



COVERSHEET

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

List of documents that have been proactively released

Date	Title	Author
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

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



BRIEFING

Pay transparency – Key policy decisions for phase one

Date:	25 May 2023	Priority:	High
Security classification:	In Confidence	Tracking number:	MBIE 2223-3787 MW 22-23 0293

Action sought		
	Action sought	Deadline
Hon Jan Tinetti Minister for Women	Decisions on the phase one elements of a pay transparency system.	29 May 2023
Hon Priyanca Radhakrishnan Associate Minister for Workplace Relations and Safety	Decisions on the phase one elements of a pay transparency system.	29 May 2023

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
<i>Ministry of Business, Innovation, and Employment</i>				
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<i>Ministry for Women</i>				
Deborah Malcolm	Deputy Secretary Policy		Privacy of natural persons	
Riripeti Reedy	Policy Manager		Privacy of natural persons	✓

The following departments/agencies have been consulted
Department of the Prime Minister and Cabinet, Te Kawa Mataaho Public Service Commission, Inland Revenue - Te Tari Taake, Te Puni Kōkiri, Ministry for Pacific Peoples, Ministry for Ethnic Communities, The Department of Internal Affairs, The Treasury, Stats NZ, Office of the Privacy Commissioner.

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

BRIEFING

Pay transparency – Key policy decisions for phase one

Date:	25 May 2023	Priority:	High
Security classification:	In Confidence	Tracking number:	2223-3787

Purpose

To seek your joint decisions on the key policy areas for phase one of the development of a pay gap reporting system, which cover: who the pay gap reporting system should apply to, what should be measured and reported on, and should there be any requirements in addition to reporting (eg action plans).

Executive summary

The Cabinet Social Wellbeing Committee invited you report back to Cabinet by 30 June 2023 with developed policy proposals for pay transparency legislation. In December 2022, you decided that the initial development for a pay transparency system would be focused on the introduction of pay gap reporting and action plans to address pay gaps (Briefing MW 22-23 0168 / MBIE 2223-2010 refers).

To meet the 30 June timeframe, the advice will be undertaken in two phases. The first phase covers advice on: who the system should apply to, what should be measured and reported on, and should there be any requirements in addition to reporting (eg action plans).

The recommended options for phase one are intended to 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 outcomes.

A one-page overview of our recommend approach is set out in Annex One (our recommended options are highlighted in blue). We have recommended:

- Applying pay gap requirements initially to employers with over 250 employees, lowering this size threshold to employers with over 100 employees after four reporting cycles.
- Requiring employers that meet the size threshold to calculate gender pay gaps and other mandatory measures but removing or modifying reporting requirements where employers do not have at least 20 employees in each gender category (male, female or ‘another gender’. (Based on Stats NZ guidance that for statistical reliability there should be at least 20 employees in each gender category).
- Specifying that a single date should be used for determining if an employer meets the size threshold. This snapshot date would also be used to determine which employees should be included in the pay gap calculation (and other mandatory measures).
- Requiring employers that meet the size threshold with employees that identify as ‘another gender’ to also calculate and report pay gaps, and additional measures, for the ‘another gender’ group.
- Requiring pay gaps to be measured and reported at the organisation-wide level while encouraging reporting at a more granular level.
- Requiring employers that meet the size threshold to calculate and report:

- the mean and median bonus pay paid to male employees compared to female employees (and to 'another gender' where appropriate)
 - the proportion of males, females, and 'another gender' that receive bonus pay
 - the proportion of males, females and 'another gender' in each quartile by salary, and
 - the number or proportion of employees who reported being male, female, or 'another gender', as well as the number or proportion of employees that did not provide a response on their gender.
- Requiring employers that meet the size threshold to calculate and report pay gap information annually to a regulator (which entity or entities will perform the regulatory functions is still to be determined).
 - 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.

These recommendations would need to be supported by some level of regulator activity. This will require funding that will be identified in phase two, based on further decisions regarding the design of the system (including the role of the regulator).

Phase two will also cover:

- the more detailed design decisions required to implement the decisions made in phase one
- options for government support for voluntary action plans
- investigating how ethnic pay gap information can also be required and reported
- the support, compliance monitoring, enforcement, and penalty aspects of the system, and
- which entity/ies should perform the regulatory functions.

