



## COVERSHEET

<b>Ministers</b>	Hon Jan Tinetti Hon Priyanca Radhakrishnan	<b>Portfolios</b>	Women Associate Workplace Relations and Safety
<b>Title of Cabinet paper</b>	Development of a Pay Transparency System – Phase One	<b>Date to be published</b>	16 October 2023

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
August 2023	Development of a Pay Transparency System – Phase One	Office of the Minister for Women  Office of the Associate Minister for Workplace Relations and Safety
2 August 2023	Development of a Pay Transparency System – Phase One  SWC-23-MIN-0104 Minute	Cabinet Office
25 May 2023	Pay transparency – Key policy decisions for phase one	Ministry for Women, MBIE

### Information redacted

### YES / NO

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reasons of privacy of natural persons, confidential advice to government and free and frank opinions.

## In Confidence

Office of the Minister for Women

Office of the Associate Minister for Workplace Relations and Safety

Cabinet Social Wellbeing Committee

## Development of a Pay Transparency System – Phase One

### Proposal

1. We propose the development of pay transparency legislation focused on a pay gap reporting system. This paper seeks approval of the key elements for a gender pay gap reporting system and associated requirements (phase one).
2. We will seek further decisions in phase two on including ethnic pay gap reporting<sup>1</sup> and on the remaining aspects of system design (including who the regulator will be, as well as the support, compliance, monitoring, and enforcement approach).

### Relation to government priorities

3. Implementing pay transparency aligns with the Government's Workplace Relations manifesto commitments to:
  - a. create an inclusive economy where economic growth is shared by all
  - b. make it easier for women to gain pay equity in their organisation or across their industry.
4. Pay transparency will also align with the Government's Ethnic Community manifesto commitment to promote equal employment opportunities for all, with a view to removing the barriers to employment for people from ethnic communities (subject to decisions in phase two regarding ethnic pay gap reporting).

### Executive Summary

5. Aotearoa New Zealand's labour market has aggregate gender, ethnic pay, and disability gaps – that is, differences in average earnings by gender, ethnicity and/or disability. These differences in average pay result in differences in overall outcomes, in particular for women, Māori, Pacific peoples, people from other ethnic communities and disabled people.
6. The drivers of these pay gaps are complex and varied. New Zealand has a suite of interventions that are focused on particular drivers of the gender pay gaps. Examples are equal pay and pay equity legislation and Employment Action Plans focused on improving labour market outcomes for women, Māori,

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<sup>1</sup> This will consider pay gap reporting for Māori and Pacific peoples, as well as other ethnic communities.

## IN CONFIDENCE

Pacific peoples, other ethnic communities and disabled people. However, New Zealand's national gender pay gap has not moved significantly in over a decade (ranging between 9 and 12 percent).<sup>2</sup>

7. Identifying workplace pay gaps is an important step in incentivising employers to investigate and address the drivers of pay gaps and supporting employees to identify and take action to address them.
8. On 5 April 2023, in response to a paper seeking an in-principle decision on taking a legislative approach for a pay transparency system, the Cabinet Social Wellbeing Committee invited us to report back to Cabinet by 30 June 2023 with developed policy proposals for pay transparency legislation.
9. To meet this timeframe, we have split the work required to design a pay gap reporting system into two phases. This cabinet paper covers the key elements for a gender pay gap reporting system (phase one), including:
  - a. who the pay gap reporting system should apply to
  - b. what should be measured and reported on
  - c. whether there should be any other requirements (eg action plans).
10. Phase two will consider including ethnic pay gap reporting and the remaining aspects of the legislative design, and we will work with officials to determine timing for phase two decisions.
11. We recommend the following key elements for a gender pay gap reporting system:
  - a. Applying pay gap reporting requirements initially to employers with 250 or more employees and lowering this size threshold to employers with 100 or more employees after four reporting cycles.
  - b. Requiring employers that meet the size threshold to calculate gender pay gaps and other mandatory measures, but removing or modifying reporting requirements if they do not have at least 20 employees in each gender category<sup>3</sup>.
  - c. Setting a specified date (or dates<sup>4</sup>) for determining if an employer meets the size threshold and to determine which employees should be included in the pay gap calculation (and other mandatory measures).
  - d. Requiring employers that meet the size threshold to calculate and report:
    - i. organisation-wide mean and median gender pay gaps for males and females (while encouraging reporting of pay gaps at a more granular level)
    - ii. organisation-wide mean and median pay gaps for the 'another gender' group, if they have employees that identify as 'another

<sup>2</sup> Stats NZ: Labour Market statistic (income): June 2022 quarter.

<sup>3</sup> Based on Stats NZ guidance that there should be at least 20 employees in each gender category.

<sup>4</sup> For example, if a different date is set for the public sector.

- gender' (an appropriate comparator group will be determined as part of the detailed design)
- iii. the mean and median discretionary pay (eg bonuses) gap between male employees and female employees (and 'another gender,' if they have employees that identify as 'another gender')
  - iv. the proportion of males, females, and 'another gender' that receive discretionary pay
  - v. the proportion of males, females and 'another gender' in each pay quartile, and
  - vi. the number or proportion of employees who reported being male, female, or 'another gender', or did not provide a response on their gender.
- e. Requiring employers that meet the size threshold to calculate and report pay gap information annually to a regulator (noting that the entity or entities with the regulatory functions is still to be determined).
  - f. Encouraging voluntary action plans and providing support to employers to develop them, with a review to begin after three reporting cycles to consider whether to make them mandatory.
12. The recommended elements balance the trade-off between applying simple requirements that will not be overly burdensome on employers, while still ensuring the system is comprehensive enough to achieve its intended objectives of supporting employers and employees to address pay gaps.
13. These requirements will need to be supported by some level of regulatory activity, the details of which will form part of the advice in phase two.
14. As well as the necessary regulatory functions, the other regulatory design decisions for phase two will include who the regulator will be and the proposed approach to guidance, support, compliance, monitoring and enforcement. While there are a range of compliance and enforcement tools that could be included, we have asked officials to focus on a light touch approach. We will also seek the funding necessary to implement the system as part of this work.

## Background

15. In March 2022, the Education and Workforce Committee released a briefing (the Select Committee Report) recommending (by majority) that the Government develop pay transparency measures in line with the recommended policy considerations in the report.<sup>5</sup>

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<sup>5</sup> Available at:

[https://www.parliament.nz/resource/en-NZ/SCR\\_121189/776d9dc8e62d36f94499009f952f4ff296e3a154](https://www.parliament.nz/resource/en-NZ/SCR_121189/776d9dc8e62d36f94499009f952f4ff296e3a154)

**I N C O N F I D E N C E**

16. In October 2022, the Cabinet Social Wellbeing Committee (SWC) agreed that policy development of a pay transparency regime should commence [SWC-22-MIN-0174].
17. On 5 April 2023, SWC considered a paper seeking an in-principle decision from Cabinet on taking a legislative approach for a pay transparency system. In response, SWC invited the Minister for Women and Associate Minister for Workplace Relations and Safety to:
  - a. develop further policy recommendations on the scope and content of pay transparency legislation, and
  - b. report back to Cabinet by 30 June 2023 with developed policy proposals for pay transparency legislation [SWC-23-MIN-0030.01].
18. Pay transparency is an umbrella term for a spectrum of options to help reduce pay gaps. We directed officials to focus on a pay gap reporting system as the first pay transparency proposal. Other options recommended by the Education and Workforce Select Committee, such as pay secrecy legislation, are not considered here. We consider the pay transparency system could eventually be expanded to consider other pay transparency measures (eg restrictions on pay secrecy) and to include other groups who experience pay gaps and poorer labour market outcomes (eg disabled people).
19. To meet the June 30 timeframe, we have split the decisions required for pay gap reporting legislation into two phases. This cabinet paper covers requirements for gender pay gap reporting (phase one), including:
  - a. who the pay gap reporting system should apply to
  - b. what should be measured and reported on
  - c. whether there should be any other requirements (eg action plans).
20. A second phase of work, to begin after 30 June 2023, will consider possible requirements for ethnic pay gap reporting and design the remaining aspects of the legislative scheme. Phase two will cover decisions on:
  - a. investigating how ethnic pay gap information can also be required to be reported
  - b. the design of the support, compliance monitoring, enforcement and any penalty aspects of the system (including costings for the regulatory functions)
  - c. which entity/ies should perform these regulatory functions
  - d. which Minister/agency should administer the legislation
  - e. approval to issue drafting instructions for the legislation.
21. We intend to announce the core aspects of a gender pay gap reporting system in July, based on the phase one decisions sought in this paper. Decisions on these key elements will provide the framework for engaging with

stakeholders to ensure the remaining aspects, including the more detailed design, will be workable and as cost effective as possible for employers.

