



9 May 2017

Submission to the Ministry of Business, Innovation and Employment: The Draft Employment (Pay Equity and Equal Pay) Bill.

1. Research for this submission was carried out by Law Reform student volunteers from the Wellington Community Justice Project (**WCJP**), a law student-lead society and registered charity at Victoria University of Wellington.
2. The WCJP aims to improve access to justice in the wider community, and provide volunteers with opportunities to develop their legal skills through volunteer projects. Law Reform is one of four teams within the WCJP with their primary focus on legislative changes and policy developments.
3. The WCJP supports the Draft Bill but makes several recommendations.
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I Introduction

- [1] In March 2017, the WCJP commenced research into the issue of pay equity. Since then, two major developments have taken place. First, there was the rest home carers' settlement. Secondly, the Government introduced the Draft Employment (Pay Equity and Equal Pay) Bill (**the Draft Bill**).
- [2] This submission is a general overview of pay equity in New Zealand. It provides some recommendations as to the Joint Working Group's (**JWG**) proposed framework and principles (**the Framework**). It also provides some feedback on the Draft Bill.
- [3] The submission comprises of four sections. First, Part II contains an overview of factors contributing to gender pay gap and pay equity. Secondly, Part III examines the approach taken in Australia and Canada. Thirdly, Part IV discusses the issue of identifying appropriate comparators. Fourthly, Part V comments on the difficulties of complying with the Framework and the Draft Bill.

II Overview of factors contributing to gender pay gap and pay equity

A Introduction

- [4] Pay equity is the idea that equal remuneration should be given for work of equal value, even though the work may be different or involves completely different skills and industries. This is in contrast to equal pay which demands equal pay for people in similar positions and similar jobs. The Equal Pay Act 1972 sought to even out the disparity in pay between employed males and employed females. However, historically it was often taken to mean implementing equal pay for women and men in similar roles, workplaces or industries. It did not specifically address pay equity.
- [5] Statistics show that the current gender pay gap is 12%, but it has been fluctuating in the past few years.¹ Past studies have often found that educational differences are a key contributor to explaining gender pay gap disparities.² However, this does not seem to be the case now. While educational differences still contribute to gender pay gap, there are other unexplainable factors that contribute as well. This section discusses those factors.

¹ Statistics New Zealand "Measuring the gender pay gap" (19 January 2016) <www.stats.govt.nz>.

² Ministry for Women "Gender pay gap" <www.women.govt.nz>.

B Discrimination and bias

[6] A new research from the Ministry of Women showed that 20% of gender pay gap was caused by explainable factors such as the types of work, education and family responsibilities that men and women commonly assume.³ However, 80% of gender pay gap can be attributed to unexplainable factors. These factors include conscious and unconscious bias, and differences in behaviour between men and women.

[7] According to Paula England, a professor at New York University and an authority on the gender pay gap, this finding is not surprising. She says that “[It is] not that women are always picking lesser things in terms of skill and importance. [It is] just that the employers are deciding to pay it less.”⁴

[8] Another recent research found that men are more likely to get a pay increase when negotiating for pay.⁵ England has also carried out studies on the gender pay gap issue. Their findings suggest that women are not necessarily kept out of high-paying and prestigious professions. Nor do they choose not to enter those professions. Instead, when a job is dominated by women, it is not seen as important, and therefore pays less, even if it requires the same skills and education.⁶

C The undervaluing of women’s work

[9] Women often earn less than men for doing jobs of equal value.⁷ For example, cashiers, a job predominantly comprising of females, tend to get paid less than male employees who are responsible for stacking shelves. This phenomenon arises because women’s competences are valued less than men’s. Jobs requiring similar skills, qualifications or experience tend to be poorly paid and undervalued when they are dominated by women rather than by men.

D Segregation in the labour market

³ Ministry for Women, above n 2.

⁴ Stephanie Thomson “The simple reason for the gender pay gap: work done by women is still valued less” (12 April 2006) World Economic Forum <www.weforum.org>.

⁵ Jamiles Lartey “Women ask for pay increases as often as men but receive them less, study says” (5 September 2016) The Guardian <www.theguardian.com>.

⁶ Stephanie Thomson, above n 4.

⁷ European Commission <<http://ec.europa.eu>>.

