

Submission to the EDUCATION AND WORKFORCE SELECT COMMITTEE on the:

**Employment Relations (Employee Remuneration  
Disclosure) Amendment Bill**

Submitted by the New Zealand Council of Trade Unions Te Kauae Kaimahi

23 January 2025

**IN UNION, TOGETHER.**  
[union.org.nz](http://union.org.nz)

This submission is made on behalf of the 31 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With over 340,000 union members, the CTU is one of the largest democratic organisations in New Zealand.

The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga), the Māori arm of Te Kauae Kaimahi (CTU), which represents approximately 60,000 Māori workers.

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## 1. Introduction

- 1.1. This submission is made on behalf of the unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (NZCTU). With over 300,000 members, the CTU is one of the largest democratic organisations in New Zealand.
- 1.2. The NZCTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga) the Māori arm of Te Kauae Kaimahi (NZCTU) which represents approximately 60,000 Māori workers.
- 1.3. The NZCTU welcomes this opportunity to submit before the Select Committee in support of the **Employment Relations (Employee Remuneration Disclosure) Amendment Bill** (the Bill). This Bill relates to the fundamental rights of working people to freedom of expression. It also allows workers to freely discuss information that supports their rights to be free of unjustifiable and unlawful disparities with respect to pay.
- 1.4. This Bill is a welcome tool for helping to address pay gaps in New Zealand. NZCTU analysis of official data in 2024 shows that women are paid 8.9% less than men on average.<sup>1</sup> For Pasifika woman and Wāhine Māori, the figure is significantly worse. These pay gaps persists, in part, because of pay secrecy which inhibits workers' ability to identify and address issues of pay discrimination. This Bill will be effective in addressing issues of pay secrecy in the workplace.
- 1.5. This Bill represents a positive step towards closing pay gaps. No one in New Zealand should suffer the indignity of pay discrimination due to their gender or ethnicity. The NZCTU strongly supports this Bill.

## 2. Chilling effect of pay secrecy

- 2.1. The NZCTU emphatically supports this Bill as an amendment to the Employment Relations Act 2000.

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<sup>1</sup> <https://union.org.nz/gender-pay-gap-not-closing/>

- 2.2. Pay secrecy clauses do not promote a culture of respecting employee privacy. Instead, they hamper the ability of workers and their unions to uncover and address unlawful and unjustifiable disparities in employee pay.<sup>2</sup>
- 2.3. To deal with situations where a worker is unlawfully or unfairly underpaid, workers must have access to comparative data. Such information will allow a worker to verify whether a suspected pay disparity exists and to ascertain whether the reason for that disparity is justifiable or not.
- 2.4. Preventing employees from freely discussing their own rates of remuneration not only takes away the individual worker's right to deal with their own personal information. It also discourages workers from inquiring into and exposing unfair employer practices that relate to pay.
- 2.5. Such clauses and the policies of pay secrecy that they promote in workplaces serve as something of a 'loophole' whereby workers have a formal legal right to be protected from unlawful disparities in pay while also being denied the practical informational tools that would allow them to expose breaches of those rights or to seek their enforcement.
- 2.6. For example, the expectation that workers maintain pay secrecy has hampered the ability of workers and unions to expose and address gender pay disparities. Regardless of whether pay secrecy is enforced through explicit clauses in employment agreements, employer instructions, or cultural expectations, the real impact of pay secrecy has been to drive the extent of the problem into invisibility.
- 2.7. The role of pay secrecy in making the gender pay gap invisible has meant that instead of giving workers and employers to tools and prompts to expose gendered disparities in pay in a timely way, the problem becomes longstanding and institutionalised.
- 2.8. When employers are finally required to meet a basic compliance with the law<sup>3</sup> (often after years of neglect) the demand for restitution can be significant and surprising.

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<sup>2</sup> A disparity in payrates between employees may be defined as unlawful in several way. For example, if the disparity is due to a form of discrimination that is proscribed by the Human Rights Act 1993 (s 21), or if it is contrary to 'what a fair and reasonable employer could have done in all the circumstances' (Employment Relations Act 2000, s 103A (2)).

<sup>3</sup> Equal Pay Act 1972, s 2A (1) provides the basic prohibition against gendered pay disparity:  
2A Unlawful discrimination

(1) No employer shall refuse or omit to offer or afford any person the same terms of employment, conditions of work, fringe benefits, and opportunities for training, promotion, and transfer as are made

- 2.9. As of August 2023, a report of the Pay Equity taskforce revealed that across all occupational claims, Pay Equity settlements were delivering an average pay correction of more than 30% for covered employees.<sup>4</sup>
- 2.10. The size of these settlements reflects a serious systemic problem. Namely, that women's work is unjustifiably (and unlawfully) undervalued in the labour market, across a range of occupations and industries.
- 2.11. This undervaluing occurs despite the existence of law that proscribes such discrimination. And pay secrecy has played a significant role in driving this issue into the shadows.
- 2.12. **The NZCTU endorses the effect of this Bill in removing the ability of employers to restrict the ability of workers to expose and remedy unfair and unlawful disparities in pay.**
- 2.13. The main effect of pay secrecy clauses is to use a policy of silence to prevent workers from discussing information and evidence that may expose unlawful (and possibly discriminatory) employer practices.
- 2.14. They are an obstacle to a worker's ability to access justice and should not be allowed.

### 3. Worker data sovereignty

- 3.1. Currently, the law allows for employment agreements to contain provisions that prohibit workers from discussing or disclosing their remuneration (including salary, wages and other conditions) to third parties, including other employees of the same employer.<sup>5</sup>

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available for persons of the same or substantially similar qualifications employed in the same or substantially similar circumstances on work of that description by reason of the sex of that person.