## Why implement a pay gap reporting system

22. Pay gap reporting is one of a suite of interventions used internationally to address gender pay gaps because it illustrates to both businesses and employees where improvements can be made in gender equality within an organisation and enables businesses to act. The Organisation for Economic Cooperation and Development (OECD) and the International Labour Organization (ILO) recommend pay transparency as a tool to close gender pay gaps. Comparable countries to New Zealand (such as Australia and the United Kingdom) have introduced pay gap reporting systems (although, the context and approach for these systems varies considerably). **Annex One** includes a summary of the key elements recommended, with those of comparable countries.
23. Some progress has been made in Aotearoa New Zealand to address pay inequalities across the labour market through initiatives such as the Fair Pay Agreements, amendments to the Equal Pay Amendment Act 2020, Employment Action Plans focused on improving labour market outcomes for women, Māori, Pacific peoples, and other ethnic communities. We need to build on this.
24. The public service gender pay gap has also reduced substantially over the last four years, through actions under Kia Toipoto 2021-24, and before this, the GPG Action Plan 2018-20, falling from 12.2 percent in 2018 to 7.7 percent in 2022, its lowest ever. It is important to note that the Public Service has had centralised reporting of gender pay gaps since 2001, but that the reduction of pay gaps has been accelerated since 2018 by agencies reporting their own pay gaps and the expectation that they will take a range of specific actions to close pay gaps. This shows that transparency, coupled with concerted action, can effect change.
25. New Zealand's national gender pay gap has been stagnant for well over a decade, ranging between 9 and 12 percent<sup>6</sup>. Currently, the median hourly wage for women is \$28.00 per hour, compared with \$30.85 for men. The extent of this pay gap is not the same for all women. Wāhine Māori, Pacific women and women from other ethnic communities face the compounding impact of gender and ethnic pay gaps.
26. The causes of gender and ethnic pay gaps are multi-faceted. About 20 percent of the gender pay gap in Aotearoa can be accounted for by differences between males and females in education and leadership roles, occupation choice, age, type of work and family responsibilities<sup>7</sup>. This means about 80 percent of the gender pay gap is due to 'unexplained' factors which can encompass unobservable differences in the characteristics between males and females, differences in preference for non-wage components of

<sup>6</sup> Stats NZ: Labour Market statistic (income): June 2022 quarter.

<sup>7</sup> Pacheco, Li, & Cochrane, Empirical evidence of the gender pay gap in New Zealand, 2017. Accessible at: [https://ndhadeliver.natlib.govt.nz/delivery/DeliveryManagerServlet?dps\\_pid=IE27586768](https://ndhadeliver.natlib.govt.nz/delivery/DeliveryManagerServlet?dps_pid=IE27586768)

jobs across gender and could include discrimination against females in the labour market. This is similar for ethnic pay gaps.

27. The objective of introducing a pay transparency system is to contribute to the Government's overarching outcome of reducing pay gaps by:
  - a. incentivising employers to identify and address the drivers of pay gaps
  - b. supporting employees to identify pay inequalities and enable them to take action to address them.
28. The proposed legislation will focus on pay gap reporting. Phase one covers the requirements for gender pay gap reporting, while phase two will consider including ethnic pay gap reporting. The practical or statistical issues involved in ethnic pay gap calculations are more complicated because people can identify as multiple ethnicities, and employers are less likely to collect ethnic identity information for other purposes. Stats NZ has not established guidance for measuring organisational ethnic pay gaps (as it has for gender pay gaps). It will also require significant consultation, which requires a longer timeframe. Ethnic pay gap reporting is not common in other jurisdictions.
29. A pay gap reporting system needs to be based on principles of fairness (addressing current inequities in labour market outcomes) and practicality (what can be asked of businesses, and when). In the sections below, we recommend elements that balance the trade-off between applying simple requirements that will not be overly burdensome on employers, while still ensuring the system is comprehensive enough to achieve its intended objectives.

## Who the pay reporting system will apply to

### The requirements will apply to employers with 250 or more employees initially, lowering to employers with 100 or more employees after four reporting cycles

30. Countries that require pay gap reporting apply the requirements to employers that have over a specified number of employees (ie the requirements are subject to a size threshold). **Annex One** outlines the size thresholds applied in comparable countries.
31. For the size threshold options, there is a cost effectiveness trade-off. As the threshold increases, the number of employers required to comply (and needing support) decreases at a greater rate than the decrease in the number of employees that would potentially benefit. This is shown in Table One below.

*Table One: The number and percentages of employers and employees that the requirements would apply to at different employer size thresholds<sup>8</sup>*

<sup>8</sup> Based on Business Demography Statistics (BDS) data. The BDS data is indicative only, providing an annual snapshot of economically significant enterprises only and the wage/salary earners (ie

Threshold	Number of employers covered by this threshold	Percentage of employers covered by this threshold	Number of employees covered by this threshold	Percentage of employees covered by this threshold
50+ employees	6060	3.6%	1,373,200	57.4%
100+ employees	2676	1.6%	1,142,400	47.7%
150+ employees	1722	1.0%	1,027,650	43.0%
200+ employees	1218	0.7%	941,550	39.4%
250+ employees	912	0.5%	873,900	36.5%

32. In addition, larger employers are more likely to have the payroll and human resources capacity and capability to calculate and report pay gap data. They could implement the requirements more efficiently and with less guidance than smaller employers. The key trade-off for determining the most appropriate size threshold is, therefore, between the coverage of the system versus the cost-effectiveness of the system.
33. We recommend that the size threshold is initially 250 or more employees and then lowered to 100 or more employees after four reporting cycles (meaning employers with 100 to 249 employees would be required to start reporting in year five).
34. This approach provides a clear pathway for increasing the coverage and associated impact of the system, while allowing employers that may have lower capacity (due to being smaller) more time to prepare. Staging the threshold would spread the Government’s costs for supporting employees to comply and allow any guidance to be improved before it is applied more broadly.
35. A staged approach is also more likely to support higher levels of compliance, as momentum and buy-in for pay gap reporting is likely to build following larger employers being required to report. Employers with under 250 employees could choose to begin voluntarily calculating their pay gaps earlier (ie before the legislative requirement applies to them)<sup>9</sup>.
36. While some stakeholders (eg New Zealand Council of Trade Unions and Equal Employment Opportunities (EEO) Commissioner) have suggested the size threshold could be lowered further, we consider a size threshold of less than 100 employees would not be workable or appropriate for the following reasons:

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employees) for the reference month only (ie February 2022). They are not official employment statistics, nor a complete record of all registered businesses. Business demography statistics are put together from a snapshot of Stats NZ’s Statistical Business Register (SBR). The SBR itself is maintained from several different sources, mostly related to the tax system.