Recommended action

The Ministry of Business, Innovation and Employment and the Ministry for Women recommend that you:

a	Note the Cabinet Social Wellbeing Committee have invited you to report back to Cabinet by 30 June 2023 with developed policy proposals for pay transparency legislation [SWC-23-MIN-0030.01].	Noted
b	Note you have agreed to undertake the policy design for pay transparency legislation in two phases, and this advice covers: <ul style="list-style-type: none"> • who the pay gap reporting system should apply to; • what should be measured and reported on; and • whether there should be any requirements in addition to reporting (eg action plans). 	Noted
c	Note that this advice is focused on gender pay gaps and that including ethnic pay gaps will be investigated as part of phase two.	Noted
d	Note officials are scheduled to meet with you on 29 May 2023 to confirm your joint decisions on the recommendations within this briefing.	Noted

Section A: Who should the pay gap reporting system apply to?

<i>Section A.1</i>		
e	Agree to one of the following options for the size threshold that determines which employers are required to calculate and report pay gaps (by circling your preferred option): <ul style="list-style-type: none"> • <u>Option 1</u>: A threshold of 250+ employees; OR • <u>Option 2 (recommended)</u>: Starting with a threshold of 250+ employees and staging down to a threshold of 100+ employees; OR • <u>Option 3</u>: A threshold of 100+ employees. 	<p><i>Option 1</i></p> <p>Option 2</p> <p><i>Option 3</i></p>
f	Agree that if you select Option 2 above (recommendation e), you need to choose one of the following options for how the staged approach would be implemented (by circling your preferred option): <ul style="list-style-type: none"> • <u>Option 2A (recommended)</u>: The system will apply to employers with 100+ employees four reporting cycles after it applies to employers with 250+ employees (ie they start reporting in the fifth reporting cycle); OR • <u>Option 2B</u>: Specify the system will apply to employers with 150+ employees after two reporting cycles; and employers with 100+ employees after four reporting cycles; OR • <u>Option 2C</u>: The decision to lower the threshold is considered after a specified review period. 	<p>Option 2A</p> <p><i>Option 2B</i></p> <p><i>Option 2C</i></p>
g	Note the assumption in the design of the system is that it will only apply to employees and not contractors.	Noted

Section A.2

- h **Agree** that employers that meet the size threshold but do not have at least 20 male or female employees are:
- a. required to calculate their gender pay gap and other mandatory measures;
 - b. but the reporting requirements may not apply or may be different.
- Agree / Disagree**
- i **Agree** that if an employer has employees that identify as ‘another gender’ but do not have at least 20 employees in that category, they are required to include ‘another gender’ in the calculations, but the reporting requirements may not apply, or may be different.
- Agree / Disagree**
- j **Note** we will provide advice in phase two on whether reporting requirements would apply where there are less than 20 employees in a gender category (eg whether any information is required to be provided to the regulator), or whether there should be different requirements (eg whether any information would be made public).
- Noted**

Section A.3

- k **Agree** that a single, specified ‘snapshot’ date be used for determining if the employer meets the size threshold, and that this snapshot date be used for determining which employees should be included in the pay gap calculation (and additional measures).
- Agree / Disagree**

Section A.4

- l **Agree** for the pay gap reporting system to apply to both public and private sector employers that meet the size threshold (including not-for-profit organisations).
- Agree / Disagree**
- m **Note** there may be some differences in how the detailed requirements of the system apply to the public sector, which will be considered as part of the detailed design work in phase two.
- Noted**

Section B: What should be measured and reported on

Section B.1

- n **Agree** that employers that meet the size threshold should also be required to collect information on employee gender based on the Stats NZ recommended categories (‘male’, ‘female’, or ‘another gender’), but employees’ responses will continue to be optional.
- Agree / Disagree**
- o **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, that reporting requirements may not apply or may be different if they have less than 20 employees that identify as ‘another gender’, refer recommendation i).
- Agree / Disagree**
- p **Note** we will do further work as part of phase two to determine the most appropriate requirements for pay gap calculations involving ‘another gender’ (for example, identifying the appropriate comparator group).
- Noted**

Section B.2

q **Agree** that reporting of pay gap data includes both mean and median measures. **Agree / Disagree**

