EMA Submission

to the

Education and Workforce Select Committee

on the

Equal Pay Amendment Bill

28 November 2018

About the EMA

The EMA has a membership of more than 8500 businesses, from Taupo north to Kaitaia, employing around 350,000 New Zealanders.

The EMA provides its members with employment relations advice from industry specialists, a training centre with more than 600 courses and a wide variety of conferences and events to help businesses grow.

The EMA also advocates on behalf of its members to bring change in areas which can make a difference to the day-to-day operation of our members, such as RMA reform, infrastructure development, employment law, skills and education and export growth.

CONTACT

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Equal Pay Amendment Bill – Submission from Employers and Manufacturers Association (EMA)

The EMA welcomes the opportunity to submit to the Education and Workforce Select Committee on the Equal Pay Amendment Bill and raise a concern that has significant impact on the intent and likely outcomes of the Pay Equity section of the Bill. The EMA would like to appear before the Select Committee.

Submission

As one of the parties involved in both Pay Equity Working Groups convened firstly under the National Government and then again after the 2017 election by the Labour-led Government, the EMA has a significant concern with the proposed Bill as it emerged from Government on the 125th Anniversary of Women's Suffrage in New Zealand last month.

Both working groups featured a mix of business, union and other representatives and both set out with the intent to produce a legislative frame work that would enable Pay Equity claims and redress the historical imbalances that have plagued certain, mainly female dominated, sectors of the national work force.

The intent and spirit within both working groups was to produce a relatively easy pathway into a Pay Equity claim through a good faith bargaining process that would bypass the necessity, expense and slower time frames of pursuing a claim through the courts.

It was agreed a collaborative approach between employers and employees was the most desirable outcome and this would be achieved by minimising potential road blocks in the Pay Equity claim process for both employees and employers.

That intent and spirit of goodwill from all parties was behind the changes recommended from the second Reconvened Work Group that made it easier to begin the claim process and agreed that rather than proscribe the comparators to be used, they would be negotiated by the parties to the claim – again with the intent of making it easier to reach a claim agreement.

Throughout both working group processes it was recognised that the issue of back pay placed a significant hurdle in the way of potentially reaching a claim settlement.

But it was the intent of the working group to reach a position that would minimise this hurdle while still coming to an agreement that would satisfy the claimants without discouraging employers from entering into and settling a claim process.

The agreed positioning, as posted in advice on the MBIE website in September 2018 was:

"If back pay is considered and parties are unable to agree, the dispute resolution process is available. The courts will also be able to exercise discretion in awarding back pay. This will be done according to criteria set out in the Bill and, ***in general, restricted back to the date a pay equity claim is first raised. This approach encourages parties to resolve pay equity claims quickly.****"*

It is the latter part of this quoted advice, in bold type that is at the crux of the EMA's concerns with the current bill as it has emerged following its first reading.

As it stands now a late clause was added to the Bill that sets in law a six-year back dated claim for back pay.

That late insertion undermines the intent of the Working Group to expedite settlements through an agreed and amicable process and undermines the goodwill of employer representatives at the table.

Why engage in a working group process at all if the Government is arbitrarily going to significantly alter the intent and outcomes of a working group? Yes, that is the right of a Government, but is it encouraging of a collaborative approach between groups that have traditionally been at loggerheads?

The answer is clearly no.

A mandated six-year back-pay period can only be seen as punitive and backward looking when the intent of the Working Groups was clearly to right an inequity and look forward.

Employers will simply be discouraged from entering a pay equity claim process, knowing they could be up for a significant sum in back pay settlements.

Instead of quickly settling the claim in favour of a disadvantaged work force the opposite will most likely occur.

Employers will be reluctant to enter the equity claim process and will stall a claim. The next hurdle will be negotiating the comparators and again employers will likely frustrate the claimants by failing to agree the comparators.

Then the issue of back pay will come into play and the most likely outcome will be a trip to court.

Again, the EMA quotes MBIE's advice from September:

The issue here is not if, but how we implement pay equity. The proposed framework uses the existing bargaining process in the Employment Relations Act, which many businesses will be familiar with. ***It was developed jointly with unions and business groups.***

The other option was to leave it to the courts. We believe good faith bargaining offers the opportunity to build productive relationships through a collaborative process. ***Pushing parties into an adversarial court process in the first instance is not a way to build good employment relations.***

It is the EMA's belief that the late insertion of the six-year back pay clause will drive businesses to the exact process that MBIE cautions against – an adversarial court process.

That is the outcome the Working Groups were set up to avoid. The mind-set and goodwill of the Working Groups was to find an agreeable process that acknowledged the inequity and redressed the historical imbalances that had arisen, largely through no particular fault of the current employers.

The bill was not to be punitive but forward looking. Unfortunately what has emerged from the Government legislates for a potentially punitive approach that is the opposite of what the Working Groups intended.

EMA's Recommendation

The EMA recommends removing all clauses referencing a mandated six-year back pay period. Instead our recommendation is to retain the approach that emerged from the Working Group process with back pay to commence from the time of a lodgement of a claim. That is a non-punitive approach and actively encourages and incentivises any employer to quickly settle a claim in favour of the claimant work force.

Mandating a six-year back pay period will achieve the opposite.

Kim Campbell

CEO, EMA