



Submission to Peoples Select Committee – Equal Pay Act.

29 July 2025

BACKGROUND:

In 2023 MERAS successfully concluded a Pay Equity Settlement on behalf of midwives employed by Health New Zealand | Te Whatu Ora.

At the time of the Equal Pay Act Amendment 2025 MERAS also had a live claim on behalf of funded sector midwives covering approximately 120 midwives employed in a dozen small-business maternity centres generally in rural settings. This claim had progressed to the negotiation stage having demonstrated that the midwives covered were assessed as being entirely equivalent to midwives employed directly in the public sector.

IMPACT OF NEW ACT

The impact of the new Act for MERAS midwives is:

1. The funded sector claim is effectively extinguished.
2. The review provision of the successful Health New Zealand | Te Whatu Ora pay equity claim has become unenforceable.
3. The capacity to use successful existing claims as a comparator is no longer available.
4. In combination with the disestablishment of the Pay Equity unit there is no longer access to the library of existing settlements and comparator data.

We note the scope of the People's Select Committee and make the following comments on the particular claims by the government as requested:

"Claims have been able to progress without strong evidence of undervaluation and there have been very broad claims where it is difficult to tell whether differences in pay are due to sex-based discrimination or other factors"

The pay equity process confirmed that there is no question that the undervaluation of midwives was due to sex-based discrimination. At more than 95%, midwifery is amongst the most female dominated occupations that pursued claims under the legislation. No evidence of 'other factors' was revealed during the process.

"These changes will mean the pay equity claims process is workable and sustainable"

This is nonsense. For Health New Zealand | Te Whatu Ora midwives the review process has been rendered unenforceable. It is therefore possible that sex-based discrimination will

creep back into the midwives pay and that there will be no enforceable remedy for that until the possibility of re-raising the claim after 10 years: i.e. in 2033.

NOTE: Whilst outside the scope of this enquiry we do observe that the pay equity process was unnecessarily cumbersome and should be made less bureaucratic and more streamlined in any future legislation.

We comment as follows on the on the impact of the specific changes made to the Equal Pay Act 1972.

- **Raising the threshold of “predominantly performed by female employees” from 60 percent to 70 percent and requiring that this has been the case for at least 10 consecutive years.**

As already noted, midwives easily clear either a 60% or 70% threshold, and have done so for decades.

- **Raising the threshold for entry to a claim process from a light-touch assessment of arguable undervaluation to having to prove the claim has merit at the start of an investigation, with the onus on employees/claimants to provide fulsome evidence of historical and current undervaluation.**

To meet this threshold effectively requires that most of the process of assessing a pay equity claim must be undertaken *before* the claim has even been raised. It is a non-sensical amendment.

- **Restriction on the male-dominated comparators able to be used to establish undervaluation to those within the same sector as the female-dominated occupation.**

This amendment ignores the fact that entire sectors of employment can, and have, suffered from discrimination against women’s work. The effect of this is to drag down the pay of female and male workers in the sector. The health sector is interesting to the extent that there are male-dominated sectors within it, but they are excluded by the requirements to be *‘the same as, or substantially similar to, the work to which the claim relates’*. It was on this basis that MERAS was denied its request to use Health New Zealand | Te Whatu Ora hospital dentists as a comparator in our successful claim.

All the previously successful claims in the Health Sector have relied upon using comparators from outside the health sector. That will not be possible under the revised Act because if no appropriate comparator is available with from within the employer, then comparators can only be sought from *‘other employers within the same industry or sector’*.

More than any other provision, this amendment reduces the chances of successful future claims within the Health Sector to zero! There are no qualifying comparators, and the data from previous comparators is neither available nor permissible for use.

- Employers being able to meet their pay equity obligations in a way that is sustainable for their business – for example through phasing of settlements.

This not an especially egregious provision. Whilst the moral argument runs that a successful pay equity claim in effect remedies decades of undervaluation that will never be made-up, the reality is that settlements can be substantial – as much as 30% or more in the Health Sector – and paying increases of that sort in one hit can compromise the viability of an employer in some cases. Phasing in settlements can be reasonable in such circumstances.

- New claims can be raised under the amended Act if they meet the new, stricter requirements.

Despite clearly meeting the 70% threshold, the previously noted issues about finding an appropriate comparator means that this is not true for midwives.

- Review clauses in existing settlements will become unenforceable.

This is a strong signal to public sector employers. However, we note that good faith under the Employment Relations Act has not been extinguished. MERAS will continue to raise all factors impacting midwives pay – including sex-based discrimination - during collective bargaining and will expect employers' responses to meet the test of good faith.

- Settled claims can be re-raised 10 years after settlement, if the claim meets the new requirements.

As the new law currently stands this will not be possible due to the issues already noted in respect of identifying any appropriate comparators. In any event, it is eight years in the future ... maybe the law will have changed by then?

FINAL COMMENTS

Whatever the reasons for the government's amendments to the Equal Pay Act, the impact for MERAS is that there is no avenue for use of the new Act. Pay Equity may be dead, but maintaining and extending the correctly evaluated pay scale for employed midwives in Aotearoa remains a priority for MERAS. That will involve maintaining the Health New Zealand | Te Whatu Ora rates from being eroded, and ensuring that there is a realistic funding model for small private sector maternity services so that they can afford parity with the public sector pay rates.