- [10] Segregation by occupation or “gendered jobs” is a significant issue in parts of the New Zealand workforce. Approximately half of women and men work in occupations where the majority of their equivalents are the same gender as they are.⁸
- [11] A study done by Sylvia Dixon in 2000 showed that the differences in occupation and industry of employment have been found to explain between 20 and 40 per cent of the gender pay gap.⁹ The study concluded that, while all age groups and cohorts appeared to have experienced some reduction in gender pay inequality from 1994-1998, the market was still characterised by difference in distribution of men and women across different sectors and industries.¹⁰
- [12] This could be due to views of different types of work as being traditionally “female” or “male” roles. The main issue with this is that it is difficult to change society’s unconscious gender bias in their perceptions. Societal values cannot be shifted overnight, but the first step is to recognise that this is a major source of the gender pay gap and then proactively work towards reducing the disparities. It must be realised that the gender pay gap is not only due to unequal pay being given for the same work, that was what the Equal Pay Act targeted and yet 40 years on the gender pay gap still exists, but also due to unequal pay being given for different work which might actually have the same value if gender biases could be removed.

E Balancing work and private life

- [13] Women experience greater difficulties than men in balancing the demands of work and private life. This is because family, care and domestic responsibilities are not equally shared by both men and women. The task of looking after dependent family members is largely borne by women. Moreover, there are more women than men who choose to take parental leave. The lack of facilities for childcare and elderly care have also forced women to exit the labour market. To balance the demands of work and private life, women often turn to part time work.
- [14] In 2013, around 6 in 10 people who worked full-time were men. Men made up 59.1% of full-time workers and women made up 40.9%.¹¹ By contrast, 7 in 10 people who

⁸ Cabinet Paper “Response to the proposals of the Joint Working Group on Pay Equity”.

⁹ Sylvia Dixon *Pay Inequality between Men and Women in New Zealand* (Department of Labour, Occasional Paper 2000/01, September 2000) at 87.

¹⁰ At 84.

¹¹ Statistics New Zealand, above n 1.

worked part-time were women, which made up 70.4% of part-time workers.¹² Consequently, women have more career interruptions or work shorter hours than men. This has had a negative impact on their career development and promotion prospects.

F Recommendation

[15] The above factors illustrate, amongst other things, that gender pay gap and pay equity issues stem partly from bias and undervaluing the work that women do. For this reason, the WCJP supports the Draft Bill and the Government's adoption of the JWG recommendations. If implemented into law, the Draft Bill will be part of a movement to address the bias and undervaluation of work for women. This is desirable.

[16] However, for reasons which will be explained later, there are aspects of the Draft Bill which may require reconsideration.

III The approach in Australia and Canada

A Introduction

[17] Other common law jurisdictions have also recognised the need for legislation to address the pay equity issue. This section examines the Australian and Canadian approaches to pay equity, and makes some recommendations for New Zealand. Australia and Canada, having similar legal systems, cultures, and levels of economic development are the most relevant and useful comparators. The approaches in these two jurisdictions are compared to the approach proposed under the Draft Bill.

B Canada¹³

[18] In Canada, the existence and extent of pay equity legislation differs between states. Ontario's Pay Equity Act, RSO 1990 is among the earliest. This Act is similar to the Draft Bill in that it utilises comparators. Using the labels of female and male job classes, employers are required to "value and compare jobs usually done by women to those usually done by men in an objective and consistent way using factors of skill, effort, responsibility and working conditions."

¹² Statistics New Zealand, above n 1.

¹³ The Pay Equity Commission <www.payequity.gov.on.ca>.

[19] The Ontario Act differs in two notable ways. First, the Pay Equity Office, a statutory body, has exclusive responsibility for investigating complaints and negotiating settlements. By contrast, no such statutory body is proposed under the Draft Bill. Instead, pay equity claims that cannot be amicably settled between employers and employees can be brought to the Employment Relations Authority (**ERA**) and the Courts for adjudication. Disputes are heard and decided on by the Pay Equity Tribunal, a separate body established exclusively for this purpose with sole and final jurisdiction. The Draft Bill proposes to include these disputes within the jurisdiction of the ERA with its established appeal process. The WCJP agrees that pay equity claims can be adequately decided upon by the ERA and the appellant courts. However, the Government may wish to consider establishing a separate body to investigate into pay equity claims. This is to provide additional frontline assistance to the courts. Alternatively, mediators could be established specifically to deal with pay equity claims.