<sup>9</sup> Note, we will consider in phase two whether the regulator would be able to collect voluntarily provided pay gap information and if so, what they would be able/required to do with it (as part of the decisions on the regulatory functions).



- a. It would be inconsistent with Stats NZ guidance<sup>10</sup> – Guidance from Stats NZ indicates that to calculate gender pay measures employers should have at least 100 employees, including a minimum of 20 male and 20 female employees. If employers with under 100 employees were required to report, there is a risk that the data would be highly volatile and could be significantly impacted by a small number of employees joining or leaving. Employers with under 100 employees are also less likely to have the required number of both male and female employees.
  - b. Employers with under 100 employees may not have the capacity or capability to implement the requirements – Stakeholders (including payroll providers and the Human Resources Institute of New Zealand) indicated that employers with under 100 employees were likely to either not have any internal HR or payroll resources, or only have one person, so implementing these reporting requirements would be burdensome.
  - c. Cost effectiveness in terms of number of employees covered versus additional compliance cost for employers reduces markedly below 100 employees – For example, if the threshold was at 50+ employees compared to 100+ employees, the requirement would apply to over twice the number of employers, while only extending coverage to 20 percent more employees.
37. As part of the detailed design of the system, we will consider whether there are any situations where exemptions or extensions may be granted (eg due to a pandemic).

*The requirements will apply to all employers that meet the size threshold, including the public sector*

38. Applying the requirements to all employers (where they are above the size threshold) means that public sector employers are automatically included unless the legislation specifically excludes them.
39. Public service agencies, Crown entities and non-public service departments are already reporting their gender and ethnic pay gaps in action plans under Kia Toipoto (the Public Service pay gaps action plan 2021-2024). While Kia Toipoto already addresses the intended objectives of a pay transparency system, we consider that for consistency and fairness, the legislative requirement should be applied to all organisations, including the public sector.
40. Te Kawa Mataaho Public Service Commission (the Commission) has indicated that it would likely support this system applying to the public sector if the detailed requirements are consistent with Kia Toipoto and Stats NZ pay gap reporting and guidance. We agree some technical differences in requirements might be justified for those covered by Kia Toipoto (eg retaining their current reporting dates for simplicity purposes) and will direct officials to work with the Commission to consider this as part of the detailed design of the system.

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<sup>10</sup> <https://www.stats.govt.nz/assets/Uploads/Methods/Organisational-gender-pay-gaps-measurement-and-analysis-guidelines/organisational-gender-pay-gaps-measurement-analysis-guidelines.pdf>

41. As local government is not included in Kia Toipoto, a requirement to report pay gap will be the first time a mandatory pay gap reporting requirement would apply to local government (noting, some local authorities will be too small to be captured by the proposed size threshold).

*The system will only apply to employees, and not contractors, as per other employment relations and employer standards requirements*

42. The assumption in the design of the system is that it will only apply to employees and not contractors. This is consistent with approaches in other countries, which are largely based on the 'employee' headcount, and the employment relations and employment standards (ERES) system, which only applies to employees. Including contractors would not be viable as the way contractors are remunerated for their services is very different from how employees are paid, and would make pay gap calculations very complicated.
43. Excluding contractors may create a risk of employers taking on workers as contractors, rather than employing them, to avoid these requirements. However, this risk applies across the ERES system (for example, in relation to minimum wage and annual leave requirements) and is better addressed through the Government's wider work programme focused on addressing potential risks and issues with employees being misclassified as contractors.

**Employers that meet the size threshold but don't have enough employees in each gender category for data reliability will still be required to calculate pay gaps, but the reporting requirements may be removed or modified**

44. Stats NZ guidance recommends that to calculate and measure pay gaps there should be a minimum of 20 in each gender category (ie 20 male and 20 female<sup>11</sup>) in the data for statistical robustness. In addition, there may also be privacy issues for groups with less than 20 employees.
45. It may, therefore, not be appropriate to require employers that meet the size threshold to calculate and report pay gaps if they do not have the required number in a gender category, as the calculations may not be reliable.
46. The requirement to have 20 in each gender category is based, however, on the number of employees that have disclosed their gender to their employer. There is a risk that excusing employers that do not have 20 male or 20 female employees from all requirements could create a perverse incentive to make limited efforts to request gender information to avoid the pay gap reporting requirements.
47. We, therefore, recommend that:
  - a. all organisations that meet the size threshold should be required to calculate their pay gaps, and the other mandatory measures (covered

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<sup>11</sup> The requirement to have 20 within a category would also apply if an employer had employees that identified as 'another gender'.

below), regardless of whether they have 20 male and 20 female employees to include in the calculations<sup>12</sup>, but;

- b. that reporting requirements may not apply or may be modified for employers with less than 20 male or female employees (eg they could be required to report none or only some measures to the regulator and/or what is reported may not be published).
48. Whether the reporting requirements are removed entirely or modified will be considered as part of phase two, as these decisions are heavily impacted by decisions on the regulatory functions and compliance approach. Officials would also need to work with Office of the Privacy Commission to ensure the approach to reporting in this situation does not raise any privacy risks (particularly when there are very low numbers in a gender category).
49. The same requirement would apply if an employer had employees that identified as 'another gender', meaning if they have under 20 employees that identified as 'another gender' they would:
- a. be required to calculate the pay gap and other measures for 'another gender', but;
  - b. may not be required to report or may have different reporting requirements for those calculations and measures.

**A snapshot date is a simple and straightforward approach to calculating if an employer meets the size threshold and which employees are captured**

50. Internationally, there are different approaches for when an employer meets the size threshold and when the identification of employees', whose pay is to be included in the gender pay gap calculation, occurs. Some countries choose to use a simple snapshot date (UK), or require the employer to pick a date within a set period (eg Ireland allows any date in June) to calculate both whether the employer meets the threshold, and which employees' pay data are included. Canada tries to ensure that the seasonal workforce is captured at the most representative point in the year for each employer, by moving the snapshot date to a point in the year where temporary employee numbers are at their highest for that employer.
51. Temporary workers make up a relatively small proportion of the workforce in New Zealand and a portion of those workers would already be employed by employers that meet the threshold count. We therefore consider that the relative value-add of a system that allows the calculation date to vary would not be significant enough to warrant the additional costs and complexity. A snapshot date is simple, cost effective and provides a consistent approach so that data can be compared year on year.
52. We propose that a date (or dates) be specified for both the employer threshold count and the calculation of employee pay for the gender pay gap measures.

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<sup>12</sup> The requirement to have 20 within a category would also apply to calculation and reporting of 'discretionary pay gap' (refer paragraphs 65-68 below).

53. Currently, the public sector uses 30 June as the date they calculate their gender pay gaps (as this aligns with end of year reporting in the public sector). We will work out the specific date(s) as part of the detailed design of the system, including whether different dates between the public and private sector would be appropriate (eg to account for best capturing the seasonal workforce or end of year reporting in the private sector).

## **What will be measured and reported on**

### **The pay gap system will use the gender categories of male, female and 'another gender'**

54. The policy objectives could be frustrated if employers are not required to request information about gender. Some employers already request information on gender, for example, as part of recruitment. We propose requiring employers that have met the threshold to request information from employees about their gender. It would remain voluntary for employees to choose whether to provide gender information when asked by their employer.
55. Stats NZ has developed a standard for the collection and dissemination of data on gender. It was developed through a review process with substantial consultation. The gender categories recommended by Stats NZ are 'male', 'female' and 'another gender'. As these categories are well established, we would propose applying these gender categories.
56. We also propose that if any employer has employees that identify as 'another gender' the employer should be required to calculate and report pay gaps (and other mandatory measures) for 'another gender', subject to any requirements on minimum numbers required for data reliability or privacy reasons. We intend to work through how this calculation would work, including identifying the relevant comparator group, as part of the detailed system design.

