

OFFICE OF THE MINISTER FOR WORKPLACE RELATIONS AND SAFETY  
OFFICE OF THE MINISTER FOR WOMEN

Chair  
Cabinet Economic Development Committee

**Equal Pay Act: Improvements to pay equity legislation**

**Proposal**

- 1 This paper seeks Cabinet approval to change the *Equal Pay Act 1972* (the Equal Pay Act) to improve the pay equity system, as recommended by the Joint Working Group on Pay Equity Principles (the JWG) and the Reconvened Joint Working Group on Pay Equity Principles (RJWG).

**Executive Summary**

- 2 In October 2014, in *Terranova Homes and Care Ltd v Service and Food Workers Union* [2014] NZCA 516 (Terranova), the Court of Appeal found that the Equal Pay Act currently provides for pay equity in female-dominated industries subject to historical undervaluation, and invited the Employment Court to state principles for applying to pay equity cases. To address this, the previous government established the JWG. The JWG reported back in May 2016.
- 3 Following this, in October 2016 the previous Government established the JWG to propose principles on pay equity that can be supported by employers (both private and public sector) and unions, rather than relying on the courts. The underlying intent of the JWG proposals is that pay equity claims be resolved within the employment bargaining framework as much as possible, rather than directing parties straight to court (ie the status quo).
- 4 The previous government introduced the Employment (Pay Equity and Equal Pay) Bill in 2017. This Bill was subject to significant criticism from stakeholders, including that it had not met the intent of the JWG.
- 5 This Government withdrew that Bill, and reconvened the JWG in December 2017 to make further recommendations to support the JWG principles for a pay equity regime.
- 6 The RJWG delivered its recommendations on 5 March 2018, reconfirming and making some changes to the original recommendations of the JWG. Its core recommendation is that pay equity claims should be resolved within the employment bargaining framework as much as possible, rather than in court. The JWG and RJWG recommended establishing a pay equity system in which:
  - a. employees may raise a pay equity claim with their employer
  - b. for claims to progress to pay equity bargaining:
  - c. they must be for work predominantly performed by women, and

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- d. there must be an arguable case that there is current or historical undervaluation.
  - e. bargaining is guided by principles on how a pay equity rate is established - this involves an examination of the work and the work of suitable comparators
  - f. the existing employment dispute resolution system should assist to resolve bargaining impasses, with the Employment Relations Authority able to set pay equity rates in certain circumstances.
- 7 The JWG and RJWG's proposals present a better approach to addressing pay equity than the current system. It is better aligned with New Zealand's employment relations framework and is informed by experiences resolving pay equity claims in the State sector.
- 8 Together, we recommend that Cabinet agree to implement the proposals by amending the Equal Pay Act, with consequential changes to the *Employment Relations Act 2000* (the Employment Relations Act). The Minister for Workplace Relations and Safety expects to introduce a Bill to Parliament by August 2018.

### Background

#### *Court decisions have endorsed a statutory pay equity regime in New Zealand*

- 9 In Terranova, the Court of Appeal found that the Equal Pay Act incorporates a pay equity regime in female-dominated industries subject to historical undervaluation. In its decision, the Court of Appeal recommended that the Employment Court set principles in accordance with section 9 of the Equal Pay Act to provide a workable framework for the resolution of the pay equity claim. The Court determined that these principles should allow the parties to bring that claim before the Court in an orderly and manageable way.

#### *Pay equity and equal pay mean different things*

- 10 The term **equal pay** is commonly used to refer to the principle that women and men should receive the same remuneration for doing the same job. Equal pay is a way to address direct and (to some extent) indirect discrimination on the basis of gender.
- 11 The term **pay equity** is commonly used to refer to the principle that women and men should receive the same remuneration for doing different jobs that are of equal value. For example, a nurse would receive the same pay as a police officer if the value of the work is determined to be the same.
- 12 Achieving pay equity involves addressing systemic gender discrimination in the labour market, where jobs that have traditionally been performed by women may be paid less than if that job had been traditionally performed by men. This involves making judgements about the relative value of different skills, responsibilities, effort and conditions of work to correct any systemic discrimination present in the existing market rate.
- 13 Since the Terranova decision, a number of unions have raised pay equity claims with State sector employers, including through filing claims with the Employment Relations Authority or through the collective bargaining process. State sector

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employers are leading the negotiations with their specific workforces, while overall coordination and support of these claims is being led by the State Services Commission (SSC). A summary of current pay equity claims in the State sector is attached as Annex 1.

### Previous government's response to the Court of Appeal decision

- 14 Following the Court of Appeal decisions, the previous government established a Joint Working Group on Pay Equity Principles (the JWG) in October 2015, comprised of union, business and government representatives, to make recommendations for dealing with claims of pay equity under the Equal Pay Act principles that could be supported by employers (both private and public sector) and unions.

#### *Relationship between pay equity and the gender pay gap*

- 15 The proposals to address pay equity are likely to be discussed in a wider context of addressing the gender pay gap<sup>1</sup>. Pay equity should contribute to closing the gender pay gap but only to the extent that the gender pay gap reflects a degree of systemic gender-based discrimination. While pay equity is expected to lift pay rates in some female-dominated occupations, it will not directly affect other significant drivers of the gender pay gap, such as:

- occupational segregation
- the career progression of women into higher paid roles
- household and unpaid work performed by women.

- 16 Other actions by private firms, individuals and government will continue to remain relevant to addressing the overall gender pay gap.

- 17 The Ministry for Women and SSC are exploring how to encourage employers to proactively address equal pay and help eliminate the gender pay gap. While this work is initially aimed at addressing equal pay and broader gender pay gap issues within the core public service, it is anticipated that it will also lay the pathway for some of this work to be broadened out to the State sector and wider labour market.

- 18 Such actions around the wider gender pay gap and the development of the gender pay principles may also indirectly influence employers to address pay equity issues.

### Proposals of the Joint Working Group and Reconvened Joint Working Group

- 19 In May 2016, the JWG provided its proposals to the previous government. The JWG and RJWG proposals are included as Annex 2. The JWG's proposals align the process for making a pay equity claim within the bargaining framework of the Employment Relations Act. Under this framework parties aim to resolve pay equity

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<sup>1</sup> New Zealand's gender pay gap is currently 9.4 per cent (based on median hourly earnings – data from Statistics New Zealand 2017). The gender pay gap has reduced since 1998 (16.3 per cent), but has stalled in the last decade.

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concerns through bargaining, with support from government provided by mediation and the Employment Relations Authority to assist in resolving disputes.

20 The JWG proposals form the basis for a pay equity regime. However, in December 2017, this Government commissioned the RJWG to make further recommendations on:

- determining the merit of a pay equity claim (including considering the role of an employer in this process from employee and employer perspectives)
- determining how appropriate comparators should be selected when assessing the work subject to a pay equity claim
- the legislative vehicle to implement the JWG principles and recommendations.

21 The RJWG reconfirmed all other remaining JWG proposals. We support all the JWG and RJWG recommendations. The recommendations are explored in more detail below.

