings were 87.8% of men's average hourly earnings. Currently women in the public sector are paid an average of 14% less than men.**

There is one definition of 'the gender pay gap' - it is measured differently depending on who you ask. It involves both horizontal (type of job) and vertical (hierarchical position within a job) occupational segregation. The gap has narrowed, over time and it is likely that it will continue to do so. However, the gender pay gap widens when the average wage drops.

**Factors that contribute to the gender pay gap include the jobs women do; the value put on women's jobs, and work arrangements and caring responsibilities.** The fact that men earn higher hourly rates of pay than women is evident not only in New Zealand but overseas too.

## NEW ZEALAND STATISTICS

- Women in the public sector are paid an average of 14% less than men;
- Support work is paid around 1/3 less than work with similar level of skills but done by men;
- 33% women compared with 13% of men work part time;
- 75% of part time workers are women;
- Part timers have lower hourly rates on average compared with full timers;
- In June 2014 the median part time hourly rate was \$16.96 whereas the full time rate was \$23.44;
- Two thirds of those in the top 20% of incomes are men;
- In 2013 MBIE estimated that nearly 85,000 workers were on minimum wage and 573,100 workers were on less than the living wage – women, Maori and Pacific Islanders are over represented;
- Female executives receive less incentive pay or stock overall than men.

## **How much of the gender pay gap is due to discrimination?**

It is impossible to give an unequivocal answer to this question because it is a matter of opinion. Discrimination does not have to be deliberate. **Wage discrimination occurs when workers of equal productivity to an employer are paid unequally.** Difficulties arise in regards to how productivity and skills are assessed - "individual productivity is unknown and variable" (Lester Thurow). How many 'X' you make an hour is a straightforward way of measuring productivity. Organisations are so stuck on comparing 'like' with 'like' that they focus on measuring quantity instead of quality.

## **WHY IS PAY AND EMPLOYMENT EQUITY IMPORTANT?**

**Pay and employment equity brings greater economic independence for women and is good for the economy as a whole.** For example, it can reduce reliance on income support and improve lifetime earnings and retirement incomes.

**Better pay and conditions can improve the incentives to enter and remain in paid work.** More workforce experience improves women's prospects of getting higher-level jobs, where they are still under-represented. Women spend more money than men on the next generation (towards education).

**Pay and employment equity also benefits employers because employees who are valued are much more likely to be more committed to the organisation, work harder, show more initiative and be more productive.** Pay and employment equity assists with staff retention as employees who are valued are less likely to leave. Implementing pay and employment equity across an organisation helps increase the diversity of the workforce at all levels.

## **PAY AND EMPLOYMENT EQUITY HISTORY**

**Early 1900s** - women were not supported and the breadwinner status belonged to men. In 1913 the PSA was formed and in 1914 the first PSA conference was held.

**1940s** - 1943 the PSA women's subcommittee formed. In 1949 the United Nations recognised equal pay as a human right. Despite this, public service attitudes to women employees were not always welcoming. Women were considered a threat to men in the workplace.

**1950s** - Success of the PSA equal pay case for Jean Parker (1956) led to political support and action resulting in the enactment of equal pay legislation. An increase of women in employment led to an increase in women in unions. The movement for equal pay became more powerful. In 1957 both National and Labour included equal pay in their election platforms.

**1960s** - In 1967 there was an inquiry into equal pay in the private sector. The Government Service Equal Pay Act was passed to eliminate separate male and female pay scales in the Public Service. Female minimum rates rose from 68% of the male rate to 71%.

**1970s** - Equal Pay Act 1972 extended pay equity coverage to the private sector. With the rise of human rights around the world, discussion around equal pay also increases.

**1980s** - The Coalition for Equal Value Equal Pay was established in 1986. New Zealand ratified the UN Convention on the Elimination of all Forms of Discrimination against Women. The 1988 report Towards Employment Equity laid the foundations for employment equity legislation.

**1990s** - Equal pay is still not a reality. The Employment Equity Act 1990 enacted. Midwifery pay equity is established and primary teachers and principals with the same job size, experience and qualifications receive same pay as secondary teachers and principals.

**2000s** – The Tripartite Pay and Employment Equity Taskforce was established in 2003. Government responded to the Taskforce Report, developing a five-year ‘plan of action’. In the 2000s there was also the rollout of pay and employment equity review process into the public sectors.

**Today the topic of equal pay is not a priority (with the gender pay gap being 14.1% in the Public Service and 9.3% across the whole economy), so the battle has not been won.**

The courts however, appear more and more likely to play a role in achieving equal pay. The PSA’s goal is to engage with and put pressure on the government to make equal pay a reality by 2020. \$294,827,136 is the ‘overdue payment’ for lost wages for women (as at 11 May 2015).

### **PAY AND EMPLOYMENT EQUITY LEGISLATION**

In New Zealand, pay and employment equity legislation has remained virtually static since 1972. The Equal Pay Act 1972 requires that men and women doing work requiring the same or substantially similar skill, effort, responsibility and working conditions are paid the same.

Other legal instruments pertaining to pay and employment equity include the Human Rights Act 1993, the Employment Relations Act 2000, the State Sector Act 1988 and the Crown Entities Act 2004.

Arguably, past legislative strategies have been limited. The courts and legislation have the potential to over complicate pay equity issues by demanding that it must be scientifically proved that women should be paid the same as men however this ‘onus of proof’ does not exist for rates of pay for men.