### **Employers will be required to report the organisation-wide mean and median gender pay gaps**

#### *Reporting should be at the organisation-wide level*

57. An organisation-wide measurement compares the difference in pay between gender groups in an organisation. This is the Stats NZ recommended approach and is the most common approach internationally (refer to **Annex One** for the country comparison of key elements). An organisation-wide pay gap is often used with supplementary measures, like quartile information, to provide further insights into pay gaps.
58. Some countries use a by-level (ie the difference in pay between groups at the same level, like tiers or managers), or a like-for-like approach (the difference in pay between two groups in the same role). Where this approach is used, for example Australia or Canada, the employer is not reporting this information. Rather, their regulators collect the information and report the gender pay gaps across a sector or nationally. This avoids data reliability issues and privacy

concerns that could occur at the organisation level and ensures a consistent approach to categorising the levels and occupations for the pay gap reporting.

59. Any consideration of a by-level or a like-for-like approach would require the legislation to provide a consistent approach to setting occupations or levels, which would add significant complexity and be unworkable for many employers (due to a lack of a common approach to pay bands, tiers, and occupations). It would also likely require a substantive role for the regulator in collecting and reporting this data across occupations and levels. This is because an employer is unlikely to have at least 20 employees in each gender category for each occupation or by-level category, meaning the data couldn't be reported per organisation or could be reported in a very limited way.
60. We propose that employers be required to calculate gender pay gaps at the organisation-wide level. Measuring organisation-wide pay gaps strikes the right balance between ease of calculation and incentivising employers to investigate the drivers of their gaps. However, further measures are required to be able to identify the drivers of pay gaps. Accordingly, this measure can be combined with additional measures (described at paragraphs 64-71 below) to enable analysis that can assist in providing context and insight into why an employer's pay gap exists.

*Employers must report both the mean and median measures*

61. Stats NZ guidance indicates that using both the mean and median provides a balanced overview of an employer's gender pay gap:
  - a. **Median pay shows the middle amount of pay earned.** For example, half of the employees earn less, and half earn more, than the median amount. Medians can identify 'typical' pay for an organisation. An employer typically has more employees with low to medium income and fewer employees with higher income. The median depends primarily on the order of the data, so it will not be impacted by outliers, such as a small number of employees with high income (like CEOs).
  - b. **Mean pay shows the average pay.** The mean is the sum of all pay, divided by the number of people earning that total pay – ie the amount of money each employee would receive if the total pay was divided evenly among all employees. Mean pay can be influenced by small groups of employees with very high pay. With a couple of very highly paid people in a small business, mean pay may be much higher than typical pay for most people.
62. Internationally, most countries require both the mean and median to measure pay gaps (see **Annex One**). The calculation of both mean and median pay gap can be done using the same data so there is very minimal additional resource required to do both rather than just one. In addition, each measure provides different and useful contextual information about an employer's gender pay gap.
63. We propose employers be required to report the organisation-wide mean and median gender pay gap calculations for each gender category. As part of the

detailed design, there will be further work on to identify the most appropriate comparator group for 'another gender.'

**Additional measures will be required to support employers and the public to understand drivers of pay gaps**

64. Organisation-wide pay gap reporting is a helpful first step to identifying pay gap issues within an organisation, but it can be a blunt measure which identifies if an aggregate pay gap exists between two groups and not what the drivers are. Additional measures are therefore useful to provide context to the overall calculation and assist in identifying the drivers of pay gaps. Additional measures can enable more detailed analysis and context for the drivers of pay gaps within an organisation.

*Requiring discretionary pay to be reported as a separate metric to the gender pay gap calculation*

65. There is also value in separating out 'discretionary pay' (eg bonuses, performance-based pay and incentives) as a separate measure to the gender pay gap calculation (the discretionary pay gap). This is because the experience overseas has been that there tends to be larger gaps in men and women's discretionary pay, as compared to base pay alone. We propose that employers be required to report the difference in mean and median discretionary pay paid to male employees and to female employees. We also propose that the difference in the mean and median discretionary pay paid to 'another gender' compared to a comparator group be calculated and reported if an employer has employees that identify as 'another gender'.
66. The requirement to have 20 within a category would apply, meaning the reporting requirements may not apply, or may differ, if an employer has less than 20 employees that receive discretionary pay in a gender category.
67. The discretionary pay gap would be calculated over a 12-month period because this type of pay fluctuates over the year. The scope of what constitutes 'discretionary pay' will be defined as part of the detailed design of the system.
68. In addition to reporting the discretionary pay gap calculation, we propose that employers be required to report the *proportion* of males, females and those of 'another gender' that receive discretionary pay across the organisation. This measure draws attention to the demographic of workers who receive discretionary pay and can help employers and employees understand why pay inequities might exist; particularly for organisations that use discretionary pay as a core component of remuneration.

*Requiring the proportion of each gender category within each pay quartile*

69. We propose employers would also be required to report the proportion of males, females and 'another gender' within each pay quartile. This measure would be simple for employers to calculate as it would use the same data set as is required to assess the organisation-wide pay gap measurements. This

measure is valuable because it draws attention to the workforce demographic at each quartile and supports employers to identify the potential drivers of their pay gaps. It will show if there are high concentrations of gender categories who are highly or lowly paid within an organisation. This measure could also be used as a way for employers to explain their pay gaps.

*Reporting the number or proportion of males, females, 'another gender' and 'no response'*

70. The number or proportion of males, females and 'another gender' employees, as well as those that did not provide their gender, is a useful metric to help the public and regulator's understanding of the overall reliability of measurements that are reported on and inform any future improvements around reporting and compliance approaches (ie if it became clear that employers had low disclosure rates for gender information). It could also provide employers with an initial prompt to consider the gender composition of their workforce.
71. Employers would already need to calculate the number of males, females and 'another gender' to calculate their pay gaps. As part of the detailed design of the system we will consider further whether employers should be required to provide the number or the proportion of employees in each category, taking account of how simple it would be for employers to specify exact numbers of employees.

**Determining the types of pay and pay period to be used to calculate pay gaps will be worked through as part of the detailed design**

*We consider the key types of remuneration should be included in the pay gap calculation, but further work is required to specify which types of pay are included*

72. Internationally the definition of pay used to measure pay gaps in an organisation differs. Australia uses a total remuneration approach, meaning all elements of pay are included for the gender pay gap calculation, including non-monetary benefits. Most other countries, however, exclude certain types of pay. The UK includes 'ordinary pay' and 'bonus pay,' but excludes overtime payments, reimbursement for expenditure relating to work, cashing out leave and non-monetised benefits. Ireland takes a similar approach to the UK but includes overtime payments.
73. Canada takes another approach and uses base salary, excluding any overtime payment and bonuses, as the gender pay gap unit of comparison. However, it also requires bonus pay gaps and overtime pay gaps to be reported separately (the mean and median difference in bonus pay and overtime pay).
74. We are seeking an in-principle decision that the key types of remuneration to be included in the gender pay gap calculation should be 'base pay' (earnings before tax without any deductions for superannuation or benefits) and 'variable pay elements' (like overtime and penalty payments that are not fixed and regular payments). This decision is subject to further work on the definition and scope of these elements of pay (ie exactly which types of pay

should be included in base pay and variable pay), and whether any 'fixed pay' elements, like monetised allowances and employer superannuation contributions should also be included.

75. We will also consider the practicalities of including discretionary pay (bonuses, performance-based pay and incentives) in the gender pay gap calculation (in addition to requiring it as a standalone pay gap reporting measure, refer paragraphs 65-68).

