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# A new framework for pay equity in New Zealand

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The new amended Equal Pay Act 1972 provides a practical and accessible process to raise and resolve claims of systemic sex-based pay undervaluation in female-dominated occupations.

In certain occupations where the work is, or was, predominantly performed by women, wages have often been kept lower than occupations where the work has been performed predominantly by men. Today's "going market rate" for employing people in traditionally female dominated occupations may not be a fair or equal rate, but a suppressed wage due to historical and or current pay discrimination.

The Equal Pay Act allows individual employees and unions to raise a pay equity claim directly with an employer using a framework that is similar to New Zealand's existing bargaining framework. This approach will lower the bar for workers and unions to raise a pay equity claim, and utilise a collaborative process familiar to workers, unions and businesses.

Under the Act, employees, employers and unions will negotiate in good faith, with access to mediation and resolution services if they are unable to agree.

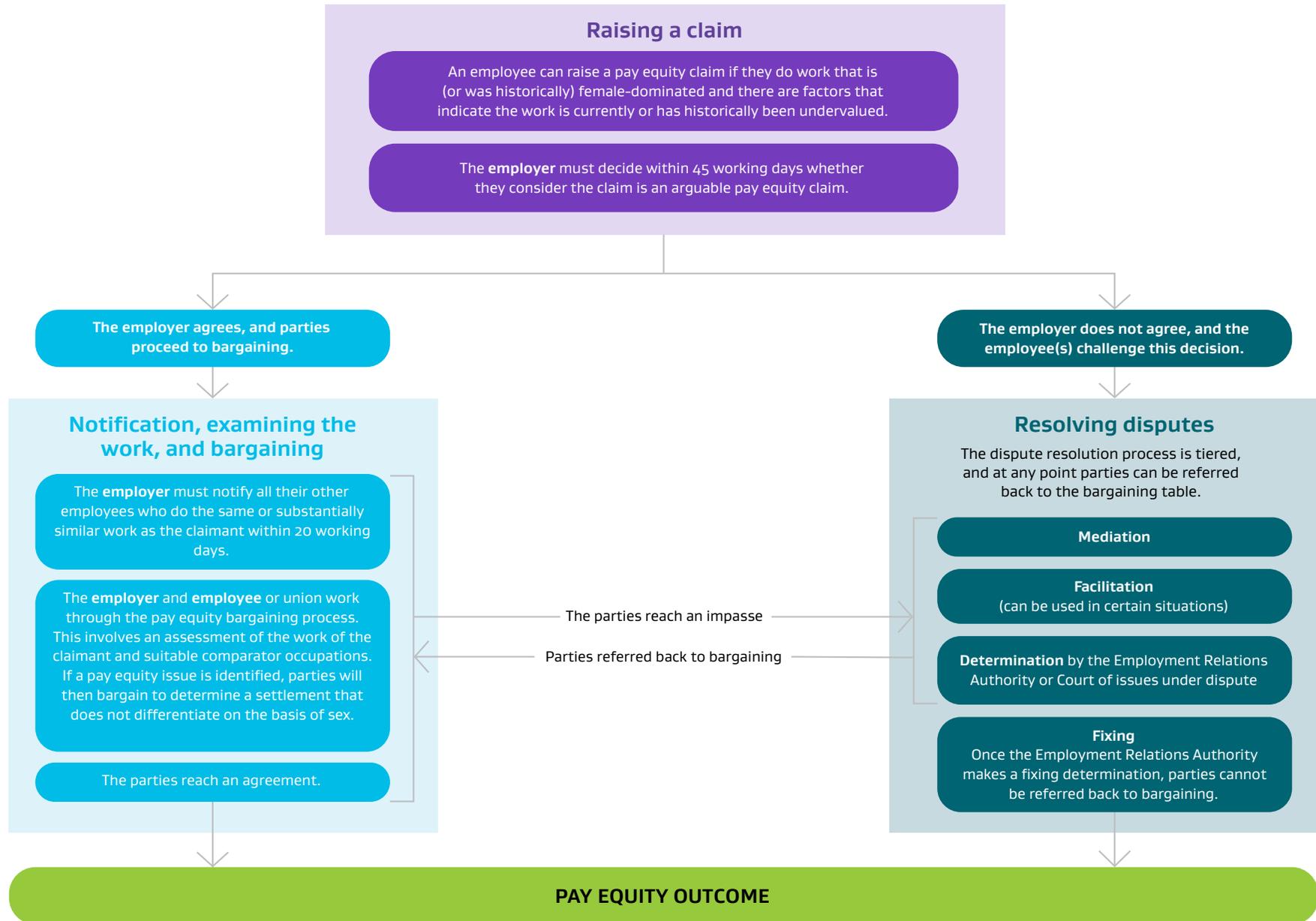
The government will work with unions, business and women's groups to produce a range of tools and resources to support both claimants and respondents to pay equity claims.