[20] Secondly, the Pay Equity Office has an educative capacity in providing information and training for employers on how to ensure compliance with the Ontario Act. By contrast, the New Zealand regime does not currently provide for an entity with an educational role. It is recommended that the Draft Bill be extended to give either an existing ministry or a new statutory body this role to help ensure successful implementation.

*C Australia*¹⁴

[21] The Australian Fair Work Act established the Fair Work Commission. The Commission has jurisdiction to make “equal remuneration orders”. These require employers to give equal pay for work of equal or comparable value. Non-compliance carries a penalty. Employees are able to apply to the Commission and will be represented by the Sex Discrimination Commissioner or a union.

[22] The Australian statute has more limited application than what is proposed in New Zealand as it applies to all public-sector employers but only private sector employers with ten or more employees. This restriction may be recognition of the possible detrimental impact on small businesses if they are subject to a pay equity claim or are

¹⁴ Fair Work Ombudsman “Gender pay equity” <www.fairwork.gov.au>.

required to significantly increase wages. Alternatively, it could reflect the intention to deal with discrimination at the systemic level rather than on an employer-by-employer basis. However, New Zealand, in the balancing of small business interests and equity, is choosing to apply the same standard to all employers. This is the ideologically stronger position compared to the Australian approach as it better aligns with our international human rights obligations. The WCJP supports applying the same standard to all employers.

- [23] The Australian Workplace Gender Equality Act 2012 also has a limited scope. It requires annual reports from private sector employers of 100 or more employees. Companies report on certain “gender equality indicators” and this report is made available to employees, unions, and shareholders.

IV Comparator industries

A Introduction

- [24] Comparators are necessary to establish that females in a particular role are being systematically underpaid. Under the current legislation, to lodge a claim a plaintiff must identify a comparator so as to show that they are being treated unfairly in comparison. In the past, comparators have often been male co-workers in similar roles or even males in the same company/workplace. This could also be extended to include males working in similar roles within the industry as available comparator groups. However identifying comparators becomes more complex when dealing with an industry dominated by females and undercompensated because of it. This is because male comparators identified in that same industry will also be suffering from under-remuneration and will therefore not be fair comparators. In order to achieve pay equity, it may be necessary to look for comparators outside of the industry. Rather than finding a comparator role or comparator company we look for a comparator industry.

- [25] This section discusses the problems in identifying comparators under the Framework and the Draft Bill. It also proposes three methods that may be used to identify comparators.

B Problems with identifying comparators

1 Inherent problems

[26] It is often difficult to make comparisons across industries. This is because judgments have to be made as to the relative value of skills, responsibilities, effort and conditions of work. This exercise can easily turn into subjective assessment.¹⁵ The selection of a comparator could therefore be inaccurate and misleading.

[27] The task of identifying an appropriate comparator is further hindered by unintentional and subconscious gender bias that sway the assumptions made about the nature of work traditionally done by women or men. Certain skills may also be undervalued or overlooked if they are difficult to observe and assess, such as skills similar to unpaid domestic work and soft skills used in interacting and relating with people.¹⁶

2 *The Framework*

[28] The JWG was unable to reach consensus on the similarity and proximity that a comparator should have with the industry in question.¹⁷ Therefore, there is currently still too much room for subjective interpretation, for biases to be realized and for unfair assessments to be made.

3 *The Draft Bill*

[29] Three comments can be made about the Draft Bill's approach to identifying an appropriate comparator.

[30] First, there is still room for subjectivity and unconscious gender bias. The Draft Bill introduces a list of considerations in clause 23(1)(b) on which the appropriateness of comparators may be evaluated. Despite having a wide coverage of the various aspects of work, the Draft Bill lacks any meaningful guidance on how and on what scale such a list will operate practically. Also, no direction is provided on what level of proximity is required for a comparator to be appropriate. This amount of ambiguity is undesirable as it leaves room for subjectivity and thus for unconscious gender bias to continue to pervade the evaluations of claims.

¹⁵ "Response to the proposals of the Joint Working Group on Pay Equity", above n 8.

¹⁶ Employment New Zealand "Equitable job evaluation" <www.employment.govt.nz>.

¹⁷ Rob Towner, Liz Coats and Rebecca Compson "Breakthrough for pay equity – a historic settlement and new Bill" (24 April 2017) Bell Gully <www.bellgully.com>.