*We consider that a pay period of 12 months will be most effective, but we need to test this further with employers to ensure the benefits outweigh the costs*

76. The period over which pay data is collected and used to calculate pay gaps also differs internationally. Australia and Ireland assess 12 months of pay data from the snapshot date. The UK uses the pay period closest to the snapshot date (this can be a week, a fortnight, monthly or any other unit of measurement depending on the length of the employer's typical pay period).
77. Canada also uses a pay period; however, it sets a minimum of two weeks and a maximum of 52 weeks. It should be noted that Canada only uses base pay in their pay gap calculation, so they do not need to deal with how bonus pay or overtime pay are treated in their pay gap calculation. Instead, they require bonus pay and overtime pay measures to be reported separately and for the previous 12 months of pay data.
78. These differences in approach are likely to be due to the practicalities and costs associated with calculating the different elements of pay, and the level of sophistication of payroll or human resource systems in their jurisdiction. Defining the scope of pay and the pay period for calculation is a very technical area that will depend on what elements of pay can practically be calculated, based on existing payroll data. Confidential advice to Government  
A key consideration for whether pay can be practically calculated is the cost associated with being able to get and calculate the data.
79. One of the challenges that was identified by payroll providers was the ease of extracting hours worked from payroll systems currently. Some providers highlighted that existing software does not always calculate accurate hours worked. For example, where allowances are associated with hours worked, the system could count hours twice (once for base pay and once for allowances). However, it was noted that these issues may need to be fixed with the upcoming changes to the *Holidays Act 2003*. If there are any complexities with gathering hours of work data, this would be more challenging over a longer pay period than a shorter pay period.
80. The public service currently undertake their gender pay gap analysis by looking at the contracted base salary as at 30 June of each year (ie the salary recorded at 30 June, rather than taking a pay period or averaging out what the salary is over the previous 12 months).
81. We consider that a 12-month period would be most effective in determining what an employee actually earned over that time, and therefore provide the



most accurate data for the gender pay gap calculation. However, we have concerns about the viability of this option for calculating all elements of pay, as we understand hours of work data is not always recorded in a way that is easily extractable. There is a risk that the costs of complying could be high. One way to mitigate this risk is to allow employers to use base pay if the pay the employee receives does not change over time. Further work is needed to test with employers and payroll providers whether this approach would reduce compliance costs or add unnecessary complexity.

82. There are interdependencies between the type of pay included for the gender pay gap calculation and the pay period used for the calculation (ie the more complex the pay is, the harder it may be to get 12 months of pay information compared to a pay period). As noted above, we intend to work on the scope and definition of the elements of pay as part of the detailed design of the system in phase two. We will also assess the pay period for calculating the different types of pay as part of that work.

**The unit for comparison for the gender pay gap is an hourly rate of pay, for some employees contracted hours can be used instead of actual hours**

83. The most typical unit of measurement in the countries we most closely compare ourselves to is an hourly rate (UK, Ireland and Canada, refer **Annex One**). To assess the average hourly rate of pay, countries assess pay received over a pay period and divide this by the hours worked. For salaried workers, some countries allow the hours worked to be based on contracted hours rather than actual hours worked. The resulting figure is an average of the pay received per hour during that pay period.
84. The outlier to this approach is Australia which annualises pay to get the unit of comparison. Annualising pay requires a common definition of a full-time equivalent (FTE) employee. In Australia, this differs per employer based on an assessment of the average number of hours that a full-time person works in that organisation. This can lead to less consistent calculations across organisations, compared to an hourly wage calculation.
85. We propose an hourly rate as the unit of comparison because it creates a consistent and simple measure regardless of how many hours or how often an employee works in the year.
86. Instead of requiring actual hours worked, some countries (the UK and Ireland) permit employers to use the contracted hours of work for employees whose hours do not differ from week to week over a longer period. We propose this approach for New Zealand.

**Employers will be required to report pay gaps annually to a regulator, who will publish the pay gap information centrally**

87. Reporting to a regulator and publication by the regulator is the most practical and cost effective approach to incentivise employers to investigate and address drivers of pay gaps, and to support employees (current and future) to identify pay inequities and enable them to take actions to address them.

Putting all employers' pay gap information in one central public place would make pay gap information accessible not only for employees, but also the wider public. Because all the pay gap information would be in one place, it would reduce search costs for both employees and the wider public (including media outlets). It would also mean that prospective employees would have this information when deciding whether to work for a new employer.

88. Some overseas jurisdictions, for example the UK and Ireland, also require employers to report pay gap information on their own websites (in addition to reporting to a regulator). This is the approach was suggested by the National Advisory Council on the Employment of Women (NACEW) and the Commission. However, we consider this would be difficult for employers to implement as a minimum legal requirement (eg if they don't have a website) and for the regulator to monitor. We therefore propose that employers are only required to report pay gap information to a regulator, who will then publish this information centrally. However, employers will be encouraged to also publish their reporting on their own website and share it with employees.
89. We propose that employers be required to report their pay gaps annually. Annual reporting provides a greater incentive for employers to investigate their pay gaps than a longer reporting period, as compiling and reviewing pay gap data will likely be part of an employer's regular reporting cycle along with other existing annual reporting obligations. Annual reporting will also support employers and employees to take action to address pay gaps as information will be more up to date compared to a longer reporting period.

### **Should there be any requirements in addition to reporting**

90. Additional requirements are common features in overseas jurisdictions and are often called 'action plans'. There is a range of understanding of what is meant by this term. International approaches range from encouraging voluntary actions with light touch guidance through to extensive mandatory investigative and goal setting requirements.
91. The evidence on the effectiveness of action plans is promising, but research is still emerging. Internationally, pay transparency systems (and action plan requirements) are still relatively new, especially in the countries that have systems that are most similar to the system that we are proposing for New Zealand (see **Annex One**).
92. To design a system that is suitable for New Zealand's circumstances we would want to understand the effectiveness of different types of systems (from more flexible to more prescriptive) at reducing the gender pay gap, and the associated costs (to employers and government). Based on the current available evidence we do not consider we have enough information to recommend introducing any mandatory requirements in addition to reporting at this stage.
93. In addition, feedback from consultation indicates most employers would not be ready to produce an action plan at the same time as coming up to speed with the proposed reporting requirements.

94. That said, stakeholders also indicated that many employers would want to have the chance to explain their gender pay gap alongside the reported figures. The Commission reports that under Kia Toipoto evidence shows action plans have contributed to reducing the gender pay gap in the public service more than just reporting alone, but that they require significant capability and capacity of employers and the regulator.

**Government should encourage employers to produce a voluntary action plan**

95. A voluntary action plan would allow the employer to choose from a range of actions depending on their circumstances. Employers could do some or all of the following via an action plan:
- a. write a narrative to explain their gap.
  - b. produce more detailed measures of their gaps, for example through comparison of pay in similar roles, assessing the ratio of male, female or another gender in different roles.
  - c. identify the drivers of their gap.
  - d. identify and take actions to address the drivers of their gap.
96. There is a wide scope of options as to what form the encouragement could take, depending on available budget. This could range from guidance to more involved support such as workshops. We have instructed officials to develop and provide advice on options, including costs, as part of phase two of the work.

**A review after three reporting cycles will consider whether actions plans should become mandatory**

97. The initial evidence suggests that there is some merit in exploring mandatory action plans in the future. We consider three reporting cycles is the appropriate review period, because it will allow time for measuring and reporting requirements to bed in, for employers to learn more about their gaps, and to see if voluntary actions are helping reduce pay gaps.
98. Further advice about the review would be provided in phase two, but we think it could consider:
- a. whether employers have been reducing their gender pay gap through measuring and reporting, and voluntary action plans
  - b. what actions employers are voluntarily taking to reduce their gender pay gaps, and the impacts of these actions
  - c. further observations from overseas as to the effectiveness of mandatory action plans within pay gap reporting systems, in contrast to systems with voluntary action plans.