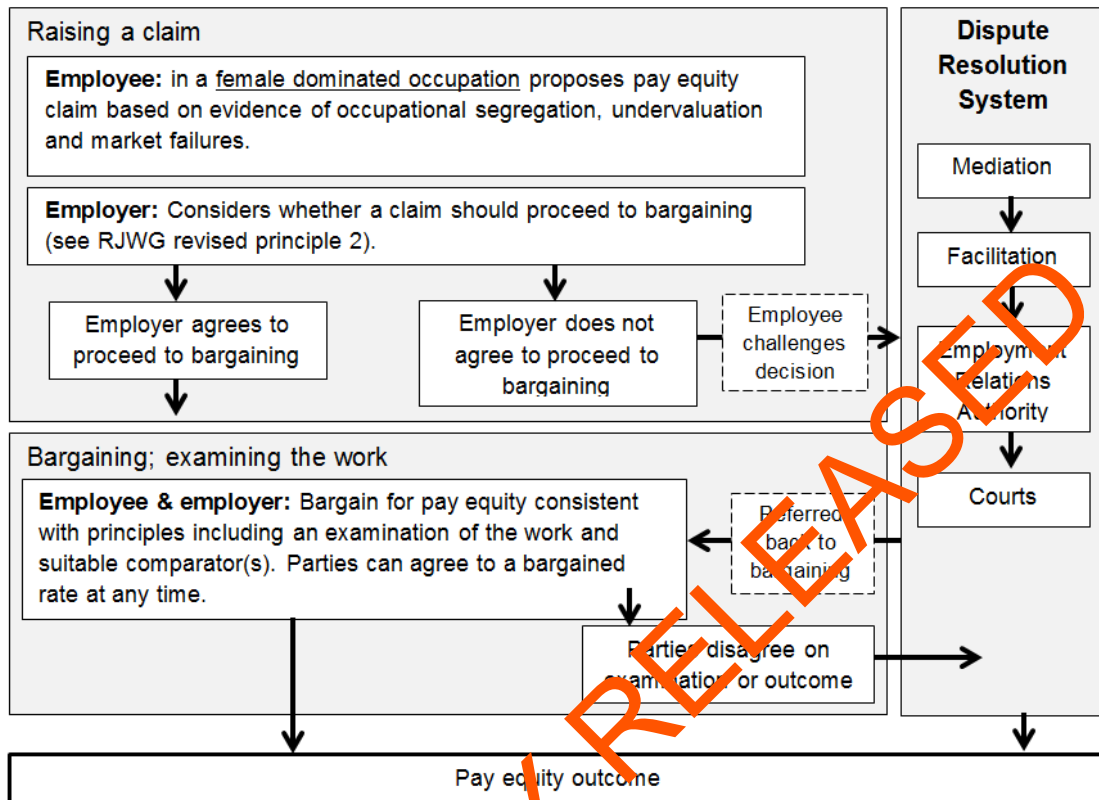
### Key elements of the JWG and RJWG proposals

22 The key elements of the proposed process for pay equity claims are:

- a. **Employee raises a claim:** Any employee may raise a pay equity claim with their employer. The claim must be for work predominantly performed by women and there should be an arguable case that there is current or historical undervaluation.
- b. **Employer notifies similar employees:** The employer must then notify their other employees that perform the same or similar work about the claim if they might be affected by it.
- c. **Employer decides whether to agree to enter pay equity bargaining:** The employer must respond to an employee about whether to accept or refuse to enter pay equity bargaining. The employer may refuse the claim if it does not relate to work predominantly performed by women or if the employer considers that there is no arguable case that there is current or historical undervaluation. Agreeing to proceed to bargaining does not predetermine that there is a valid pay equity problem or that there will be a settlement. The employer's decision to refuse can be challenged by the employee or their representative. In this case, parties would enter the employment dispute resolution process, which could result in the Employment Relations Authority or Court determining whether that employer is required to enter pay equity bargaining.
- d. **Parties enter pay equity bargaining:** Parties bargain to resolve the claim. Bargaining is guided by principles on how a pay equity rate is established. This involves an examination of the work and the work of suitable comparator occupations. The parties may agree to a bargained outcome at any point.

23 Where bargaining reaches an impasse, the existing employment dispute resolution system will be available to assist. We note the need to have adequate financial and human resources including pay equity expertise to assist bargaining processes.

24 This process is set out in the simplified diagram below.



### Raising a pay equity claim

- 25 The test for being able to raise a pay equity claim is intended to distinguish between claims which should proceed under a pay equity regime and those which should be dealt with under general wage bargaining.
- 26 The RJWG proposed that to proceed to pay equity bargaining, claimants needed to demonstrate the following (Annex 2 provides further information on the factors that can be considered to demonstrate current or historical undervaluation):
- a. the claim must be for work predominantly performed by women<sup>2</sup>, and
  - b. there must be a light touch assessment of current or historical undervaluation (ie an arguable case should be established). There could be consideration of whether gender-based systemic undervaluation continues to affect the remuneration of the work, but this is not required.
- 27 This is lower than the original JWG threshold for proceeding to the assessment of the claim and bargaining, which required claimants to make a case for both historic and current undervaluation. This lower threshold, as proposed by the RJWG, is intended to reflect the JWG's intention that the gateway to pay equity bargaining should not be onerous – including for individual women employees raising pay equity issues with their employers.

<sup>2</sup> The term 'predominantly performed' has not been defined to allow the courts flexibility to interpret this.

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- 28 However, this may mean that claims are progressed to bargaining where there is no current undervaluation (despite some evidence of historical undervaluation). The RJWG addressed this by being clear that proceeding to pay equity bargaining claim does not predetermine that a pay equity problem exists.
- 29 We expect the issue of current undervaluation will be raised during the bargaining process, potentially as part of the discussion on comparators. In the event of a dispute brought by either the claimant or the employer, it will be important that the courts will be able to consider whether there is in fact ongoing undervaluation when determining wages.
- 30 We consider that the threshold proposed by the RJWG to proceed to bargaining is sufficient and that the court could consider whether there is ongoing undervaluation in determining whether a pay equity problem exists.

### *Pay equity bargaining*

- 31 The JWG proposed that the pay equity bargaining process must involve an examination of the work and a comparison of this work with appropriate comparators based on the skills, responsibilities, experience, conditions of work and degrees of effort. Examinations of the work must be objective and free of assumptions based on gender, and current views, conclusions or assessments of value of the work must not be assumed to be free from assumptions based on gender.