Section B.3

r **Agree** that the organisation-wide pay gap reporting would be required but that reporting of pay gaps at more granular levels would be encouraged. **Agree / Disagree**

Section B.4

s **Agree** that the gender pay gap calculation will include the key types of remuneration employees receive, including base pay and variable pay. **Agree / Disagree**

t **Note** officials intend discretionary pay to be captured, but we are investigating how best to do so (in the gender pay calculation itself and/or in a separate measure like the 'bonus' pay gap calculation). **Noted**

u **Note** for recommendation s we will provide advice in phase two on the definition and scope of these elements of pay, including assessing the extent to which the elements of pay can practically be included for the gender pay gap calculation. **Noted**

Section B.5

v **Agree** that the unit of comparison for the gender pay gap is an hourly rate of pay (as opposed to an annualised figure). **Agree / Disagree**

Section B.6

w **Note** that we will provide advice in phase two on the pay period required for the gender pay calculation. Further work is required to determine the viability of requiring 12 months of pay data as compared to a single pay period. **Noted**

Section B.7

x **Agree** 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 **Agree / Disagree**

Section B.8

- y **Agree** that the following additional measures be required to be calculated and reported (in addition to organisation-wide pay gaps)¹
- a. the mean and median bonus pay paid to male employees compared to female employees **Agree / Disagree**
 - b. the mean and median bonus pay paid to ‘another gender’ compared to a comparator group (to be determined in phase 2) for employers that have employees that identify as ‘another gender’ **Agree / Disagree**
 - c. the proportion of males, females and ‘another gender’ (for employers that have employees that identify as ‘another gender’) that receive bonus pay **Agree / Disagree**
 - d. the proportion of males, females and ‘another gender’ (for employers that have employees that identify as ‘another gender’) in each quartile by salary **Agree / Disagree**
 - e. the number or proportion of males, females and ‘another gender’ who reported their genders, as well as the number or proportion of people that did not provide a response on their gender. **Agree / Disagree**
- z **Agree** that ‘bonus pay’ for the bonus pay gap calculation be required to be calculated over a 12 month pay period. **Agree / Disagree**

Section B.9

- aa **Agree** to require employers to report their pay gaps and additional measures annually. **Agree / Disagree**

Section B.10

- bb **Agree** to one of the following options for who employers should report their pay gap information to (by circling your preferred option):
- Option 1: Measure pay gaps but no reporting required; OR **Option 1**
 - Option 2: Required to report to regulator but information not published; OR **Option 2**
 - Option 3: Required to report to employees; OR **Option 3**
 - Option 4: Required to report on the employer’s own website; OR **Option 4**
 - Option 5 (recommended): Report to a regulator, who will publish the pay gap information centrally. **Option 5**

¹ Noting, that reporting requirements may not apply, or may be different, if they have less than 20 employees in a category.

Section C: Should there be any other requirements on employers in addition to reporting?

cc **Agree** to one of the following approaches for additional requirements (ie action plans) (by circling your preferred option):

- Option 1: No further intervention; OR *Option 1*
- Option 2 (recommended): Government encourages voluntary action plans, and provides guidance to support for businesses to develop them, with a review of whether mandatory action plans should be introduced after three reporting cycles; OR **Option 2**
- Option 3: Delay a decision on whether there should be additional requirements (for example action plans) until phase 2 of this work; OR *Option 3*
- Option 4: Agree to require employers to take actions beyond reporting, with the details of what these actions are to be developed in phase 2; OR *Option 4*
- Option 5: Agree to require employers to take actions beyond reporting, with the details of what these actions are to be agreed as part of phase one (for example, to write a narrative description explaining their gender pay gap, and to provide and publish this at the same time they provide/publish their gender pay gap figures), or some other specific action). *Option 5*

If you chose option 2 (recommended) in recommendation cc

dd **Note if you select option 2 (voluntary action plans) in recommendation cc**, you could signal that you plan to undertake a review of the effectiveness of voluntary action plans and consider whether to make them mandatory at a specified time in the future. **Noted**

ee **If you select option 2 in recommendation cc, agree** to one of the following options for the timing of a review to consider whether to make action plans mandatory (by circling your preferred option):