## THE TERRANOVA CASE

- ❖ In 2014 the Court of Appeal issued a landmark judgement considering the provisions of the Equal Pay Act 1972 in *Terranova Homes and Care Ltd v Service and Food Workers Union Nga Ringa Tota Inc.* [2014]. The appeal related to a preliminary judgment of the Employment Court from August 2013 which considered pay equity in the scope of aged care.
- ❖ Both judgments have indicated that the outcome of the case has “potentially far reaching implications not only for the residential aged care sector but for other predominantly female intensive occupations as well”. The case involves a claim by the SFWU that a group of female caregivers employed by Terranova received a lower rate of pay than they would have if the majority of employees were male, and that this was unfair and in breach of the Act.
- ❖ The Employment Court found that to establish equal pay for workers in the female dominated aged care industry, it would be necessary and within the scope of the Act to use external employers and industries as comparators in determining what a notional male employee with similar skills and responsibilities would be paid. The Court of Appeal agreed with the finding of the Employment Court and focused on the interpretation of the Act.
- ❖ The Court of Appeal held the case had been difficult due to the poor wording of the Act. The Court confirmed that a broad approach be applied when assessing pay equity. The case was referred back to the Employment Court for it to state the principles that should act as a framework for the hearing of the substantial case. Importantly, the case also made clear that to simply allege that ‘we [the employer] would pay men the same as women in this situation’ would not provide a complete defence.
- ❖ This is a case of ‘watch this space’ to find out how evidence can be adduced from the employers regarding skills and remuneration of their employees. Whatever the outcome, both parties can take the matter to the Supreme Court. If the SFWU wins, it could mean higher pay for thousands of female workers.
- ❖ Some employers are waiting for the outcome of the case before they take any action in regards to pay and employment equity. So essentially they are either holding the position that undervaluation does not exist in their workplace or alternatively, they are apathetic. Employers should not be waiting for the outcome of this case given that they already have existing obligations under the current legislation.

## **WHY DOES A GENDER PAY GAP STILL EXIST?**

There are many reasons why a gender pay gap still exists in the 21<sup>st</sup> century.

**Where does career 'choice' for women start? Both secondary and tertiary educated women are encouraged to pursue stereotypical 'women' jobs** - career advisors are arguably not informed properly. For example, there is a clear male dominance in degrees such as the hard sciences, engineering and IT. Both women and men should be encouraged to explore all career options. Once an occupational group becomes dominated by women its remuneration lowers.

**The common perception is that the gender pay gap is a 'female choice' rather than a 'societal choice'**. However, 'choice' is not always as it seems and in some situations may be foisted upon women. The career path of a male is more likely to follow a straight line with no career breaks and consistent promotions. The more children a woman has, then the more interruptions to their career and the more restrictions on being able to get a higher paying job. The impact of part time employment includes being valued less in the workplace with a limited opportunity to progress. The pay penalty increases with the length of parental leave taken.

**We are constantly told to focus on, and reduce, the number of workers in the 'top' group of earners.** However, the fact remains that not all women are interested in improving things for the whole workforce and even if they wanted to this they may not be able to do so. This is why the 'top' earners should not be the focus of change but rather the 'lower-end' earners.

**There exists a conscious and unconscious bias towards women in the workforce.** This bias is both a male and female issue and it places limits on achieving pay and employment equity.

**We have yet to accept that the law is part of the strategy but not the entire solution to the gender pay gap.** Despite the *Terranova* case displaying support for unions and pay equity campaigns, a major jolt is still required through legislative and court processes. Arguably, increasing the living wage will do more for women than enforcing other legislative measures.

## **HOW TO ACHIEVE PAY AND EMPLOYMENT EQUITY?**

**The organisation or business must be held responsible and questioned directly in terms of productivity and the gender pay gap. Organisations need to ask: has there been an undervaluation of my employees and if so how can this undervaluation be improved?**

Employers need to understand their own business dynamics before can they enact change - they need to establish a base line, establish a rationale for leadership, and start analysing and collecting data in order to improve any pay or employment inequality in their workplace. YWCA Equal Pay Awards are raising social awareness within business by rewarding those who demonstrate pay equity.

**Employers need to recognise the skills of woman workers that are already there rather than solely focusing on credentials and qualifications** (for example, women gain skills from working in the household). It should be ‘what you have got’ and not ‘how well you can sell it’.

**How wages are viewed needs to change - wages are not just a ‘price’ or a ‘cost’ rather they are a right, a social practice and an investment.** Various international agencies now pay lip service to at least gender equality generally in the name of efficiency.

It is important that employers adopt the view that both theoretically and empirically if wages are increased then productivity is also increased and turnover is decreased.

**Recognise that yes, if you increase the pay of underpaid women there will be an immediate cost but there will be more important long term gains.** We have an aging population for example and we need more carers. Investing in women and girls has a ‘multiplier effect’ on productivity, efficiency and sustained economic growth – women’s economic independence is vital to their role as full and equal partners for development and essential to the achievement of the Ministry of Social Development’s goals, including the eradication of poverty.

**More women need to be educated (especially Maori and Pacifica women who are largely underrepresented in professional roles.** Economic power for society as a whole increases when women are educated. Many women go straight into the workforce from secondary school into lower occupational classes and so are paid less right from the outset.

**Encourage men to have career breaks and be responsible for looking after the family.**

**Recognise that bias towards women exists and that it is perpetuated in the workplace.**

**Be more transparent (and comfortable) about what we earn generally.** We do not know about each other’s pay like how we use to and this is a problem. Female politicians overseas are currently talking about ‘salary sharing’ as one solution to closing the gender pay gap.

Data from a United States LinkedIn survey of 1,000 workers reveals that even if people increasingly see it as a solution for addressing the gender gap – or any other income inequalities around the office – they also think that sharing salary information is a big taboo.

**Appreciate that the gender pay gap is not ‘black and white’ and that there is no one solution.**

We all need to work together to recognise and right the wrong that exists in the workforce.