### *Appropriate comparators*

- 32 The use of comparators is a method for identifying undervaluation on the basis that male occupations should not be subject to gender-based undervaluation. Therefore, pay differences between comparable male and female occupations may indicate undervaluation due to systemic gender discrimination. The JWG proposed that comparators may include male comparators who perform different work, but with skills, responsibilities, conditions or degrees of effort which are the same or substantially similar to the work being examined.
- 33 A key part of the Court of Appeal's interpretation of the Equal Pay Act in Terranova is that parties may look beyond the immediate employer or industry for comparators if an appropriate comparator does not exist in the immediate employer or industry.
- 34 An option the JWG considered was for the principles to state that the process for identifying comparators should start within the same or similar employers, and expand to other industries only if an appropriate comparator is unavailable (a hierarchy of comparators). The original JWG could not reach consensus on this issue.
- 35 The RJWG heard from parties using the principles to negotiate pay equity claims in State sector workforces that they did not follow a hierarchy when determining comparators (ie first assessing comparators within the same workplace or employer before going wider). Instead, both employees and employers tended to use a bundle, or an agreed range, of comparators. Parties reported this approach was working well for current State sector bargaining. The RJWG recommended that the principles did not need to include any further principles for selecting comparators but noted that guidance would be useful.

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36 We agree with the RJWG's proposed approach. We do not consider that a hierarchy of comparators is required in legislation. 9(2)(f)(iv)

37 To provide further flexibility to parties, we also propose an exception to allow parties to enter into a written agreement that sets out an alternative method that they will use to conduct an assessment of the work and comparable work. This will support parties to use the best method to suit their circumstances. Where agreement cannot be reached, parties would be required to assess the work performed by, and remuneration paid to, appropriate comparators.

### *Access to the dispute resolution system*

38 We propose (in line with the JWG recommendations) that:

- a. access to facilitated bargaining with the Employment Relations Authority be extended to individual pay equity bargaining (currently facilitated bargaining is only available for collective bargaining), and
- b. the threshold for accessing facilitated bargaining with the Employment Relations Authority be lowered for pay equity disputes – where the issue cannot be resolved in mediation or facilitation, parties may then apply to the Employment Relations Authority for a determination.

### *Legislative vehicle to implement to Joint Working Group and Reconvened Joint Working Group proposals*

39 The RJWG agreed that the implementation of a pay equity regime should be through amending the Equal Pay Act due to its symbolic importance (some amendments will be required). Doing so will also involve repealing the *Government Service Equal Pay Act 1960*, as the new pay equity legislation will bind the Crown. Consequential amendments to the Employment Relations Act will also be required.

40 We intend to keep the Equal Pay Act as it is where possible, with the aim of inserting the RJWG pay equity regime without changing existing provisions relating to non-pay equity matters. We note that clarifying the pathway for pay equity could impact remaining provisions of the Equal Pay Act. These issues will be worked through during the legislative drafting process to ensure unintended consequences are avoided.

41 We propose retaining the Equal Pay Act largely as it is and include the RJWG pay equity regime.

### **Other matters**

42 We recommend the following to ensure the proposed pay equity bargaining system functions well.

### *Interaction between pay equity bargaining and other bargaining*

43 We propose establishing a clear separation between pay equity and collective bargaining, so that:

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- a. the settlement of a collective agreement does not settle or extinguish an unresolved pay equity claim, and
  - b. failure to settle a pay equity claim is not a justification for not concluding collective bargaining.
- 44 This ensures that, while pay equity bargaining and collective bargaining might occur simultaneously, parties are clear about the conclusions each process reaches.
- 45 Under the Employment Relations Act, industrial action (strikes and lockouts) can occur in relation to bargaining for collective agreements. No new ability for industrial action based on pay equity bargaining is proposed.

### *Penalties*

- 46 We propose that the offence regime contained within the Equal Pay Act be complemented with a new penalty regime consistent with the penalty regime in the Employment Relations Act. This is a modern and fit-for-purpose penalty regime which has been recently reviewed and modernised. This would empower the Employment Relations Authority and the Employment Court to impose pecuniary penalties not exceeding \$10,000 for individuals, and not exceeding \$20,000 for companies or other non-individuals.
- 47 The Ministry of Business, Innovation and Employment (MBIE) and the Ministry for Women are working with the Ministry of Justice on the structure of the new penalty provisions.

### *Limitation period for back pay*

- 48 The status quo under section 131 of the Equal Pay Act is a six year limitation period for arrears for equal pay and pay equity claims. There are other avenues for discrimination claims under both the *Human Rights Act 1993* (the Human Rights Act) and the Employment Relations Act that provide different rights to compensation and arrears, however we note that these relate to equal pay claims. Such a claim is treated as a claim for the recovery of wages under section 131 of the Employment Relations Act. We do not propose any changes to this.
- 49 We intend to retain the status quo six year limitation period for equal pay claims.
- 50 Any agreed pay equity settlement outside of the courts need not include back pay. However, we propose that for pay equity claims:
- a. within the first five years after legislation comes into force, the court can award back pay to the date the claim was made (with a six year limitation from the point of settlement)
  - b. five years after legislation comes into force, the court can award back pay to the five year anniversary of the legislation coming into force (with a six year limitation from the point of settlement)
- 51 The effect of these back pay provisions will mean that 11 years after the legislation comes into force, the court will be able to award back pay of six years from the point of settlement for all claims.



- 52 We recognise the need to provide guidance on what information should be presented with a claim, and will progress this guidance work separately.
- 53 This option recognises that while structural gender discrimination resulting in historical and continued undervaluation of female-dominated occupations cannot be attributed to any action taken by an employer, that recent publicity about pay equity issues puts employers on notice about the possibility of pay equity issues within their workforce. This option will incentivise employers to address pay equity issues within the first 11 years following legislation being passed, with the incentives being progressively stronger after the first five years.
- 54 There are financial exposure risks for both the private sector and for government. This will encourage employers to review the existence of any pay equity issues in their workforce on a regular basis.
- 55 The current Equal Pay Act provision relating to back pay (section 13) links a claim for back pay to section 131 of the Employment Relations Act. As previous court decisions under section 131 have related to minimum entitlements, it has not been tested whether a court would decide back pay for pay equity claims in the same way, or whether they would exercise discretion differently considering that pay equity is an employment relations issue rather than a minimum standard.

*Treasury comment on the limitation period for back pay*

- 56 The Treasury shares MBIE's view of the preferred implementation option outlined in the regulatory impact statement. That is, implementing the RJWG recommendations in legislation, in combination with capping the back pay that courts can award to the date the claim is made to the employer. In Treasury's view, this option:
- better recognises that structural gender discrimination resulting in the undervaluation of female-dominated jobs is a systemic issue that cannot be attributed to any particular action of an employer
  - reduces the risk that employers are faced with unforeseen financial exposure after five years, and
  - still provides sufficient incentives on employers to engage with claims in good faith, recognising that the fixed penalties proposed may be insufficient on their own.

57 The Treasury also recommends, regardless of which option is agreed, that Cabinet agrees to further clarify the role of back pay for pay equity. Under the proposed employment relations process for addressing pay equity, it is uncertain how courts would approach back pay if negotiations break down and mediation is unsuccessful. 9(2)(j)



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- 58 The Treasury considers that the role of back pay for pay equity should be to incentivise employers to engage with claims in good faith. This could be legislatively achieved through either a direction to the courts of what to consider when approaching the issue of back pay, or reframing back pay for pay equity as a further remedy that could be applied by the courts when an employer has not engaged on a claim in good faith. This would clarify that a disagreement between negotiating parties about whether to provide for back pay would not itself be a sufficient ground for courts to award back pay.