- Option 1: No scheduled review; OR *Option 1*
- Option 2 (recommended): Schedule a review to consider whether to make action plans mandatory after three reporting cycles; OR **Option 2**
- Option 3: Schedule a review after a different number of reporting cycles and indicate your preferred number of reporting cycles: ____ *Option 3*

If you chose option 5 in recommendation cc

ff **If you select option 5 (specified mandatory action plans) in recommendation cc, discuss** with officials at the meeting on 29 May what other decisions would be required for the June Cabinet paper to include this option. **Discuss**

Other

gg	Note that the cabinet paper will seek delegated decision-making authority to enable you to make decisions on the detailed design elements necessary to prepare drafting instructions for the phase one aspects of the system.	Noted
hh	Note that the decisions outlined above will require some level of regulatory activity which will require government funding to implement.	Noted
ii	Confidential advice to Government	Noted
jj	Note that legislation to enable a pay gap reporting system should not be introduced until funding has been secured.	Noted

Hon Jan Tinetti
Minister for Women

..... / /



Deborah Malcolm
Deputy Secretary Policy
Ministry for Women

25/05/23

Hon Priyanca Radhakrishnan
**Associate Minister for Workplace
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..... / /



Anna Clark
**General Manager, Workplace Relations
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25/05/23

Background

Cabinet has requested policy advice on the scope and content of pay transparency legislation by June 2023

1. 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.
2. In October 2022, the Cabinet Social Wellbeing Committee (SWC) agreed that policy development of a pay transparency regime should commence [SWC-22-MIN-0174].
3. The intention had been to seek the policy decisions from Cabinet in two stages:
 - a. the first stage seeking an in-principle decision for Cabinet taking a legislative approach to pay transparency, and
 - b. the second stage seeking Cabinet decision on the detailed policy design of the legislation in early 2024.
4. On 5 April 2023, SWC considered a paper seeking an in-principle decision from Cabinet on taking a legislative approach. 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].
5. We understand your intention is to announce the core aspects of the system in July. To meet this timeframe, you have agreed to seek Cabinet decisions by 30 June 2023 (referred to as phase one) on the key policy decisions covering:
 - a. who the system should apply to
 - b. what should be measured and reported on, and
 - c. if action plans should be required, and if so, what they should contain.
6. This will be followed by a second phase of work to begin after 30 June 2023 and consider ethnic pay gaps and design the remaining aspects of the legislative scheme. Phase two will cover:
 - a. more detailed elements of phase one decisions in preparation for drafting
 - b. subsequent decisions on action plans, based on the decisions made in phase one
 - c. investigating how the ethnic pay gap information can also be required to be reported
 - d. design of the support, compliance monitoring, enforcement and penalty aspects of the system
 - e. which entity/ies should perform these regulatory functions
 - f. detailed costings for the regulatory functions, and seek Budget funding
 - g. which Minister/agency should administer the legislation
 - h. seek approval to issue drafting instructions for the legislation.

7. This paper seeks your decisions on the elements that will form the basis of the June 2023 Cabinet paper.

Many factors contribute to pay gaps, and a pay transparency system is only one part of the Government's actions to address these

