THE HIGH COURT OF NEW ZEALAND
TE KŌTI MATUA O AOTEAROA

19 November 2026

MEDIA RELEASE

TŌPŪTANGA TAPUHI KAITIAKI O AOTEAROA v ATTORNEY-GENERAL

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

What this judgment is about

This judgment is about whether the Equal Pay Act 1972, following its amendment in 2025, is inconsistent with the right to freedom from discrimination on the ground of sex, and with the right to justice, affirmed in the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act).

What is a declaration of inconsistency?

When legislation cannot be given a meaning that is consistent with the Bill of Rights Act, the courts may make a declaration of inconsistency. A declaration is not a review of Parliament's legislative choices, but rather the court exercising its duty under the Bill of Rights to assess whether limitations on protected rights are justified. Parliament has recognised this power and has its own processes to respond. A declaration does not invalidate the law — the statute in question remains in full force and effect.

What is pay equity?

Pay equity ensures that equal pay is provided for work of equal value. Its focus is on rectifying gender-based undervaluation of work.

Pay equity is distinct from pay equality. Pay equality is the principle that there should be no difference on the basis of sex between the rates that are paid by a common employer to its male and female employees. Pay equity looks beyond an employer's particular employees. It looks

more broadly to comparators in the marketplace to ensure that work performed predominantly by women is not undervalued.

A summary of the applicants' claim

The applicants are unions. Their members are employed in occupations where the work performed is subject to pay inequity. They brought this proceeding because they see the Equal Pay Act, following its amendments, as breaching provisions in the Bill of Rights Act.

The parts of the Equal Pay Act which provide for the determination of pay equity claims were introduced through amendments that were passed, unanimously, in 2017.

In 2025, the Act was amended again, under urgency, over two days. The applicants say that rather than enabling pay equity claims, the relevant provisions now amount to a breach of the right to freedom from discrimination on the ground of sex. They say, in addition, that other provisions of the Bill of Rights Act are breached through the way in which the amendments were introduced under urgency, and through their substantive effects.

The key changes to the pay equity scheme

In the decision, the High Court finds that the 2025 amendments changed the statutory scheme in five primary ways:

1. by terminating all existing pay equity claims immediately;

2. by precluding some previously available claims from being brought again by raising the threshold of the "female dominated" workforces from 60 per cent to 70 per cent for the last 10 years;

3. by preventing pay equity issues from being identified and addressed for 10 years following a pay equity settlement;

4. by preventing the use of comparators — when considering undervaluation — outside a claimant group's industry or sector;

5. by making the process generally more burdensome for claimants pursuing qualifying pay equity claims — for example by requiring evidence of merit at the outset, allowing employers the power to discontinue pay equity claims and allowing employers in multi-employer claims to opt out without reasons.

Issues in the proceeding, and the Court's findings on each

The issues addressed in the proceeding, and the Court's findings on each (in italics), are provided here:

(a) Does the Equal Pay Act, following its amendment, discriminate against members of the applicants on the basis of sex for the purposes of s 19(1) of the Bill of Rights Act? *The Court found that it did.*

(b) If so, is the discriminatory treatment demonstrably justified under s 5 of the Bill of Rights Act? *The Court found that it was not*.

(c) Was the decision to enact the Equal Pay Amendment Act 2025 under urgency and without prior consultation or notice unlawful, in breach of ss 27(1) and (3) of the Bill of Rights Act? *The Court found that it was not*.

(d) Is the content of the Act, following its amendment (with a focus on its restrictions and retrospective invalidation of existing pay equity claims and proceedings) inconsistent with the rights to natural justice and to bring civil proceedings in ss 27(1) or (3) of the Bill of Rights Act? *The Court found that it was not*.

(e) If the Act is inconsistent with ss 19 or 27 of the Bill of Rights Act, should the Court exercise its discretion to make a declaration of inconsistency in this case? *The Court found that the Court should exercise its discretion to make a declaration of inconsistency with s 19.*

The primary right in issue

Section 19(1) of the Bill of Rights Act says:

> Everyone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act 1993.