### *Transitional provisions*

- 59 If the Bill is silent on how existing claims filed with the Employment Relations Authority or Employment Court are transitioned to the new regime once the Bill comes into force, they would be considered under the Equal Pay Act. Because of the volume of existing claims, this would effectively undermine the changes made by the Bill.
- 60 Consistent with this broad principle, the transitional provisions address how different types of claims should be dealt with under the new pay equity regime.
- a. Equal pay claims: Claims in relation to equal pay will be transferred to, and dealt with under, the new regime.
  - b. Settled pay equity claims: Any settlements made under the Equal Pay Act before the Bill comes into force are to be recognised as pay equity settlements for the purposes of the amended Equal Pay Act.
  - c. Existing and potential unresolved pay equity claims: Existing and potential pay equity claims under the Equal Pay Act filed with the Employment Relations Authority or the Employment Court will become claims under the regime in the Bill effective from the introduction of new legislation to Parliament. The provisions will aim to recognise existing progress in bargaining under the new Bill by allowing parties to have a formal written agreement to bargain, thus not forcing parties to initiate their claims again. Where parties cannot come to agreement, they will need to adhere to all the provisions of the new pay equity process.
  - d. If a claim under the existing Equal Pay Act is transitioned to the new regime, then any determination that fixes terms and conditions can provide for recovery of back pay to the original date of filing, within the standard six year limitation, if that date was earlier than the date of introduction of new legislation to Parliament.
- 61 The proposed transitional provisions are likely to be contentious, particularly in relation to transitioning claims to be dealt with under the new legislation. Submitters on the previous Government's Bill were concerned that they breached constitutional principles and the Legislation Design and Advisory Committee (LDAC) guidelines. Submitters recommended that claims continue under the original Equal Pay Act.
- 62 The main implication of transitional claims to be dealt with under the new Bill is that it removes the potential for employees to seek recovery of arrears for any loss or damage (including back pay) that occurred up to six years prior to filing the claim. This is a potential remedy for pay equity claims under the Equal Pay Act. Under the

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proposed transitional provisions, employees would only be able to claim arrears five years after the legislation has been passed or back to the date they filed the original claim with the Employment Relations Authority under the Equal Pay Act if a claim was raised within the first five years that the legislation was introduced.

- 63 The proposed provision has the potential to deprive employees to those claims from any benefit they might gain from a decision of the court under the Equal Pay Act and has a detrimental impact on the rights and situations established in reliance on the Equal Pay Act, which is on the spectrum of retrospectivity.
- 64 The transitional provisions will require existing and potential pay equity claims under the Equal Pay Act to be dealt with under the proposed new regime. We consider this is a necessary and justified departure from the LDAC guidelines regarding applying new legislation to matters that are the subject of ongoing or potential litigation and preventing a person from relying on a right or defence that existed at the time they undertook the conduct that those rights or defences related to. The justification for the transitional provisions is finely balanced, complex and is likely to be contentious.
- 65 The transitional provisions are necessary and justified to meet the policy objective of shifting pay equity from a litigious framework to a bargaining framework. Without such transitional provisions, it is likely that all potential pay equity claims will be filed and determined under the existing Equal Pay Act.
- 66 We have taken into account the overall fairness of the transitional provisions. In particular, while the transitional provisions create a potential loss of benefit and detriment to employees (ie potentially changing an existing right), it is balanced by a potentially unfair loss and detriment to employers.
- 67 The transitional provisions will impact existing unresolved pay equity claims which are outlined in Annex 1.

### *Regulation making power and guidance*

- 68 To provide further detail, we propose creating an empowering provision in legislation to enable the development of regulations to include additional matters to be taken into account when considering or determining whether a pay equity claim should proceed to pay equity bargaining, conducting an assessment of the work and comparable work in the bargaining process, or identifying appropriate comparators, including a range of comparators.

### *Managing concurrent pay equity claims for the same work*

- 69 We propose that a single employer should be able to combine duplicate concurrent claims for the same work into a single pay equity bargaining process and settlement. We propose:
- enabling a single employer to combine pay equity claims for the same work into one pay equity bargaining process
  - requiring the employer to notify the employees that are part of any claim being joined and provide the contact details of a representative from each claim to a representative of the other joined claim (subject to agreement of the representatives and any privacy considerations).

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- 70 We also propose that the Bill enables parties to a pay equity claim to agree to multiple employers combining claims for the same work into one single pay equity bargaining process.
- 71 Any party can initiate the joining of pay equity claims either within a single employer or for multiple employers.

*Enduring nature of pay equity settlements*

- 72 The underlying objective of the pay equity bargaining process is to enable parties to reach enduring settlements that address pay equity, notwithstanding any agreed review provisions. Therefore, where a claim has been settled, and that settlement addresses pay equity, the employer should be able to refuse to enter a new pay equity bargaining process for that same claim. Otherwise, there is a risk that new claims arise that duplicate the pay equity bargaining process parties may have already completed.
- 73 As such, we recommend that:
  - a. an employer may determine that a claim does not need to proceed to pay equity bargaining if it is covered by an existing settlement, and
  - b. the Employment Relations Authority or Employment Court must have regard to any existing pay equity settlement that covers the claim when determining whether a claim should proceed to pay equity bargaining.

- 74 This would provide employers with an ability to refuse pay equity bargaining on claims where a claimant is covered by an existing settlement. However, employees would have some limited ability to challenge the employer's refusal. In this case, the Employment Relations Authority or Court would consider whether an existing settlement which covers the employee addresses the claim.

**Resourcing matters for government to consider**

*Government support for information to assist the implementation of pay equity*

- 75 The State Services Commission (SSC) and the Ministry for Women are developing tools and resources to support the negotiation of pay equity claims in the State sector. 9(2)(f)(iv)  
[Redacted text]

- 76 We also recognise the need for comprehensive communications and information availability when legislation is passed to ensure employees and employers understand their rights and obligations in relation to both pay equity and equal pay.

*Code of employment practice*

- 77 We believe that a code of employment practice is also an appropriate method for providing guidance on the application of the Bill. Codes can provide guidance on the application of an Act and allow the Employment Relations Authority or court to have regard to the matters set out in the code.

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- 78 We recommend that the power to approve codes of practice under the Employment Relations Act be broadened to allow codes of practice to be approved for the purposes of the pay equity legislation. In addition, this legislative change is an opportunity to further broaden the application of codes for the purposes of all other relevant employment legislation.
- 79 We also recommend that the status of employment codes be brought into line with the code provisions in the *Health and Safety at Work Act 2015*. Doing so would mean that the Employment Relations Authority or court might have regard to the code of employment practice when determining issues to which the code relates. This will help raise the standing of the code to ensure that parties consider the code when bargaining over pay equity matters.
- 80 If approved by Cabinet, we will direct MBIE to develop a code in parallel to the pay equity legislation, together with the Ministry for Women and SSC.