- [31] Secondly, the Draft Bill sets out a hierarchy of comparators which should be used. This provides some structure and clarity. However, it could lead to long and costly disputes, and ineffective pay equity outcomes.
- [32] The hierarchy requires applicants to find a comparator within their employer's business first. Only if none exist can they look for a comparator in similar businesses. If there are no comparators in similar businesses, they can then look for a comparator in the same industry or sector. Comparators from a different industry or sector can only be selected if no appropriate comparator has been found by that point. The hierarchy streamlines the process of claims by making it more structured. It also provides clarity on where comparators should be sourced.
- [33] However the preference for comparators within the employer's business ignores the central issue of pay equity: that there are industries in which remuneration is distorted by virtue of the work being labelled as women's work. Comparators within those industries would be of little use. In those cases, looking to other industries might be the only appropriate option. More distant comparators are allowed to be used only if there are no "appropriate comparators" closer to the work in question. However, no comprehensive definition of what constitutes an "appropriate comparator" is provided. There are therefore no effective safeguards to regulate when comparators should be identified within the workplace and when they should be sourced further afield. Time and money will be spent at each comparator stage (eg workplace, similar business, same industry and different industry) trying to identify an appropriate comparator. Even if a comparator is identified, the parties may disagree on whether that comparator is appropriate. This process can quickly lead to unnecessary delays and costs. This only serves to discourage employees from bringing meritorious claims. It may also cause employers to give in to pay equity claims.
- [34] Thirdly, the Draft Bill expressly allows for the selection of comparators outside the sector or industry in question. While this is an improvement on current legislation, it can still be said the tone the Draft Bill takes definitely favours a narrower view of comparators. The message seems to be this: settle your pay equity disputes within the same business and industry. It remains to be seen how effective its express statement of inclusivity will be in real claims, especially in light of all the obstacles, namely clause

23(2)(a)–(c), that must be overcome first. This casts doubt on the true applicability of clause 23(3).

C Potential methods and factors in identifying comparators or value of work

1 Comparator hierarchy

[35] A hierarchy of comparators was an option put forward by the Office of the Minister of State Services and the Office of the Minister for Workplace Relations and Safety in their “Response to the proposals of the Joint Working Group on Pay Equity”.¹⁸ It was proposed that, as the JWG was silent on the issue of establishing a hierarchy of comparators for establishing pay equity, a possible option was to establish a hierarchy of comparators, with comparators drawn from the employers or groups within the industry, before other comparators are considered and to adopt this hierarchy in conjunction with the recommended principles of the JWG. Implementing this option may reduce some of the uncertainties inherent in the pay equity bargaining process.

2 Equitable job evaluations

[36] “Equitable job evaluations” or “gender neutral job assessments” have been proposed as a viable system of comparing work across industries.¹⁹ This established system has 12 factors organised into three factor families.²⁰ First, the skill factor family. Its factors are knowledge, problem-solving and interpersonal physical skills. Secondly, the responsibilities factor family. Its factors are responsibilities for leadership, resources, organisational outcomes and services to people. Thirdly, the demand factors family. Its factors are emotional, sensory and physical demands, and working conditions.

[37] Jobs are evaluated based on all the above factors and are then given a score. Using this system, it is possible to reduce different jobs from across multiple fields and disciplines to a number which then enables comparison across the various areas. It is possible that gender bias can still occur in terms of the factors chosen to inform the evaluation. However, ensuring proper definitions and weightage of factors will help with eliminating this risk.²¹

¹⁸ “Response to the proposals of the Joint Working Group on Pay Equity”, above n 8.

¹⁹ Coalition for Equal Value Equal Pay (NZ) “Gendered jobs and gender neutral job evaluations” (24 September 2013) <www.cevepnz.org.nz>.

²⁰ “Response to the proposals of the Joint Working Group on Pay Equity”, above n 8.

²¹ Employment New Zealand “Gender Bias in Job Evaluation: A Resource Collection” (April 2008) <www.employment.govt.nz>.