<sup>4</sup> Ministerial Oversight forum on Pay Equity (Te Kawa Mataaho- Public Service Commission, regular report, August 2023) at 2

<sup>5</sup> Employment Relations (Employee Remuneration Disclosure) Amendment Bill (32-1), Explanatory note:

*"In New Zealand some individual, and possibly collective, employment contracts may include terms prohibiting employees from discussing or disclosing their remuneration (including salary, wages and other conditions) to third parties, including other employees of the same employer. These terms are currently permitted and breaching these terms may be considered a breach of good faith or a disciplinary matter subjecting the individual to detriment or adverse treatment by their employer."*

- 3.2. Ostensibly, such clauses may be justified as a protecting the privacy of employees. However, this is not correct. These clauses pose serious restrictions on the ability of workers to meaningfully control their personal information.
- 3.3. The law recognises that all individuals have a 'right to privacy'. In general terms,<sup>6</sup> this means that persons, agencies and actors that gain access or control over the personal information of others must not disclose this information against the wishes of individual (or individuals) to whom that information relates.
- 3.4. At the same time, every individual has a natural right to decide for themselves whether their personal information is shared with others.
- 3.5. The idea that a worker can be restricted from discussing matters that are personal to them is not consistent with privacy principles or any concept of data sovereignty. Privacy protects personal information from encroachment by others, it is not designed to impose restrictions on an individual's use of their own personal information.
- 3.6. Clauses that restrict the ability of workers to speak about their pay are not designed to protect the workers' themselves.
- 3.7. So far as such clauses may co-opt the language of privacy and confidentiality, these clauses impose upon workers a concept of privacy that aligns with and serves the interests and opinions of employers.
- 3.8. These clauses are serious restrictions on the rights of workers to discuss matters that relate to their own circumstances, namely their rates of pay. In not complying with these clauses, a worker may face disciplinary consequences for merely sharing their own personal information.
- 3.9. **The NZCTU strongly recommends the purpose of this amendment Bill which is to prevent the imposition of contractual terms that are designed to enforce pay secrecy.**

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<sup>6</sup> Privacy Act 2020, s 3 (a)- Recognises the individual 'right to privacy' along with the need to balance this right against other rights and interests. It defines a purpose of the Privacy Act as:

*"Providing a framework for protecting an individual's right to privacy of personal information, including the right of an individual to access their personal information, while recognising that other rights and interests may at times also need to be taken into account..."*

- 3.10. Worker data sovereignty entails allowing workers to decide for themselves how, when and whom they share personal information, including information about remuneration.

## 4. Summary of recommendations

- 4.1. The NZCTU strongly supports and endorses the entirety of **the Employment Relations (Employee Remuneration Disclosure) Amendment Bill**.
- 4.2. We also highlight the usefulness of the approach taken in this Bill, whereby employer attempts to rely on contractual provision to enforce pay secrecy will be a ground for a personal grievance.
- 4.3. This approach is the most effective deterrent against employers who seek to impose pay secrecy on their workers. Furthermore, allowing workers to raise personal grievances where such policies are used by employers recognises the fact that pay secrecy clauses undermine basic rights to data sovereignty and ensures that such attempts can be opposed stridently.

## 5. Conclusion

- 5.1. This Bill is a positive step towards addressing serious issues around unlawful disparities in pay and addressing the pay gaps present in the labour market.
- 5.2. It has long been accepted that across the labour market, women are systematically underpaid for performing the same (or substantially similar) work as men.<sup>7</sup> There is also compelling empirical evidence that workers are similarly underpaid based on ethnicity.<sup>8</sup>

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<sup>7</sup> Gender Pay Gap (11 March 2024) Employment New Zealand Website  
<https://www.employment.govt.nz/fair-work-practices/pay-and-gender-equity/gender-pay-gap>

<sup>8</sup> Ethnicity pay gaps (14 November 2024) Inland Revenue (Te Tari Taake) website  
<https://www.ird.govt.nz/about-us/publications/annual-corporate-reports/our-gender-pay-gap-action-plan/diversity-equity-and-inclusion-roadmap/ethnicity-pay-gaps#:~:text=The%20current%20average%20ethnicity%20pay,and%2024%25%20for%20Pacific%20women.>

- 5.3. These systemic disparities are unlawful and longstanding.<sup>9</sup> Our inability to effectively deal with them stands as an indictment against the political will of our lawmakers.
- 5.4. This Bill will finally give workers an important tool for asserting the rights that they are formally accorded in the statute books.
- 5.5. We urge the Select Committee to fully endorse the substance of this Bill and recommend its urgent passage into law.

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<sup>9</sup> Despite being unlawful since the passing of the Equal Pay Act 1972, disparities in pay due to gender has been (and remains) a difficult issue to resolve. The Court of Appeal commented on these historic difficulties in *Terranova Homes & Care Ltd v Service and Food Workers Union NGA RINGA TOTA INC* [2014] NZCA 516; BC201463862, where it upheld and expanded a decision of the Employment Court :

[32] The Arbitration Court confirmed that the Act was “still alive”, but rejected the Union’s case. It held that the choice of the Act as “a vehicle for remedy of the perceived problems in the present case” was an error of law and that the Act contained “no powers or other provisions by which the Court [could] address the issue raised by the union and [gave] no powers to the Court to do what the union ask[ed]”. In the Court’s view, its jurisdiction under the Act was limited to ensuring equal pay between male and female employees covered by the same award.

*Terranova Homes & Care Ltd v Service and Food Workers Union NGA RINGA TOTA INC* [2014] NZCA 516; BC201463862