### Pay transparency

- 81 In the State sector there is already a degree of pay transparency as the overall gender pay gap for occupations across the core public service and for each agency are published annually. The Ministry for Women and SSC are also progressing work to encourage employers to proactively address equal pay and the gender pay gap initially aimed at addressing equal pay and broader gender pay gap issues within the core public service, while also providing a pathway ensure the State sector and wider labour market are addressing the gender pay gap.

9(2)(f)(iv)

### Next steps

- 84 If Cabinet agrees to our proposed legislative changes, we intend to introduce legislation to Parliament in August 2018. Drafting is already underway as the Attorney-General has provided consent for this in advance of Cabinet decisions.

### Consultation

- 85 The JWG was comprised of representatives from unions (New Zealand Council of Trade Unions, the Public Service Association, E Tū, FIRST Union, the New Zealand Nurses Organisation and the New Zealand Educational Institute), businesses (Business New Zealand and the Employers and Manufacturing Association) and government agencies (MBIE and SSC). The RJWG also included the Ministry for Women.
- 86 Union and business parties to the JWG and RJWG also consulted with various parts of their membership on the final recommendations. No significant concerns were raised during this consultation.

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- 87 We are consulting with the RJWG leads during the legislative drafting process.
- 88 The proposed Equal Pay Amendment Bill will be referred to the Legislation Design and Advisory Committee for design advice.
- 89 The Treasury, the Department of Prime Minister and Cabinet (Policy Advice Group), the Ministry of Health, the Ministry of Social Development, Te Puni Kōkiri, the Accident Compensation Corporation, Crown Law, the Ministry for Pacific Peoples and the Ministry of Education were consulted on the proposals in this paper.

### Financial implications

- 90 The status quo pay equity regime under the Equal Pay Act is likely to have significant fiscal costs as a number of female-dominated occupations are in, or funded by, the public sector. It is important to recognise that adoption of the JWG and RJWG proposals is not expected to change these fiscal impacts.
- 91 It remains difficult to estimate the scale of these impacts, given there is no simple way to establish which occupational groups may be affected and the extent to which current wage and salary rates reflect the systemic gender-based discrimination resulting in current or historical undervaluation that pay equity is intended to address.
- 92 Budget 2017 provided \$5.3 million over four years to support pay equity dispute resolution, including for mediation services and the Employment Relations Authority.

### Human Rights

- 93 The Equal Pay Act allows the courts to award back pay up to six years before the date the claim is filed. This paper proposes an additional limit on pay equity claims for arrears for five years after commencement of the proposed legislative changes, with a limitation of six years, or to the date the claim is raised, whichever is the sooner. As pay equity claims, by definition, relate to work exclusively or predominantly performed by women, the limitation on back pay in such claims disproportionately affects women. The limitation will apply equally to all existing and undetermined pay equity claims. It will also likely impact on non-unionised employees, claimants from low-paid and vulnerable workforces and women who face particular barriers to making and progressing pay equity claims. As such, it could be argued that the proposal relating to arrears limits the right to be free from discrimination on the prohibited grounds of sex affirmed in section 19(1) of the *Bill of Rights Act 1990* (the Bill of Rights Act).
- 94 In our view, however, any such limitation is justified under section 5 of the Bill of Rights Act because:
- it is a necessary restriction for the implementation of a scheme which aims to address the systemic discrimination against women in the workplace through a bargaining framework
  - back pay has been limited to the date of lodging the claim or to ensure the process is balanced and fairly reflects the nature of the grievance (pay equity grievances reflect systemic social issue involving structural undervaluation of

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female-dominated occupations and do not involve the same blameworthiness by the individual employer when compared to direct discriminatory practices)

- c. the limit is in due proportion to the importance of the objective and does not limit section 19(1) of the Bill of Rights Act any more than reasonably necessary.

95 I note that this limitation is consistent with accepted jurisprudence that the rights affirmed by the Bill of Rights Act are not absolute and may be subject to reasonable limits. The Courts have recognised that “individual freedoms are necessarily limited by membership of society and by the rights of others.”<sup>3</sup> I note that the proposals in this paper are particularly directed at addressing structural discrimination that prevent full participation in society. The proposals in this paper aim to address those structural barriers in a way that is most likely to see real change.

96 The Ministry of Justice will undertake an assessment of whether the Bill is consistent with the Bill of Rights Act and will provide advice to the Attorney-General.

### Legislative implications

97 Legislative proposal

1.1 **Department responsible:** MBIE

1.2 **Title of Bill:** Equal Pay Amendment Bill

98 We recommend that the Government responds to the JWG and RJWG proposals by amending the Equal Pay Act and making consequential amendments to the Employment Relations Act.

### *Need for legislation*

99 Legislating is the most effective way to both respond to the JWG and RJWG proposals and to amend the regulatory framework for dealing with pay equity by enforcing a pay equity bargaining framework. The Equal Pay Act and the Employment Relations Act will both need to be amended. The Government Service Equal Pay Act will be repealed. Other legislation may need to be consequentially amended or repealed to give effect to these recommendations.

100 The legislative priority category given to the Bill for this year (2018) is category 5 (to be referred to Select Committee in the year).

### *Associated regulations*

101 The Bill includes a regulation making power to prescribe additional matters to be taken into account when determining whether a claim should proceed to pay equity bargaining, conducting an assessment of the work and comparable work in the bargaining process and identifying appropriate comparators. Regulations are not required to bring the Bill into operation.

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<sup>3</sup> *R v B* [1995] 2 NZLR 172, 182 (CA).

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*Timeline*

102 The following legislative timeline is preferred, as it promptly gives effect to the modified pay equity principles of the JWG without compromising the ability to develop and test the legislation effectively.

<i>Step</i>	<i>Proposed date</i>
Date by which the Bill will be provided to the Ministry of Justice (or the Crown Law Office if applicable) for an assessment of consistency with the New Zealand Bill of Rights Act 1990.	July 2018
9(2)(f)(iv) [REDACTED]	[REDACTED]
Dates on which the Bill will be before LEG and Cabinet for approval for introduction.	August 2018
Date by which any policy decisions for associated regulations will be before Cabinet.	n/a
Date requested for introduction of the Bill.	August 2018
Date of report back from select committee.	2019
Date by which final drafting instructions for any associated regulations will be sent to the Parliamentary Counsel Office.	2019 onwards
Date of enactment.	2019 onwards
Date of commencement.	2019 onwards

**Regulatory Impact Analysis**

103 The Regulatory Impact Analysis Team at the Treasury (RIAT) has reviewed the Regulatory Impact Assessment (RIA) produced by MBIE. The reviewers consider that the information and analysis summarised in the RIA meets their criteria.

**Gender implications**

104 Amending pay equity legislation will have significant gender implications. Updating the Equal Pay Act to implement pay equity and shift it from a litigation framework to a bargaining framework in line with the employment relations framework in the Employment Relations Act and other legislation, will likely generate substantive gender implications for employees and employers. Women employees in female-dominated occupations, especially individual women and women in low-paid or vulnerable workforces, may have particular needs to be addressed by legislation, accompanying codes of practice and any other policies or initiatives that are relevant to giving effect to the recommendations of the JWG and the RJWG.