The prohibited ground of discrimination relied on here was sex. The Court found that s 19(1) is capable of including the right to be free from pay inequity. (See paragraphs [56] to [67]).

The Court's findings in more detail

The Act, following its amendment, discriminates in breach of s 19 of the Bill of Rights Act

The framework for finding unlawful discrimination involves a three-stage test.

The first stage requires the Court to consider whether there is differential treatments or effects as between people or groups in analogous or comparable situations on the basis of a prohibited ground of discrimination. Here, the Court found that the Act, in its current form treats women in female dominated workforces differently than other people in gender-balanced or male dominated workforces. Accordingly, the relevant provisions following amendment, discriminate directly on the prohibited ground of sex. (See paragraphs [68] to [85]).

The second stage requires an assessment of whether, if there has been differential treatment, it has resulted in a material disadvantage for the person or group differentiated against. The Court found that material disadvantage had been caused through the changes to the scheme causing existing pay equity claims to be terminated, increasing the threshold for pay equity claims to be brought, preventing pay equity issues to be identified and addressed for 10 years following settlements, preventing the use of comparators outside of claimant groups' industries or sectors and by making the process more burdensome for claimants pursuing qualifying claims. (See paragraphs [86] to [112]).

The third stage requires an assessment of whether the discrimination can, nonetheless, be "demonstrably justified in a free and democratic society" in terms of s 5 of the Bill of Rights Act. It is here that the factual record, demonstrating the basis upon which the amendments were made, falls to be considered. Having considered the relevant documents, given in evidence, the Court concluded that the discrimination could not be justified under s 5 of the Bill of Rights Act because the limiting measure does not serve a sufficiently important purpose, is not rationally connected with its purpose, does not impair the right no more than is reasonably

necessary, and is not in due proportion to the importance of the measure's objective. (See paragraphs [131] to [207]).

The decision to enact the Amendment Act under urgency and without prior consultation or notice was not unlawful in breach of ss 27(1) and (3) of the Bill of Rights Act

Under s 27(1) of the Bill of Rights Act, every person has the right to the observance of the principles of natural justice and, under s 27(3), every person has the right to bring civil proceedings against the Crown.

The Court found that there is no right to be consulted prior to the Executive introducing legislation and that there can be no legitimate expectation or other procedural expectation that a statute will not be amended. Accordingly, there is no natural justice right over a government's decision to promote legislation that changes an existing legal position, even when the position is based upon contractual rights. And there is no obligation on the Executive to consult before introducing primary legislation, unless a statutory scheme provides otherwise.

The Court found that s 27(3) is concerned with procedural parity in litigation, not with preserving substantive causes of action. It is not a right that guarantees the content of the substantive law.

Accordingly, the applicant's claims under ss 27(1) and (3), relating to the introduction of the Amendment Act under urgency and without prior consultation, did not succeed. (See paragraphs [208] to [230]).

The content of the Act, following its amendment, is not inconsistent with the rights in ss 27(1) or (3) either

This cause of action was concerned with the content of the Act, as amended, rather than the process leading to the passage of the amendments.

The Court found that the provisions do not prohibit legislation which alters, invalidates or extinguishes rights, including rights that are the subject of existing legislation. Accordingly, the Act as amended was not found to be inconsistent with those rights. (See paragraphs [231] to [240]).

Should the Court make a declaration of inconsistency?

The Court found that, once legislative inconsistency with the Bill of Rights Act has been established, as is the case here, declarations should be made unless there are strong reasons not to do so. Parliament had amended the Bill of Rights Act to enable the courts to make declarations of inconsistency if a claim is made out. The applicants' claim under s 19 had been made out. Accordingly, the Court found that it was appropriate for a declaration to be made in this case to recognise the rights of the women the applicants represent and the fact of the breach of those rights. (See paragraphs [241] to [243]).

The declaration

The Court made a declaration that the Equal Pay Act 1972, as amended by the Equal Pay Amendment Act 2025, is inconsistent with the right in s 19(1) of the Bill of Rights Act to be free from discrimination on the ground of sex. (See paragraph [244]).