8. Aotearoa New Zealand's labour market has aggregate gender and ethnic pay gaps – that is, differences in average earnings by gender and/or ethnicity. These differences in average pay result in differences in overall outcomes, in particular for women, Māori, Pacific peoples and people from other ethnic communities. The drivers of these pay gaps are complex and varied, including occupation choices, social norms about gender and the division of household responsibilities, and workplace racism, sexism and discrimination.
9. New Zealand has a suite of interventions that are focused on particular drivers of the gender pay gap. For example, equal pay and pay equity legislation and Employment Actions Plans focused on improving labour market outcomes for women, Māori, Pacific peoples, and other ethnic minorities. However, New Zealand's national gender pay gap has not moved significantly in over a decade (ranging between 9 and 12 percent). Women, Māori, Pacific peoples and people from other ethnic communities experience persistently poorer labour market outcomes, with higher rates of unemployment, underutilisation and underemployment, as well as persistent pay gaps when compared to Pākehā men.
10. Alongside decisions about pay rates themselves, gender and ethnic pay gaps are also driven by employer decisions around hiring, progression, training, and development. These decisions can either consciously or unconsciously influence pay inequalities and the gender/ethnic make-up of the workforce at different levels, as well as the aggregate gender/ethnic pay gap.
11. Identifying workplace gender/ethnic pay gaps is an important first step in taking action to address them. Generally, employers and employees are unaware of the existence or extent of pay gaps and transparency will enable them to uncover, quantify and act on them. The evidence provided by pay gap data can motivate employers to take the action necessary to drive sustainable change. If employers had information that made visible their workplace gender/ethnic pay gaps, they could make more informed decisions about how to take action to lessen their pay gap.
12. There are also barriers to accessing individual pay or occupational pay band information. This lack of information may make it difficult for employees to make informed choices about employment and identify gender pay, equal pay, or pay equity issues.
13. Therefore, the objectives of introducing a pay transparency system are to contribute to the Government's overarching outcome of reducing pay gaps by:
 - a. incentivising employers to investigate and address the drivers of pay gaps, and
 - b. supporting employees to identify pay inequities and enable them to take action to address them.
14. Pay transparency systems can include a range of interventions. For example, reporting of pay gaps, requiring action plans to address pay gaps, restricting pay secrecy, requiring job advertisements to include pay information, and requiring employers to provide pay information to employees if they request it.
15. In December 2022, you decided that the initial development for a pay transparency system would be focused on the introduction of pay gap reporting and action plans to address pay gaps (Briefing MW 22-23 0168 / MBIE 2223-2010 refers). You also recognised that a pay transparency system could eventually be expanded to consider other pay transparency interventions in the future.

Content and approach for the advice on the development of a pay gap reporting system

16. This briefing seeks high-level policy decisions on:
- a. **Section A – Who the pay gap reporting system should apply to:**
 - i. What is the size threshold at which employers should be required to report their pay gaps?
 - ii. What is required if an employer meets the size threshold but doesn't have enough employees in each gender category for data reliability?
 - iii. How is it determined whether an employer meets the size threshold, and which employees should be included?
 - iv. Should this system apply to public sector employers, as well as private?
 - b. **Section B – What should be measured and reported on:**
 - i. What gender categories employers will be required to collect, calculate and report?
 - ii. Whether to require reporting of pay gap data by mean, median or both?
 - iii. What level pay gap data should be reported at?
 - iv. What type of pay should be included in the pay gap calculation?
 - v. What unit of measurement should be used to assess the gender pay gap – an hourly rate of pay or an annualised figure?
 - vi. The pay period used to calculate the gender pay gap?
 - vii. Hours worked vs contracted hours for salaried employees?
 - viii. Whether any other measures, in addition to pay gap calculations, will be required?
 - ix. How often employers are required to report?
 - x. Who employers should report to?
 - c. **Section C – Should there be any requirements on employers in addition to reporting?**
17. For each element, we have developed options ranging from those that are limited in scope to more complex options with a broader scope. There are trade-offs between the scope/impact of an option and the associated costs and complexity. This means there is a cumulative effect on impacts and costs depending on the combination of options selected. To give a sense of this, we have included a section providing a high-level summary of the approach overall for the package of options. In addition, Annex One includes a table outlining the different options considered and recommended. Annex Two includes a table comparing the recommended options with the pay transparency systems of comparative countries.
18. We have also included a section noting that options in this paper will commit government to a minimum level of regulatory functions and have provided some initial information about this. Further work on this will be completed as part of phase two.

19. Lastly, we provide an initial assessment of how this policy relates to the Crown's obligations under Te Tiriti o Waitangi, noting that wider consultation needs to occur as part of phase two.

Design principles for the advice

20. We have prepared this briefing under significant time pressure, with limited time to explore options, test our assumptions, engage with stakeholders or gather evidence.
21. Therefore, there is a risk that:
 - a. some of the high-level decisions made by Cabinet in June may need to be amended or changed at a later stage, for instance, if it becomes clear during detailed design that an option is unworkable or there is a better alternative to achieve the policy objectives, and
 - b. that the estimates of compliance costs for employers and the potential implementation and regulatory costs are inaccurate (note that advice on costs to the Crown will be developed as part of phase two as well as potential funding options).
22. To support the prompt development of this advice, we have applied the following design principles when assessing the options against the criteria (outlined below):
 - a. Keep the requirements simple – Simple requirements are easier for employers, employees and the regulator to understand and to comply with or assess compliance against, and are also expected to lower compliance costs for both firms and the regulator. The importance of keeping the requirements simple has also been a strong theme emphasised by stakeholders.
 - b. Be consistent with other comparable jurisdictions where possible (noting, comparable jurisdictions have quite different contexts and systems) – This enables us to build from the work and learnings of those countries.
 - c. Be consistent with other domestic regulatory requirements (eg payroll information required by the Inland Revenue Department – Te Tari Taake and *Holidays Act 2003* requirements), Stats NZ guidance, Stats NZ pay gap reporting and Kia Toipoto requirements, where possible and appropriate – This will make it easier for organisations to understand and complement existing pay gap reporting.
 - d. Minimise constraints on future decisions – Where possible, avoiding recommending options in phase one that will restrict the available options in phase two (ie in relation to ethnic pay gaps, the role of the regulator and compliance approach) and ability to expand the system in the future.