105 The legislation is likely to be contentious (eg possible limitations on back pay), with particular reference to women who affected by the amelioration of any existing rights under legislation.



**Compliance with ILO Convention 100 on Equal Remuneration and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**

- 106 International Labour Convention 100 requires equal remuneration to be paid to both men and women for work of equal value without discrimination based on sex. In effect, the purpose of this Convention is to eliminate discrimination in the workplace and reduce differences in remuneration attributable to discrimination.
- 107 The JWG and RJWG proposals are in line with Convention 100. Establishing processes and principles to resolve pay equity claims at the earliest time and at the most appropriate level support its implementation.
- 108 The JWG proposals provide a clearer process for parties to bargain over pay equity.
- 109 The United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is a core human rights treaty that New Zealand has ratified. CEDAW article 11(1)(d) requires New Zealand to take all appropriate measures to eliminate discrimination against women in the field of employment to ensure, on a basis of equality of men and women, the same rights. This includes the right to equal remuneration (including benefits) and equal treatment in respect of work of equal value, as well as equality of treatment in evaluating the quality of work.
- 110 The JWG and RJWG recommendations are in line with CEDAW.

**Compliance with the Bill of Rights Act 1990**

- 111 The proposals in this paper are in accordance with section 19 of the *Bill of Rights Act 1990* (the Bill of Rights Act), which states that everyone has a right to freedom from discrimination on a number of grounds, including gender. See paragraphs 93-96 for further discussion of the Bill of Rights Act implications.
- 112 Providing practical guidance on how matters of pay equity can be raised and developing clear pay equity processes will minimise pay discrepancies based on gender discrimination.
- 113 A final view as to whether the amendments appear to be consistent with the Bill of Rights Act will be possible once the legislation has been drafted, when the Ministry of Justice will provide advice to the Attorney-General. Officials from MBIE will work with the Ministry of Justice toward ensuring the Bill's consistency with the Bill of Rights Act.

**Publicity**

- 114 If approved by Cabinet, we intend to issue a media statement on the decision to implement the JWG and RJWG's proposals in legislation. We will discuss Cabinet's decisions with the RJWG parties prior to any announcement.
- 115 MBIE will publish this paper on its website, subject to any necessary redactions.

## Recommendations

The Minister for Workplace Relations and Safety and the Minister for Women recommend that Cabinet:

- 1 **Note** that the current *Equal Pay Act 1972* provides a statutory pay equity regime (the same pay for different work of equal value) under which any employee performing work predominantly performed by women may bring a pay equity claim against their employer
- 2 **Note** the Joint Working Group on Pay Equity Principles (JWG) and reconvened Joint Working Group (RJWG) have made proposals for dealing with pay equity claims
- 3 **Agree** to support the JWG and RJWG's proposals, as well as further decisions required to implement a pay equity regime, in accordance with the recommendations in this Cabinet paper
- 4 **Agree** to implement a pay equity regime by amending the *Equal Pay Act 1972* and making consequential amendments to the *Employment Relations Act 2000* and other legislation
- 5 **Agree** to repeal the *Government Service Equal Pay Act 1960* because the amendments to the *Equal Pay Act 1972* will bind the Crown

### *Initiating a pay equity claim*

- 6 **Agree** to create a statutory process that enables employees to make a pay equity claim
- 7 **Agree** to set requirements on the form of a pay equity claim
- 8 **Agree** to place a duty on employers to notify all other employees of the employer who perform the same or similar work and who might be affected by (or benefit from) a pay equity claim
- 9 **Agree** to set requirements on the form of employers' response to a pay equity claim, including a requirement to respond within a reasonable timeframe

### Criteria for determining whether a claim should proceed to pay equity bargaining

- 10 **Agree** that a pay equity claim must show that it relates to work predominantly performed by female employees
- 11 **Agree** that there must be an arguable case that the work is currently or has been historically undervalued
- 12 **Agree** that in considering whether there is an arguable case that the work is currently or has historically been undervalued, consideration may be given to:
  - 12.1 any relevant origins and history of the work and the wage setting for it;
  - 12.2 any social, cultural, or historical factors that may have led to undervaluing of the work and the remuneration for it;

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- 12.3 a characterisation or labelling of the work as “women’s work”;
- 12.4 any social, cultural, or historical phenomena that have led to women being considered to have natural or inherent qualities not required to be accounted for in wages paid.
- 12.5 gender-based systemic undervaluation has affected the remuneration for the work due to features of the market, industry or sector or occupation which may have resulted in continued undervaluation of the work, including but not limited to:
- 12.5.1 a dominant source of funding across the market, industry or sector;
  - 12.5.2 the lack of effective bargaining;
  - 12.5.3 the failure by the parties to properly assess or consider the remuneration that should be paid to properly account for the nature of the work;
  - 12.5.4 the levels or responsibility associated with the work, the conditions under which the work is performed, and the degree of effort required to perform the work.
- 12.6 the work may have been affected by gendered occupational segregation or segmentation
- 13 **Agree** that proceeding with a pay equity claim does not in and of itself predetermine a pay equity outcome
- Pay equity bargaining*
- 14 **Agree** to place a duty on employers to enter into bargaining on pay equity, following a pay equity claim, if the employer determines that:
- 14.1 the request relates to work predominantly performed by female employees, and
  - 14.2 there is an arguable case that the work is currently or has been historically undervalued
- 15 **Agree** that bargaining on pay equity must include an examination of:
- 15.1 the work being performed and the remuneration paid to those performing the work; and
  - 15.2 the work performed by, and remuneration paid to, appropriate comparators
- 16 **Agree** that the examination of the work being performed must include a thorough assessment of the work on the following basis:
- 16.1 the assessment must be objective and free of assumptions based on gender, and

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- 16.2 current views, conclusions or assessments of work value are not to be assumed to be free of assumptions based on gender, and
- 16.3 the assessment must fully recognise the importance of skills, responsibilities, effort and conditions that are commonly over-looked or undervalued in female-dominated work such as social and communication skills, responsibility for the wellbeing of others, emotional effort, cultural knowledge (including indigenous knowledge) and sensitivity

### *Appropriate comparators*

- 17 **Agree** that the examination of the work being performed and that of appropriate comparators must include the identification and examination of the:
  - 17.1 skills required; and
  - 17.2 responsibilities imposed by the work; and
  - 17.3 conditions of work; and
  - 17.4 degree of effort required in performing the work; and
  - 17.5 experience of employees
- 18 **Agree** that the examination of appropriate comparators may include the identification and examination of the:
  - 18.1 male comparators performing work which is the same as, or similar to, the work at issue in circumstances in which the male comparator is not predominantly performed by females;
  - 18.2 male comparators who perform different work all of which, or aspects of which, involve skills and/or responsibilities and/or conditions and/or degrees of effort which are the same or substantially similar to the work being examined;
  - 18.3 any other useful and relevant comparators
- 19 **Agree** that parties can enter into a written agreement that sets out an alternative method that they will use to assess the nature and remuneration of the work and comparable work
- 20 **Agree** that a male whose remuneration is itself distorted by systemic undervaluation of “women’s work” is not an appropriate comparator

