



Women experiencing discrimination – 2016

Fact sheet: Kristine Bartlett Case

The Terranova pay equity case was a landmark case brought by the Service and Food Workers Union (SFWU) (now E Tū), later joined by PSA and NZNO, on behalf of Kristine Bartlett.

In 2012 Kristine Bartlett and the SFWU lodged a claim with the Employment Relations Authority alleging Ms Bartlett's employer, Terranova Homes and Care Ltd, was in breach of the Equal Pay Act 1972. Ms Bartlett had been working as a caregiver of the aged for more than 20 years. When she first began, she was paid \$9.95 an hour. By 2012 she was paid \$14.46 an hour, just 71 cents above the then minimum wage of \$13.75¹. The case alleged that Ms Bartlett's skills, responsibilities and experience were being undervalued compared to similar conditions in typically male dominated occupations, and that such low rates of pay were related to the predominance of women in this occupation, and breached the principle of equal pay for work of equal value.

In November 2012, Ms Bartlett's case was referred to the Employment Court as it raised important questions of law: the interpretation of the purposes and criteria (S.3(1)(b)) of the Equal Pay Act 1972 in regard to equal pay for work 'exclusively or predominantly performed by women'; and the extent and nature of statements of principles that the court may make under Section 9 of the Act².

In June 2013 a preliminary Employment Court hearing was held. Section 3(1)(b) of the 1972 Act states that remuneration for work done primarily by women should match that for men with similar skills, working in jobs requiring similar responsibility, effort and work conditions. The SFWU argued that, as caregiving was considered to be 'women's work' and was therefore undervalued, establishing the appropriate pay rates for caregivers required examination of sectors apart from aged care.

The Employment Court accepted this argument and ruled that the case should proceed to the second stage of determining how fair pay for caregivers should be determined³. On 19 September 2013 Terranova appealed the judgement. On the same day, National's Minister of Labour said the Government was considering whether to intervene in the proceedings⁴. In December 2013 the then Attorney General, Christopher Finlayson, requested intervener status and, at a subsequent appeal hearing, argued in support of Terranova's narrow interpretation of the Act: restricting comparison to male employees within the same workplace⁵.

The Court of Appeal upheld the Employment Court decision and recommended the Employment Court issue a 'statement of principles' with guidelines on a 'workable framework for the resolution of Ms Bartlett's case' before proceeding further. It also said that the Court may 'identify appropriate

¹ Hyman P. 2013. All the way for equal pay by Prue Hyman.

https://issuu.com/nznursesorganisation/docs/prue_hyman_-_all_the_way_for_equal

² Kristine Bartlett and Service & Food Workers Union vs. Terranova Homes & Care Ltd

<http://www.cevepnz.org.nz/What%27s%20happening/Bartlett%20vs%20Terranova.htm>

³ [2013] NZEmpC 157 ARC 63/12. <https://www.employmentcourt.govt.nz/assets/Documents/Decisions/2013-NZEmpC-157-SFWU-vTerranova-Homes-and-Ca.pdf>

⁴ Cowlshaw S. 2013. Government may step in on pay court case.

<http://www.stuff.co.nz/national/politics/9182518/Government-may-step-in-on-pay-court-case>

⁵ Kristine Bartlett and Service & Food Workers Union vs. Terranova Homes & Care Ltd

<http://www.cevepnz.org.nz/What%27s%20happening/Bartlett%20vs%20Terranova.htm>

comparators and guide parties on how to produce evidence of other comparator groups or issues relating to systematic undervaluation', and that "[i]f a comparator that is uninfected by gender discrimination cannot be found within the workplace or the sector it may be necessary to look more broadly, to jobs to which a similar value can be attributed using gender neutral criteria"⁶. The Supreme Court declined further appeal from an employers group.

Having convened a Joint Working Group on principles for the implementation of equal pay, with employer, union and government representatives, the Government accepted the group's recommended principles in November 2016. It announced that it would update the Equal Pay Act 1972 and amend the Employment Relations Act 2002. However, it also added a sub-principle requiring 'that comparators be drawn from within the business, similar businesses, or the same industry or sector' in the first instance (i.e. a 'hierarchy of potential comparators')⁷. This was an additional barrier than what was agreed to by the tripartite working group.

After 20 months of negotiations, on 18 April 2017 the Government and unions jointly announced a settlement in the Care and Support Workers Pay Equity Case. It applied to approximately 55,000 workers in the residential aged care, disability support services and home support services; and features a 5-year set of pay increases linked to qualifications and experience. This amounts to a pay rise of between 15 and 49 per cent, depending on qualifications⁸.

On 02 May 2017, the Care and Support Workers Settlement Agreement was signed between Government and unions, and on 08 June 2017, the Care and Support Workers (Pay Equity) Settlement bill passed unanimously in Parliament. On 1 July 2017 the Care and Support Workers (Pay Equity) Act 2017 came into force with the new wage rates applying from that day.

Two days after the initial announcement of the Bartlett settlement, on 20 April 2017, the Government released an 'exposure draft' of its Employment (Pay Equity and Equal Pay) Bill for public consultation. Rather than amending the Equal Pay Act (EPA) and the Employment Relations Act, the draft sought to repeal the EPA (and the Government Service Equal Pay Act 1960). The period for public consultation given was three weeks⁹. The Bill was heavily criticised but passed its first reading by a single vote.

In November 2017, the new Labour-led government stopped progress on the Bill and, in January 2018, announced that it would reconvene the Joint Working Group on Pay Equity (RJWG) to recommend new legislation to improve pay equity for women, specifically how to determine the merit of a claim as a pay equity claim, and how to select appropriate male comparators. On 27 February 2018 the RJWG published its recommendations. The Government wants to introduce legislation based on those recommendations by mid-2019 to improve pay equity¹⁰.

⁶ Hill L. 2017. Pay Equity: Update on the Kristine Bartlett caregivers claim. *Women's Studies Journal*, 31(1): 100-147.

⁷ Wagstaff R. 2017. CTU President: All the way for equal pay. <https://thestandard.org.nz/richard-wagstaff-ctu-president-all-the-way-for-equal-pay/>

⁸ Campbell G. 2017. Gordon Campbell on the aged-care settlement. <http://werewolf.co.nz/2017/04/gordon-campbell-on-the-aged-care-settlement/>

⁹ Dyhrberg S. 2017. One step forward and two steps back for pay equity. <https://www.lawsociety.org.nz/practice-resources/practice-areas/employment-law/one-step-forward-and-two-steps-back-for-pay-equity>

¹⁰ Patterson J. 2018. Changes aim to remove barriers to filing pay equity claims. <http://www.radionz.co.nz/news/political/351789/changes-aim-to-remove-barriers-to-filing-pay-equity-claims>