## Pay equity vs equal pay

**Pay equity is about women and men receiving the same pay for doing jobs that are different, but of equal value (that is, jobs that require similar degrees of skills, responsibility and effort).**

**Equal pay is about men and women getting the same pay for doing the same job. The process for making equal pay claims is largely unaffected by the new Act.**

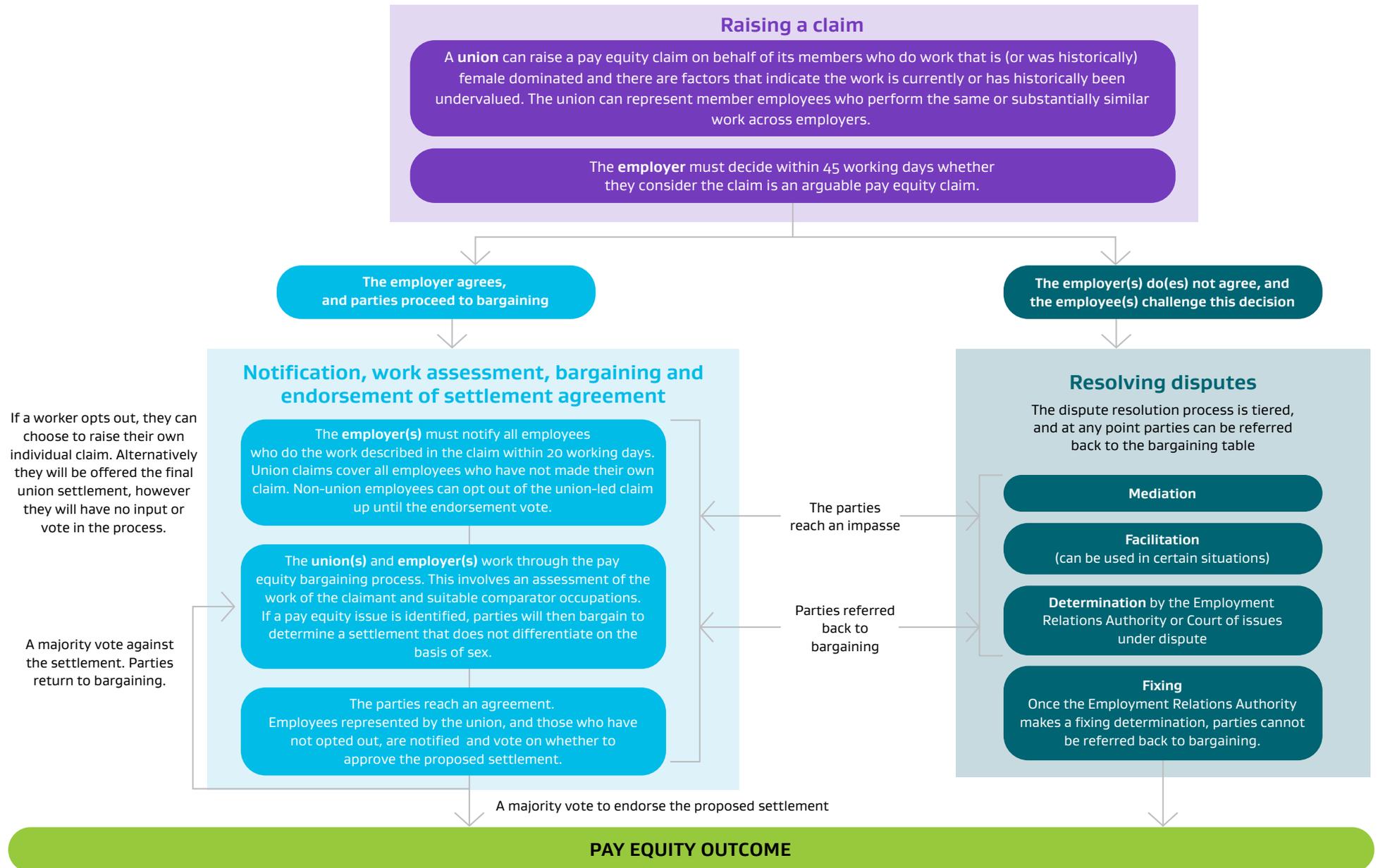
# The process for pay equity claims raised by individual employees



A pay equity outcome includes a settlement with remuneration, any terms and conditions of employment and a pay equity review process.