99. NACEW is supportive of the proposed approach to encourage voluntary action plans but supports a review to consider whether to introduce mandatory action plans after *two* reporting cycles.

### **The design and development of the system will be mindful of compliance costs for employers**

100. We have been mindful of the potential compliance costs for employers in designing the key elements of the system by, for example, proposing that the system apply initially to larger employers and that employers are only required to report on organisation-wide pay gaps, rather than at a more granular level which would add complexity.
101. We consider that, where employers have a payroll system where the information required for the pay gap calculation is straightforward to extract, then the compliance costs are not likely to be large, particularly for employers with 250+ employees.
102. There are further design components, that will be considered as part of the next phase of work (discussed below), which can ease compliance costs. For example:
- a. taking into account the ability to extract different types of information from payroll systems when determining which elements of pay should be included in the calculation
  - b. providing tools and systems that will systematise tasks for employers, such as pay gap calculators and reporting portals for submitting information to the central register.

### **Risk assessment**

103. The proposals in this paper comprise the key elements of a gender pay gap reporting system. Phase two of the work will involve:
- a. detailed design proposals that flow from the high-level proposals in this paper
  - b. the remaining policy proposals required to design the system as a whole (ie the potential inclusion of ethnic pay gap reporting, which entity will perform the regulator functions and the scope of the regulatory functions), as well as potential funding options.
104. Given that there are both more detailed, and additional, design elements to work through before the system can be drafted into legislation, there is a risk that some of the high-level decisions made on the proposals in this paper may need to be amended or changed at a later stage. For instance, if it becomes clear during detailed design that a proposal is unworkable or there is a better alternative to achieve the policy objectives.
105. In addition, the decisions in this paper are being made in the absence of estimates of the compliance costs for employers, and the decisions commit government to providing some level of regulatory functions, which have not

yet been quantified, costed or resourced (more detail is provided in the section immediately below).

## **The decisions in this paper commit government to providing some level of regulatory functions**

106. Regulatory functions will be necessary to support the robustness and transparency of the pay gap system. This Cabinet paper includes recommendations that will require a regulator to:
- a. create and maintain a central register of pay gap information
  - b. undertake some level of compliance activity to ensure employers report the required information, potentially including monitoring for non-compliance and enforcement against employers who do not comply
  - c. issue guidance for employers on how to report pay gap information and how to develop action plans (for those employers who voluntarily choose to develop them).
107. Additional regulatory functions may be needed, depending on the decisions made on this paper and on work in phase two.
108. It is important to note that the costs associated with these regulatory functions will require upfront and ongoing funding, and that additional functions will come with additional costs. Phase two will identify the entity (or entities) that will perform different regulatory functions, the scope of those functions, and the associated costs.
109. Phase two will also consider compliance and enforcement measures. These are key tools to ensure the robustness of the pay transparency system, and to achieve the desired objectives. We have asked officials to focus on a light touch approach to compliance and enforcement that incentivises employers to comply whilst also achieving the system's objectives.

## **Phase two will cover the remaining elements of the pay gap reporting system**

### **We are seeking a delegated decision-making authority for the detail design**

110. To support the high-level Cabinet decisions sought in this paper, it will be necessary to make further detailed design decisions for the drafting instructions (which will be undertaken after phase two decisions have been agreed). We are, therefore, seeking a delegated decision-making authority in relation to the detailed design elements that flow from these high-level policy decisions. Under that delegated authority, we will make decisions that are consistent with the overall parameters set by the policy decisions in this paper.

**The next cabinet paper will cover the remaining decisions required to enable drafting of pay gap reporting legislation**

111. A further cabinet paper will cover the remaining high-level policy decisions needed for drafting legislation to implement a pay gap reporting system. In particular, it will cover decisions on:
- a. investigating how ethnic pay gap information can also be required to be reported
  - b. the design of the support, compliance monitoring, enforcement and any penalty aspects of the system (including costings for the regulatory functions)
  - c. which entity/ies should perform these regulatory functions
  - d. which Minister/agency should administer the legislation
  - e. approval to issue drafting instructions for the legislation.
112. Following decisions on this paper, we will work with officials to fully scope the resource required and develop the timeframe for phase two, taking into account where this fits within the Government's priorities. Given the amount of work required for the remaining high-level policy decisions and detailed design, it will not be possible to report back before the election.

**Financial Implications**

113. Pay transparency legislation will create costs to the Crown. The extent of these costs will depend on the design of the system.
114. We expect the Crown will incur costs related to developing and maintaining the register and central reporting, and from providing information and education, monitoring, and compliance and enforcement. However, detailed development of the regulatory functions will not happen until phase two and we have not been able to develop costings at this stage, and will not be able to do so ahead the planned announcement of this policy.

115. Confidential advice to Government [REDACTED] Treasury recommends that the funding approach is agreed before the announcement proposed in this paper, as an announcement may commit government to funding this policy without having determined the amount or source of the funding.

116. Confidential advice to Government [REDACTED]

*Financial Implications for employers*

117. Pay transparency legislation will create costs for employers. In this first phase of the pay gap reporting system development, we have not been able to quantify the monetised costs for employers. BusinessNZ and the Employers and Manufacturers Association (EMA) noted that the costs will vary depending on the size of the employer and the capability of their respective payroll and HR systems. They also indicated that there were two types of costs for an employer – costs of complying with the measurement and reporting requirements and costs of taking actions to address issues identified. The latter of these costs could be higher than the reporting costs and will be variable depending on the drivers of an employers' gap.

## **Legislative Implications**

118. Legislation will be required to implement the pay gap reporting system. The Bill is currently not on the legislative programme. However, we will seek agreement to add it on the legislative programme and advise on its priority as part of the phase two cabinet decisions.

119. The proposed Act will bind the Crown.

## **Impact Analysis**

### **Regulatory Impact Statement**

120. MBIE's Regulatory Impact Analysis Review Panel, which included a representative from the Ministry for Women, has reviewed the Regulatory Impact Statement prepared by MBIE. The Panel considers that the information and analysis summarised in the Regulatory Impact Statement partially meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

121. The panel's "partially meets" rating reflects the fact that this Regulatory Impact Statement is an interim statement and issues related to implementation, monitoring and review will be covered in a future Regulatory Impact Statement as part of phase two of the policy decision process.

### **Climate Implications of Policy Assessment**

122. The proposals in this paper do not meet the criteria for when a climate implication of policy assessment is required.

## **Te Tiriti o Waitangi**

123. Pay gaps experienced by Māori, especially wāhine Māori, are larger than the average pay gap. Multiple claims in the WAI 2700 Mana Wāhine Kaupapa Inquiry have mentioned pay gaps. Proposals in this paper could contribute to the Crown better upholding its Te Tiriti obligations.

124. Below is an initial assessment of how this proposal to require some businesses to measure and report their gender pay gaps upholds Te Tiriti. This paper proposes an intervention in relation to gender pay gaps. Phase two

of this project will consider ethnic pay gaps, with the combined decisions from the two phases forming a single policy which will then proceed to a draft Bill. More consideration of Te Tiriti, and consultation with iwi and Māori organisations, will be necessary in phase two.