### *Settling a claim*

- 21 **Agree** to clarify that the settlement of a collective agreement does not settle or extinguish an unresolved pay equity claim, and failure to settle a pay equity claim is not a justification for not concluding collective bargaining
- 22 **Agree** that pay equity is remuneration (including but not limited to time wages, overtime payments and allowances), that has no element of gender-based differentiation

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- 23 **Agree** that pay equity must be free from any systemic undervaluation derived from the effects of current, historical, or structural gender-based differentiation
- 24 **Agree** that in establishing pay equity, other conditions of employment cannot be reduced
- 25 **Agree** that any established pay equity rate must be reviewed and kept current by parties to a claim

*Access to the dispute resolution system*

- 26 **Agree** that parties may access employment mediation services at any stage throughout the pay equity process – such as an employer’s refusal to proceed to pay equity bargaining, the assessment of the claim, the use of appropriate comparators, and agreeing a pay equity rate
- 27 **Agree** that, only where mediation and facilitation have not resolved the issue, parties may apply to the Employment Relations Authority for a determination as to whether the parties have complied with their obligations in relation to pay equity, including whether to proceed to pay equity bargaining after the initiation of a claim
- 28 **Agree** that disputes in relation to pay equity claims and pay equity bargaining, for both collective agreements and individual employment agreements, may be referred by either party to the Employment Relations Authority for facilitation
- 29 **Agree** that, for pay equity matters relating to individual employment agreements and collective agreements, the Employment Relations Authority may only accept reference for facilitation if the issue cannot be resolved in mediation or facilitation
- 30 **Agree** that a party to bargaining for pay equity for an individual employment agreement or a collective agreement may apply to the Employment Relations Authority for a determination fixing the provisions of the agreement being bargained for
- 31 **Agree** that the Employment Relations Authority may fix the provisions of an individual employment agreement or a collective agreement being bargained for, only to the extent necessary to ensure the agreement meets pay equity requirements, and only if it is satisfied that:
  - 31.1 all other reasonable alternatives for reaching agreement on pay equity claims have been exhausted within a reasonable period, and
  - 31.2 fixing the provisions of the agreement is the only effective remedy

*Applying good faith to pay equity bargaining*

- 32 **Agree** that all pay equity bargaining must be in good faith, consistent with the elements of the *Employment Relations Act 2000*
- 33 **Note** that good faith bargaining for pay equity may include the following elements:
  - 33.1 it is orderly and efficient

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33.2 it is kept within reasonable bounds

33.3 it is not needlessly prolonged.

### *Penalties*

34 **Agree** to penalties for non-compliance which are consistent with the *Employment Relations Act 2000* by empowering the Employment Relations Authority and the courts to impose pecuniary penalties not exceeding \$10,000 for individuals, and not exceeding \$20,000 for companies or other corporations, and replace the penalty regime of the *Equal Pay Act 1972* for pay equity and non-pay equity claims

### *Limitation period for back pay*

35 **Agree** to limit arrears for pay equity claims such that the Employment Relations Authority may only provide for the recovery of arrears back to the date five years after the introduction of the Equal Pay Amendment Bill with a limitation of six years, or to the date the claim is raised, whichever is the sooner

### *Transition to the new regime*

36 **Note** the transitional provisions in the Bill depart from the default approach in the Legislation Design and Advisory Committee Guidelines by applying new legislation to matters that are the subject of ongoing or potential litigation and preventing a person from relying on a right or defence that existed at the time they undertook the conduct that those rights or defences related to

37 **Agree** that the transitional provisions are necessary and justified to ensure that the policy objective of the new legislation to shift pay equity into a bargaining framework is achieved, including to limit pay equity arrears claims as outlined in recommendation 34

38 **Agree** to the transitional provisions in the Bill, including the requirement that *Equal Pay Act 1972* claims that have been filed in the Employment Relations Authority or the Employment Court when the Bill comes into force, and that are awaiting a final determination, all be discontinued, but may be recommenced under the provisions of the Bill

### *Regulation making power and guidance*

39 **Agree** to empower the making of regulations to prescribe matters that must be taken into account when considering or determining whether a pay equity claim can proceed to bargaining, conducting an assessment of the work and comparable work in the bargaining process and identifying appropriate comparators

40 **Agree** to amend the *Employment Relations Act 2000* to empower the Minister for Workplace Relations and Safety to approve codes of employment practice to provide guidance on the application to the Bill (once enacted) and other relevant employment legislation (including the *Holidays Act 2003*, the *Minimum Wage Act 1983*, the *Parental Leave and Employment Protection Act 1987*, and the *Wages Protection Act 1983*).

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*Managing concurrent pay equity claims for the same work*

- 41 **Agree** that a single employer may combine multiple claims for the same work into a single pay equity bargaining process and settlement
- 42 **Agree** that multiple employers may combine claims for the same work into a single pay equity bargaining process and settlement

*Enduring nature of pay equity settlements*

- 43 **Agree** to give effect to the intention that pay equity settlements should be enduring by:
  - 43.1 enabling an employer to determine that a claim does not need to progress to pay equity bargaining if it is covered by an existing settlement, and
  - 43.2 requiring the Employment Relations Authority or courts to have regard to any existing pay equity settlement that covers the claim when determining whether a claim has an arguable case

9(2)(f)(iv)

*Approval for drafting*

- 46 **Note** that the drafting of legislation has commenced in advance of Cabinet's decisions on the recommendations in this paper, with the consent of the Attorney-General
- 47 **Agree** that drafting continues on the basis of Cabinet's decisions on the recommendations in this paper
- 48 **Note** that officials are consulting with the lead members of the Reconvened Joint Working Group during the drafting process
- 49 **Authorise** the Minister for Workplace Relations and Safety and Minister for Women to make changes, consistent with the policy framework in this paper, on any issues that arise during the drafting process
- 50 **Note** the inclusion of the Equal Pay Amendment Bill in the 2018 legislation programme with a priority 5
- 51 **Note** that the Bill should be introduced no later than August 2018

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*Other matters*

- 52 **Note** that the Government is undertaking a range of actions to support equal employment opportunities for women and to address the gender pay gap

*Publicity*

- 53 **Note** that the Minister for Women, the Minister for Workplace Relations and Safety and the Minister of State Services will release a media statement confirming Cabinet's support for the recommendations
- 54 **Note** that the Ministry of Business, Innovation and Employment will publish a copy of this paper on its website, subject to any necessary redactions

Hon Iain Lees-Galloway  
**Minister for Workplace Relations and  
Safety**  
\_\_\_\_/\_\_\_\_/\_\_\_\_

Hon Julie Anne Genter  
**Minister for Women**  
\_\_\_\_/\_\_\_\_/\_\_\_\_

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## Annex 1: Summary of State sector pay equity claims

There are currently six live pay equity claims in the State sector. These claims cover both direct State sector employees and State sector funded services.