Alternatively, the outcome may be an agreement or determination that pay inequity does not exist.

# The process for pay equity claims raised by unions



If a worker opts out, they can choose to raise their own individual claim. Alternatively they will be offered the final union settlement, however they will have no input or vote in the process.

A majority vote against the settlement. Parties return to bargaining.

A pay equity outcome includes a settlement with remuneration, any terms and conditions of employment and a pay equity review process.

Alternatively, the outcome may be an agreement or determination that pay inequity does not exist.

A settlement would apply to all employees represented by the union. The settlement will also be offered to employees who opted out of union bargaining or are not members of the union

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# Components of the new pay equity framework

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## Raising a pay equity claim

An employee or unions can raise a claim they consider is arguable and employers will need to decide if they accept the claim is arguable.

A claim is arguable if it relates to work that is or was predominantly performed by female employees and the work is currently or historically undervalued.

Employees, unions and employers may consider a number of other factors when deciding if the work has been currently or historically undervalued, such as;

- › the origins and history of the work
- › any social, cultural or historical factors
- › the characterisation of the work as women's work

## An arguable claim

Accepting that a claim is arguable does not mean an employer agrees there is pay inequity, or that there will be a pay equity settlement. Rather, acknowledging a claim is arguable means the parties can move to the work assessment phase, and enter into pay equity bargaining the claim together in good faith.

The pay equity process sets a low threshold to raise a claim. This means an assessment of arguability should take a light touch, where all claims that could have a pay equity case should proceed to bargaining.

## Assessment to find if the work is undervalued on the basis of sex

The parties to a pay equity claim undertake an assessment process to determine whether the employee's work is undervalued, on the basis of sex. This involves assessing the work of the claimants and comparing it to the work of suitable comparators not subject to sex-based undervaluation.

Employers, employees and unions will be able to choose potential comparators that they consider are most relevant and appropriate if the comparators' work is not historically or currently undervalued.

These could include comparators doing work that is the same or similar, or different work that involves similar skills and experience, responsibilities, working conditions or degrees of effort.

Comparators serve as a basis for negotiation. A range of comparators can be used during negotiations.

## Multi-employer bargaining

Unions can raise a pay equity claim with multiple employers which must be consolidated. If an employer believes they have genuine reasons based on reasonable grounds for not being part of the multi-employer process, they need to provide those reasons in writing to the union. If the union and the employer don't agree, they can use the dispute resolution process.

If you opt out, the pay equity claim for your employees will need to be progressed as a separate claim.

## Multi-union claims

In some instances, two unions or more may cover workers within one employer. The unions can raise a claim together. If a union has already raised a claim, and a second union wants to raise a claim for the same work with the same employer, this must be consolidated. Claims can be consolidated at any stage in the process until the first claim is settled. If the unions can't agree, they can use the dispute resolution process.

## The dispute resolution process

The dispute resolution process for pay equity bargaining is similar to that for other employment relations matters.

The Employment Mediation Service can assist in pay equity bargaining. Their support includes assisting parties to unravel difficult issues and develop options and steering parties back into negotiations.

When a matter has not been resolved through mediation or other processes, any party to a claim may apply for a determination by the Employment Relations Authority.

## Addressing claims for back pay

The Act recognises that pay equity is an issue stemming from structural discrimination, and the issue of pay inequity cannot be attributed to the actions of a single employer. A balanced approach is therefore required.

If parties wish, they will be able to discuss back pay as part of their pay equity bargaining or apply to the Employment Relations Authority for a determination for back pay.

For further information: <http://www.mbie.govt.nz/payequity> | <http://www.women.govt.nz/payequity>

## Disclaimer

The information in this pamphlet has no statutory or regulatory effect and is of a guidance nature only. Users of this booklet should not substitute this guidance for legal advice.