125. Te Tiriti reserves for the Crown the right to govern. This policy is proposed to be implemented by legislation, and the obligations it creates will apply to all employers who meet the chosen size threshold. The direct benefit of those obligations will largely fall on the current and future employees of those employers, with possible indirect benefits on members of wider society (for example, if there is a reduction in occupational segregation<sup>13</sup> over time). We do not yet know whether the proportion of Māori working for larger employers is larger or smaller than the proportion of Māori in society, so we can't tell whether this benefit will flow disproportionately to Māori or not.
126. Under Te Tiriti, Māori retain the right to make decisions over their resources and taonga. Requiring employers to publish gender pay gaps enables employees to make decisions or take actions in response to that pay gap information. Such actions could include negotiating with their employer; or choosing an employer with a good plan in place to address or explain their pay gap. This is likely to be of benefit to wāhine Māori, who experience larger pay gaps than tāne and Pākehā women. In this sense, pay gap reporting enables wāhine Māori to make more informed decisions about their economic wellbeing.
127. The Crown's obligations to New Zealand citizens are owed equally to Māori. This policy seeks to address inequalities in New Zealand's labour markets, in the form of persistently lower pay for females compared with males, with wāhine Māori experiencing a wider gap than tāne or Pākehā women. The extent or speed of any change will depend on the form of the regulatory intervention and the actions taken by employers to address pay gaps.

## Population Implications

128. Phase one of the pay transparency system focuses on gender pay gaps, which is focused on improving outcomes for women, including wāhine Māori, Pacific women, and women from other ethnic communities. Phase two of the pay transparency system will investigate how ethnic pay gap information could also be reported. This will include consultation with representative groups of Māori, Pacific peoples and people from ethnic communities.
129. As outlined above, the drivers of pay gaps are varied and complex, and require substantial societal change to eliminate them. A pay transparency system will help shine a light on drivers of pay gaps by incentivising employers to identify and investigate pay gaps, and support employees to identify pay inequities and enable them to take actions to address them. This is expected to reduce pay gaps and improve labour market outcomes for women of all ethnicities.

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<sup>13</sup> Occupational segregation refers to the separation and clustering of males and females in particular occupations.



130. We acknowledge that those with a disability and people in the rainbow community have also experienced persistent pay gaps and ongoing poor labour market outcomes. The current work to develop a pay gap reporting system considers gender and ethnic pay gaps only. However, we expect that pay gap information will also support members of these communities, particularly those in the rainbow community that identify as 'another gender' (given the inclusion of 'another gender' as a gender category).

## Human Rights

131. We consider this proposal is consistent with the New Zealand Bill of Rights Act 1990.
132. The proposals in this paper also support New Zealand's international human rights obligations. Pay equity or "equal pay for work of equal value" is a fundamental right under international human rights law, as recognised at Article 23(2) of the Universal Declaration of Human Rights. Furthermore, pay equity is referred to in major treaties which Aotearoa New Zealand has ratified, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), Articles 2, 3 and 7 and under the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), Article 11.
133. We note that the EEO Commissioner has expressed concern about setting any threshold for the inclusion of employers within the pay gap reporting system. The EEO Commissioner considers that the system should apply to all employers but that requirements could differ for different sized employers). The Commissioner considers that all workers should have equal protection from having their human rights breached through 'discriminatory pay inequities', and that people working under small employers shouldn't miss out on the benefits and protection of pay transparency.
134. However, the existence of a pay gap, in itself, is not evidence of discrimination (although it may be) as there are a range of other factors that impact pay and pay gaps. Under the Human Rights Act 1993 all people have the right not to be discriminated against in employment (the Equal Pay Act 1972 also protects the right to be free from discrimination based on sex relating to remuneration and employment). There are already a range of mechanisms to help people become aware of their rights (eg guidance, awareness-raising activities) and how to address them (eg make a complaint to the Human Rights Commission, or raising an equal pay or pay equity claim).

## Consultation

135. The following agencies have been consulted in the development of this paper: The Department of Prime Minister and Cabinet, the Treasury, Statistics New Zealand, the Inland Revenue Department, the Ministry of Education, the Tertiary Education Commission, the Ministry of Social Development, Te Kawa Mataaho Public Service Commission, the Ministry of Justice, Whaikaha Ministry of Disabled People, Te Puni Kōkiri, the Ministry for Pacific Peoples, and the Ministry for Ethnic Communities.

136. NACEW has also been consulted in the development of a pay transparency system for this paper, as the appointed advisory group on pay transparency. In general, the recommended requirements align with what NACEW indicated as their preferred options.

#### *Treasury Comment*

137. The Treasury recommends against announcing the policy decision ahead of the funding being confirmed for this policy. The Treasury understands further work is required before reporting back with detailed financial options in phase two. The Treasury considers that announcing the policy without the funding being secured effectively commits the government to funding this work, either from existing or new sources. The Treasury recommends Cabinet considers the benefits of announcing this policy now against the benefit of maintaining optionality and the fiscal management approach for future Budgets.

### **Communications**

138. Subject to the decisions on this paper, we intend to publicly announce the core policy decisions in this paper.
139. We consider that the proposals in this paper would enable an announcement that set out the key elements of a gender pay gap reporting system including, the size threshold of employers to whom the system would apply, the requirement for those employers to report their mean and median organisation-wide gender pay gap annually to a regulator (as well as a small number of additional measures), and that the Government will encourage employers to develop action plans to address the drivers of their pay gaps, but these will not be mandatory.
140. The announcement could signal that work is underway to develop the remaining aspects of the system, which will complement the core elements, including the potential to include ethnic pay gap reporting. The announcement could also note that the timing for the commencement of the requirements will be available at the time that the legislation is introduced.
141. A communication package will be developed and include a communication plan, a stakeholder engagement approach, press release, reactive Q&As and key messages.

### **Proactive Release**

142. This Cabinet paper will be released within 30 days of decisions being made by Cabinet.

### **Recommendations**

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

- 1 **note** that on 19 October 2022 the Cabinet Social Wellbeing Committee agreed that the policy development of a pay transparency regime should

commence, and that ministers should submit a paper to SWC in due course seeking policy decisions [SWC-22-MIN-0174];

- 2 **note** that on 5 April 2023, the Cabinet Social Wellbeing Committee invited Ministers to report back to Cabinet by 30 June 2023 with developed policy proposals for pay transparency legislation [SWC-23-MIN-0030.01];
- 3 **note** policy design for pay gap reporting legislation has been split into two phases, and this paper covers the key elements for gender pay gap reporting (phase one), including:
  - 3.1 who the pay gap reporting system should apply to;
  - 3.2 what should be measured and reported on; and
  - 3.3 whether there should be any other requirements (eg action plans);

### Who should the pay gap reporting system apply to?

- 4 **agree** that the pay gap reporting requirements will apply to employers (including public sector employers):
  - 4.1 with 250 or more employees from the commencement date, and
  - 4.2 with 100 or more employees after four reporting cycles (ie employers with 100 to 249 employees will start reporting in the fifth reporting cycle);
- 5 **note** that an assumption in the design of the system is that it will only apply to employees and not contractors (as is the norm in the employment system);
- 6 **agree** that employers that meet the size threshold but do not have at least 20 male or female employees are required to calculate their male/female gender pay gaps, and other mandatory measures, but the reporting requirements may not apply or may be different (which will be determined as part of the detailed design of the system);
- 7 **agree** that employers that meet the size threshold and have employees that identify as 'another gender', but do not have at least 20 employees in that category, are required to calculate pay gaps (and additional measures) for 'another gender', but the reporting requirements may not apply, or may be different (which will be determined as part of the detailed design of the system);
- 8 **agree** that a specified date (or dates, if a different date is set for the public sector) is used for determining if the employer meets the size threshold, and for determining which employees should be included in the pay gap calculation (and additional measures);