[38] Guidance may be taken from professional job evaluators and management consultants such as Hay Group, who have published manuals detailing how job evaluations should be undertaken.²²

3 *Job classification*

[39] Canada's pay equity legislative scheme uses job classification to identify appropriate comparators. Jobs are sorted into job classes based on similarity of duties, required qualifications and similarity of salary scale.²³ These job classes are then analysed for their gender predominance. Job classes which comprise of 60 percent or more of female workers are considered to be female-predominant job classes and the same goes for male-predominant job classes. Comparisons are then able to be made across different organisations in the public sector, between a female-predominant job class claiming for pay equity and another female-predominant job-class that has achieved pay equity.²⁴

D *Recommendations*

[40] First, employees should be allowed to immediately look to other industries to identify an appropriate comparator. The current proposed process is unnecessary. But if the current Draft Bill is to go through, more practical guidance and clarity is needed on what constitutes an "appropriate" comparator.

[41] Secondly, combination of all three ideas: job classification, comparator hierarchy, and equitable job evaluations can be woven into the various stages of a claim assessment. General equitable job evaluations could be undertaken of the job descriptions of different occupations and from there sorted into job classifications, which can then be ordered into a comparator hierarchy in terms of proximity and appropriateness.

[42] Consolidating these together into a comprehensive resource would streamline the comparator identification stage of claims and add an element of certainty into what is often an inherently uncertain process. This will also help eradicate error, uncertainty and bias in assessments of claims and ensure a fairer result for employees and employers alike.

²² See Employment New Zealand, above n 21.

²³ The Pay Equity Commission, above n 13.

²⁴ Paul Diver Associates "The 'Terranova Approach': Has New Zealand Entered an Uncharted Domain?" (24 February 2016) <www.pdassociates.co.nz>.

[43] However, it is acknowledged that extensive time and resource will be needed to implement such a scheme. Also, results may vary as occupational roles are often specifically or individually tailored, making it difficult to categorize and compare them.

V *Difficulties in complying with the Framework and the Draft Bill*

A *Introduction*

[44] The WCJP submits that there is potential for employers to be financially undermined by the Framework and the Draft Bill as it currently stands. While it is undisputed that pay equity must be achieved in New Zealand, there is concern that some businesses may not be able to financially cope with an increase in wages brought about by pay equity decisions. With upwards of 4000 pay equity claims to the ERA already filed,²⁵ the effect of legislative action on employers will be considerable. It is therefore imperative that any negative consequences of the adoption of such a framework are rigorously considered by the government. This section will discuss some of the negative consequences that could arise.

B *The cost for small businesses*

[45] The framework for settling pay equity claims put forward by the JWG proposes in Appendix 1 that once a pay equity claim has been raised, the two parties, employer and employee, bargain in good faith to decide what pay women in that workplace should be paid for the work they do. If no agreement can be reached, mediation, facilitation and final appeal to the ERA or courts can be used to settle the claim.²⁶

[46] If the principles in place to promote good faith behaviour and agreement fail,²⁷ employees can appeal the claim until judicial intervention is required to settle the claim. One can envisage a scenario where a female employee working at a small business makes a pay equity claim. If the employer decides the claim does not meet the criteria defined in the principles, the employee can appeal the decision until the decision reaches the courts. As the business is small, it may have little capital at its disposal. This is where the issue lies. Given the potential high cost of litigation, the business may be forced to fold under the employee's pressure rather than going to court over the

²⁵ "Equal Pay Settlement by Christmas?" (2016) 22 Kai Tiaki Nursing New Zealand 7 at 7.

²⁶ Joint Working Group *Recommendation of the Joint Working Group on Pay Principles* (Ministry of State Services, 24 May 2016) at Appendix 1.

²⁷ Employment Relations Act 2000, s 3.

issue, resulting in the employee effectively ‘winning’ the negotiations, regardless of whether she has a valid claim or not. Therefore, the balance of power between employer and employee during pay equity claims appears to be skewed to the side of employee. Claims are therefore not settled through the desired process.

C Businesses may be forced to comply with pay rise demands

[47] This effect produced by the negotiation framework may potentially be more problematic if the scenario is taken a step further. Continuing from the example above – if the employer believed the employee had a valid claim, then the employee and employer negotiate appropriate pay with regard to the principles produced by the JWG and Employment Relations Act 2000. Again, if the good faith bargaining principles fail to produce an agreement, the claim can be appealed all the way to the Supreme Court.²⁸ Again, it may be more cost effective for the employer to agree to the pay demanded by the employee than it is to go to court to settle the claim. Therefore, scenarios can be envisaged where in some businesses, employers are at the mercy of their employees to comply to their pay demands, regardless of whether the claim is made on valid grounds or not.