The following is a summary of the current status of these claims. All are being progressed in line with the Joint Working Group's Pay Equity Principles.

### Filed in the Employment Relations Authority

- A claim made by the New Zealand Educational Institute (NZEI) Te Riu Roa covers education support workers. This claim, filed in the Employment Relations Authority in October 2015, covers approximately 425 employees.
  - The parties have undertaken the assessment stages and, as a result of that, have entered into negotiations to resolve the pay equity claim.
- A claim made by the Public Service Association (PSA) covers social workers employed by the Ministry of Children. This claim, filed in the Employment Relations Authority in November 2015, covers approximately 2000 employees.
  - The parties have undertaken the assessment stages and are about to enter into negotiations to resolve the pay equity claim.

### Raised with Employer under the CTU/SSC joint agreement

- A claim made by NZEI Te Riu Roa covers support staff in schools. This claim, made in the 2017 collective agreement negotiations, will initially focus on teacher aide roles and covers approximately 21,600 employees.
  - The parties have agreed Terms of Reference to guide the application of the Principles and are currently at the stage of assessing the work done by Teacher Aides within the wider school support staff group.
- A claim made by the New Zealand Nurses Organisation covers nurses and midwives employed by District Health Boards (DHBs). This claim, made in the current collective agreement negotiations, covers approximately 22,300 FTEs. This bargaining was not resolved at time of writing.
- A claim made by the PSA, notified to the DHBs in March 2018m, covers DHB clerical workers. This claim covers approximately 6,800 FTEs and is at very initial stages.
- A claim made by the PSA, notified to the Ministry of Primary Industries in December 2017, covers support officers. This claim covers approximately 165 employees 9(2)(j)

**Annex 2: Combined recommendations of the original Joint Working Group and the reconvened Joint Working Group**

Original JWG Principles	Reconvened JWG changes
<p>1. Any employee or group of employees can make a claim.</p>	<p>Reconfirmed</p>
<p>2. In determining the merit of the claim as an equal pay claim, the following factors must be considered:</p> <p>A. The work must be shown to be predominantly performed by women</p> <p>B. The work may have been historically undervalued because of:</p> <ul style="list-style-type: none"> <li>i. any relevant origins and history of the work and the wage setting for it;</li> <li>ii. any social, cultural, or historical factors that may have led to undervaluing of the work and the remuneration for it;</li> <li>iii. a characterisation or labelling of the work as “women’s work”;</li> <li>iv. any social, cultural, or historical phenomena that have led to women being considered to have natural or inherent qualities not required to be accounted for in wages paid.</li> </ul> <p>C. Whether gender-based systemic undervaluation has affected the remuneration for the work due to</p> <ul style="list-style-type: none"> <li>i. features of the market, industry or sector or occupation which may have resulted in continued undervaluation of the work, including but not limited to a dominant source of funding across the market, industry or sector; or the lack of effective bargaining;</li> <li>ii. the failure by the parties to properly assess or consider the remuneration that should be paid to properly account for the nature of the work, the levels or responsibility associated with the work, the conditions under which the work is performed, and the</li> </ul>	<p><b>2A.</b> To determine whether to proceed with the claim as a pay equity claim the work must be predominantly performed by women. In addition, it should be arguable that:</p> <p><b>2B.</b> The work is currently or has been historically undervalued (due to the same factors under 2B in the original JWG Principles).</p> <p><b>2C.</b> Consideration may also be given to whether gender-based systemic undervaluation has affected the remuneration for the work (due to the same factors under 2C in the original JWG principles <b>plus</b> areas where remuneration for this work may have been affected by any occupational segregation and/or any occupational segmentation).</p> <p><b>2D.</b> Agreeing to proceed with a pay equity claim does not in and of itself predetermine a pay equity outcome.</p>

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<p>degree of effort required to perform the work;</p> <p>iii. any other relevant work features.</p>	
<p><b>3.</b> A thorough assessment of the skills, responsibilities, conditions of work and degrees of effort of the work done by the women must be undertaken.</p>	Reconfirmed
<p><b>4.</b> The assessment must be objective and free of assumptions based on gender.</p>	Reconfirmed
<p><b>5.</b> Current views, conclusions or assessments of work value are not to be assumed to be free of assumptions based on gender.</p>	Reconfirmed
<p><b>6.</b> Any assessment must fully recognise the importance of skills, responsibilities, effort and conditions that are commonly over-looked or undervalued in female-dominated work such as social and communication skills, responsibility for the wellbeing of others, emotional effort, cultural knowledge and sensitivity.</p>	Reconfirmed
<p><b>7.</b> To establish equal pay, there should be an examination of:</p> <p>i. the work being performed and the remuneration paid to those performing the work; and</p> <p>ii. the work performed by, and remuneration paid to, appropriate comparators.</p>	Reconfirmed
<p><b>8.</b> An examination of the work being performed and that of appropriate comparators requires the identification and examination of:</p> <p>i. the skills required;</p> <p>ii. the responsibilities imposed by the work;</p> <p>iii. the conditions of work;</p> <p>iv. the degree of effort required in performing the work;</p> <p>v. the experience of employees;</p> <p>vi. any other relevant work features.</p>	Reconfirmed
<p><b>9.</b> An examination of the work and remuneration of appropriate comparators may include:</p> <p>i. male comparators performing work which is the same as or similar to the work at issue in circumstances in which the male comparators' work is not predominantly performed by females; and/or</p> <p>ii. male comparators who perform different work all of which, or aspects of which, involve skills and/or responsibilities and/or conditions and/or degrees of effort which are the same or substantially similar to the work being examined; and</p> <p>iii. any other useful and relevant comparators.</p>	Reconfirmed

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<p><b>10.</b> The work may have been historically undervalued because of:</p> <ul style="list-style-type: none"><li>i. any relevant origins and history of the work and the wage setting for it;</li><li>ii. any social, cultural or historical factors which may have led to undervaluing or devaluing of the work and the remuneration paid for it;</li><li>iii. there is or has been some characterisation or labelling of the work as “women’s work”;</li><li>iv. any social, cultural or historical phenomena whereby women are considered to have “natural” or “inherent” qualities not required to be accounted for in wages paid.</li></ul>	Reconfirmed
<p><b>11.</b> A male whose remuneration is itself distorted by systemic undervaluation of “women’s work” is not an appropriate comparator.</p>	Reconfirmed
<p><b>12.</b> Equal pay is remuneration (including but not limited to time wages, overtime payments and allowances) which has no element of gender-based differentiation.</p>	Reconfirmed
<p><b>13.</b> Equal pay must be free from any systemic undervaluation, that is, undervaluation derived from the effects of current, historical or structural gender-based differentiation.</p>	Reconfirmed
<p><b>14.</b> In establishing equal pay, other conditions of employment cannot be reduced.</p>	Reconfirmed
<p><b>15.</b> The process of establishing equal pay should be orderly, efficient, kept within reasonable bounds and not needlessly prolonged.</p>	Reconfirmed
<p><b>16.</b> Any equal pay established must be reviewed and kept current.</p>	Reconfirmed

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