**What should be measured and reported on**

- 9 **agree** that employers that meet the size threshold are required to request information from employees about their gender, based on the Stats NZ recommended categories ('male', 'female', or 'another gender'), but employees' responses will continue to be optional;
- 10 **agree** that if an employer has employees that identify as 'another gender', they are required to calculate and report pay gaps for the 'another gender' group in addition to calculating and reporting pay gaps between male and female (noting, recommendation 7 would apply);
- 11 **agree** that it will be mandatory for employers that meet the size threshold to report:
  - 11.1 organisation-wide mean and median gender pay gaps (referred to as the 'gender pay gap calculation');
  - 11.2 the difference in the mean and median discretionary pay (eg bonuses) paid to male employees compared to female employees (referred to as the 'discretionary pay gap calculation');
  - 11.3 the difference in mean and median discretionary pay paid to 'another gender' compared to a comparator group (to be determined in phase 2) if they have employees that identify as 'another gender';
  - 11.4 the proportion of males, females and 'another gender' that receive discretionary pay;
  - 11.5 the proportion of males, females and 'another gender' in each pay quartile; and
  - 11.6 the number or proportion of males, females and 'another gender' who reported their genders, as well as the number or proportion of employees that did not provide a response on their gender;
- 12 **agree in principle** that the gender pay gap calculation (refer recommendation 11.1) will cover the key types of remuneration employees receive, including base pay and variable pay, subject to further work on the definition and scope of these elements of pay and whether discretionary pay is included (in addition to being reported separately – refer recommendation 11.2);
- 13 **agree** that the unit of comparison for the gender pay gap calculation is an hourly rate of pay (as opposed to an annualised figure) and that for employees whose hours do not differ from week to week over a long period, an employer can use contracted hours of work (rather than actual hours of work) to calculate hourly pay;
- 14 **agree** that 'discretionary pay' for the discretionary pay gap calculation be required to be calculated over a 12 month pay period (noting the pay period for the gender pay gap calculation will be determined as part of the detailed design work);

- 15 **agree** that it will be mandatory for employers to report their pay gaps and additional measures annually to a regulator, who will publish the pay gap information centrally;

**Should there be any requirements on employers in addition to reporting**

- 16 **agree** that the Government encourages voluntary action plans, and provides guidance to employers to develop them;
- 17 **agree** that there will be a review of whether mandatory action plans should be introduced after three reporting cycles;

**Next steps**

- 18 **authorise** the Minister for Women and Associate Minister for Workplace Relations and Safety to make decisions, consistent with the overall parameters set by the policy decisions in this paper, on any issues that arise during the drafting process, including (but not limited to):
- 18.1 whether reporting requirements would apply or differ for employers that do not have 20 employees within a gender category (including what if any, information is required to be provided to the regulator and whether any information would be made public);
  - 18.2 whether there are any situations where exemptions or extensions may be granted;
  - 18.3 whether there should be any differences in how the detailed requirements of the system apply to the public sector;
  - 18.4 what the specified date (or dates) should be for the employer threshold count and the calculation of employee pay for the gender pay gap measures;
  - 18.5 the most appropriate requirements for pay gap calculations involving 'another gender' (eg identifying the appropriate comparator group);
  - 18.6 the definition and scope of the core elements of pay (including base pay, variable pay and discretionary pay);
  - 18.7 whether any 'fixed pay' elements (like monetised allowances and employer superannuation contributions) should also be included in the gender pay gap calculation;
  - 18.8 whether discretionary pay is included in the gender pay gap calculation (or only reported separately in the discretionary pay gap calculation); and
  - 18.9 the pay period required for assessing the elements of pay in the gender pay gap calculation;

19 **note** that the decisions outlined above will require some level of regulatory activity which will require government funding to implement;

20 Confidential advice to Government



21 **agree** to publicly announce the core policy decisions in this paper;

22 **note** announcing this policy may commit the government to funding the policy proposals without having determined the amount or source of the funding;

23 **note** a further cabinet paper will cover the remaining high-level policy decisions needed for developing and implementing a pay gap reporting system (phase two), including decisions on the inclusion of ethnic pay gap reporting, the support, compliance monitoring, enforcement aspects of the system, and which entity/ies should perform the regulatory functions;

24 **note** the further cabinet paper will seek approval to issue drafting instructions to Parliamentary Counsel Office to give effect to the policy decisions in both this paper (covering phase one decisions) and that cabinet paper (covering phase two decisions);

25 **note** that we intend to advise on the priority of the Bill in the Legislative Programme when we seek phase two cabinet decisions.

Authorised for lodgement

Hon Jan Tinetti  
Minister for Women

Hon Priyanca Radhakrishnan  
Associate Minister for Workplace  
Relations and Safety

## Annex One: Table comparing the recommended features for a New Zealand pay transparency system with the pay transparency systems of comparable countries

Country	Recommendation for NZ	Australia	UK	Ireland	Canada
Size threshold	250+ staged down to 100+	100+	250+	250+ staged down to 50+	100+
Employer size threshold determination and which employees are included in the calculation	Snapshot for both threshold and which employees will be included in the pay gap measures.	Measure peak number of employees to assess threshold. Snapshot for calculation of all employees.	Snapshot for both threshold and which employees will be included in the pay gap measures.	Snapshot for both threshold and which employees will be included in the pay gap measures.	Measure peak number of employees to assess threshold. Snapshot for which full-time employees to include. Peak when employee-count is highest for which 'temporary employees' to include
What gender categories are required?	Male/Female/Another gender/No response	Male/ Female (non-binary is collected but not reported)	Male/Female	Male/Female	Men/Women
Pay gap data required by mean, median or both?	Both	Both	Both	Both	Both
At what level is pay gap data reported?	Organisation-wide level	Across a sector/ industry and national level. Adding organisation level reporting in 2024	Organisation-wide level	Organisation-wide level	Across occupations at the sector/industry level and national level.

Country	Recommendation for NZ	Australia	UK	Ireland	Canada
What other measures are required (in addition to pay gap calculations)?	<ul style="list-style-type: none"> <li>- Mean and median discretionary pay &amp; proportion of males and females (and another gender, where appropriate) receiving discretionary pay.</li> <li>- Proportion of males, females, and 'another gender' in each quartile by pay.</li> <li>- Number or proportion of each gender and who have not disclosed their gender information</li> </ul>	<p><i>Note: Their reporting is currently at the sector level, not by organisation.</i></p> <p>From 2024 relevant employers will report:</p> <ul style="list-style-type: none"> <li>- Pay gaps by quartile</li> <li>- Percentage of males/females in quartile</li> </ul>	<ul style="list-style-type: none"> <li>- Mean/median bonus pay</li> <li>- Percentage of male/females receiving bonus pay</li> <li>- Percentage of male/females in quartile</li> </ul>	<ul style="list-style-type: none"> <li>- Mean/median bonus pay</li> <li>- Percentage of male/females receiving bonus pay</li> <li>- Percentage of male/females in quartile</li> </ul>	<p><i>Note: Their reporting is at the sector level, not by organisation</i></p> <ul style="list-style-type: none"> <li>- Mean/median bonus pay</li> <li>- Mean/median overtime pay</li> <li>- Proportion of men/women receiving bonus and overtime pay</li> <li>- Quartile salary bands by occupation</li> </ul>
How often are employers required to report?	Annually	Annually	Annually	Annually	Annually
Who do employers report to?	To a regulator who will publish the pay gap information centrally	To a regulator via an online tool, who will publish the pay gap information centrally (new requirement to be implemented)	Publish on their websites and report to a regulator, who will publish the pay gap information centrally	Publish on their websites	To a regulator via an online tool, who will publish the pay gap information centrally (note the new online tool is under development)
Are there be any requirements on employers in addition to reporting?	Government encourages employers to voluntarily develop an action plan, and provides support for businesses, with a review to consider mandatory plans after three reporting cycles	From 2024 relevant employers with 500 or more employees will be required to have policies or strategies for each of the six gender equality indicators	Action plans and supporting narratives are optional, and employers can choose to publish these	Reasons for gender pay gaps, and measures (if any) employers are taking or planning to take to eliminate or reduce these pay gaps	Carry out regular gender pay audits and take proactive steps to ensure employers are providing equal pay for work of equal value