

## The Employment Relations Authority has granted an interim order to fix the pay equity rates for nurses

**The Authority has granted an Interim Order to fix pay equity rates for nurses – an Order that was mutually consented to by Te Whatu Ora (Health New Zealand) and the New Zealand Nurses Organisation Inc (NZNO). The Authority cited their powers under section 160 of the Employment Relations Act 2000 (the Act), which raises questions as to what powers the Authority has to fix terms when there is a dispute in regards to fair pay agreements under the new Fair Pay Agreements Act (FPA) 2022.**

### The decision, and what this means for nurses

Te Whatu Ora applied to the Authority for an interim order which would fix pay equity rates and direct remuneration for prior work. The Authority granted this order in a determination released on December 14<sup>th</sup>.<sup>1</sup> This order gives effect to the pay rates already agreed to under the agreement in principle made by the parties in 2021. For nurses working under the New Zealand Health Authority, this means that they will receive the increased pay rates as well as a \$3,000 lump sum payment, and back pay of the increased rates.

NZNO expressed concerns that the sums referred to in the Agreement in principle were "outdated comparative remuneration". Regardless, the interim order was mutually consented to so nurses could begin to receive the increased pay rates while other related proceedings were still ongoing.

### What powers did the Authority utilise to make this interim order?

In identifying what powers the Authority has to make such interim orders, the Authority pointed to their jurisdiction over all matters arising under the Equal Pay Act 1972, as well as their role under the Employment Relations Act to support successful employment relationships. As this interim order was mutually consented to, the use of this legislative power in this way was not contentious.

Additionally, the Authority highlighted their power to 'follow whatever procedure the Authority considers appropriate' under the Employment Relations Act. It is possible the Authority may cite such power for fixing terms when there's a dispute regarding fair pay agreements under the new FPA Act 2022.

### What power does the Authority have to fix terms under the FPA Act?

The FPA Act clarifies the role of the Authority as 'making determinations, including to fix terms under s 234 or 252'. Section 234 of the FPA Act allows the Authority to make a determination fixing the terms of a proposed agreement if the bargaining sides are unable to agree on the terms themselves, and a bargaining side applies to the Authority for them to do so. The Authority may only make such a determination if they are satisfied that all other reasonable alternatives have been exhausted, the bargaining sides have used their best endeavours to find an alternative for a reasonable time, a bargaining side has deliberately/seriously sustained a breach of the duty of good faith, or the proposed agreement has not been ratified after two ratification processes. The FPA Act also clarifies that the Authority may fix terms both bargaining sides agree to. The Authority's power to make such determinations is exclusive.

<sup>1</sup> *New Zealand Nurses Organisation Incorporated v Te Whatu Ora Health New Zealand* [2022] NZERA 663.

**Article title**  
(Continued)

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If you have any questions about the determination, please contact our specialist Employment Team.