D Difficulties of matching wages in comparative businesses and industries

[48] Employers may be financially damaged indirectly, by being compelled to comply with wages decided in claims distinct from employers’ businesses or even industries. When a claim is settled in the courts, such as the recent Terranova case, the wages decided upon will likely extend as precedent to similar situations in related businesses and industries. For small businesses, complying with these wage standards may be unrealistic, and financially crippling to conform to. The paradigm shift in wages brought about negotiations in Terranova, of up to a \$7 increase, was financially possible due to ACC compensation and the government increasing funding to the sector.²⁹ However, if the government is under no obligation to fund a sector after pay equity negotiation results in dramatically higher wages, who will foot the bill? It is concerning that businesses could potentially be left with no option but to comply to the agreement, which could be detrimental to profits. Employment law specialist Peter Cullen makes

²⁸ *Terranova Homes and Care Ltd v Service and Foodworkers Union Nga Ringa Tota Inc* [2014] NZSC 196, [2015] 2 NZLR 437.

²⁹ Anusha Bradley “Equal-pay disputes move away from courts” (8 June 2016) Radio New Zealand <www.radionz.co.nz>.

the poignant point that “if the owner of a small laundry with four staff ends up having to back pay employees over several years, even if it was just ten cents more an hour, it could put that company out of business”.³⁰ Although large businesses may be able to afford wage increases through union and governmental settlements, small businesses may be significantly disadvantaged by industry wage increases.

E The cumulative, piecemeal approach of pay equity claims across industries may lead to loss of employees

[49] Another consequence of higher wages in different industries has been witnessed recently in the fallout from the Terranova settlements. Mental health employers are concerned that once wages settled in Terranova kick in,³¹ mental healthcare employees may leave the industry, attracted by the higher wages available in the intellectual disability care industry. Therefore, the piecemeal approach of achieving pay equity in different industries over time may result in businesses losing employees to higher paying industries as wage inequality between industries occurs with each new settlement. To avoid employees leaving, employers may be forced to offer pay equal to different industries, even if the pay in the employer’s business or industry is already equitable between genders.

F Recommendation

[50] The WCJP agrees that pay equity must be achieved in New Zealand. However, in cases where the negotiation framework recommended by the JWC fails to produce an agreement, court decisions must be careful to account for the feasibility of other businesses complying with wages that are agreed to in each case. Of course, women must be paid fairly and equally, but this should be carried out without crippling business’s ability to function. Failure to do so has the potential to reduce the survival of struggling businesses, where an increase in wages may be damaging to these business’s bottom lines. In terms of policy, it is recommended that during amendment of the Employment Relations Act, legislation which eases the financial burden on businesses to strictly comply with precedent cases and wages be strongly considered by the government.

³⁰ “Landmark ruling for women” (23 December 2014) Radio New Zealand <www.radionz.co.nz>.

³¹ Jessica McAllen “After the equal pay decision, joy – and anxiety – from care workers who missed out” (24 April 2017) The Spinoff <www.thespinnoff.co.nz>.

VI Conclusion

- [51] The WCJP agrees that the Framework and the Draft Bill are steps in the right direction. We recognise that there are competing concerns at play. On one hand, employees to pay equity claims should have access to appropriate comparators to best achieve pay equity. On the other hand, the difficulties in accurately identifying an appropriate comparator may lead to excessive pay equity outcomes that could cripple businesses and impose a heavy burden on the government.
- [52] There is also force in the argument that pay equity claims should aim to be resolved within the workplace and if not, the industry. Otherwise, employees may exploit the process and pick the most favourable comparator industry. Therefore, the cautious tone taken is understandable given that the ramifications of both successful and unsuccessful claims are huge for both employers and employees. However, as highlighted earlier, looking for a fair comparator within the same industry is incredibly difficult and may often be a futile attempt. If this cautious stance is to be maintained, further practical clarity and guidance is needed in order for meaningful pay equity outcomes to be achieved.
- [53] The WCJP believes that the competing concerns mentioned in [51] will have to be seriously considered by the Government. The current Draft Bill fails to strike the right balance. It lacks sufficient practical clarity and guidance to justify its cautious approach. Also, it poses too much of a hurdle for pay equity applicants. The potential for unnecessary delays and costs makes it difficult to achieve an amicable and swift resolution of pay equity claims.