Criteria for assessing options

23. We have assessed the options for each element against the following criteria (where relevant). In this briefing, references to these criteria are **bolded**.
 - a. **Effectiveness:** whether the option incentivises employers to investigate and address drivers of pay gaps and/or enables employees to identify pay inequities and take action to address them.
 - b. **Impact on employers:** the option's likely compliance cost to r employers.
 - c. **Practicalities / workability / implementation considerations:** whether the option is likely to be easy to comply with and how easy it will be to monitor and enforce (eg payroll considerations), and whether the option protects the privacy of employees' information.

- d. **Simplicity:** whether the option ensures the requirements are clear and avoids unnecessary complexity.
- e. **Balance:** whether the option strikes a suitable balance between consistency of information and flexibility for employers to measure and report.
- f. **Cost to implement the regulatory system (ie costs to government):** whether the option achieves the objectives in a way that represents good value for money (note that, costs for employers are captured in b above).

Section A: Who should the pay gap reporting system apply to?

A.1: What sized employers should be required to report on their pay gaps?

Recommendations:

- Starting with a threshold of 250+ employees and then staging down to a threshold of 100+ employees (option 2).
- If you support a staged approach (option 2), we recommend the system will apply to employers with 100+ employees four reporting cycles after it applies to employers with 250+ employees (ie they start reporting in the fifth reporting cycle).

Note:

- The assumption in the design of the system, is that it will only apply to employees and not contractors.

24. Countries that require pay gap reporting apply the requirements to employers that have over a specified number of employees. In particular, Australia and Canada require relevant employers with 100 or more employees to report. The United Kingdom requires employers with over 250 employees to report. Ireland required employers with over 250 employees to report initially and is staging the threshold down to employers with over 50 employees by 2025. Other European countries have much lower thresholds (eg Finland's threshold is 30+ employees, Denmark's is 35+ employees and Sweden applies different requirements based on thresholds of 10-24 employees and 25+ employees). However, these countries are less comparable to New Zealand, due to their different political and social context (including their approaches to the confidentiality of pay information).
25. We note that other New Zealand regulatory systems (such as financial and climate change reporting requirements) apply a threshold based on assets or revenue. However, we consider a threshold based on employee headcount is more appropriate for a pay transparency system as reliability of the data and privacy are key considerations for a threshold and these relate to number of employees included in the analysis. In addition, a headcount threshold is consistent with the international approach for pay transparency systems and aligns with the policy focus of a pay transparency system, which is to reduce pay gaps for employees. The options considered below, therefore, include different thresholds based on the number of employees employed by the organisation.
26. Guidance from Stats NZ indicates that while employers with fewer than 100 employees could look at pay differences in their organisations, their measures might not be statistically reliable and therefore should be treated as indicators². It also suggests that to calculate pay gap data an employer should have a minimum of 20 females and 20 males, again to ensure that data is statistically reliable.
27. The National Advisory Council on the Employment of Women (NACEW) prefer a 100+ employee threshold, however, are supportive of a staggered approach as long as there is a clear timeline for it applying to 100+ in the near future. The New Zealand Council of Trade Unions (NZCTU) supports a threshold of 50+ employees, reducing over time. BusinessNZ and the Employers and Manufacturers Association (EMA) indicated that they thought businesses with over 100+ organisations would be more likely to have internal HR systems and processes. Business leaders and employers that attended a hui held by MindTheGap in

² <https://www.stats.govt.nz/assets/Uploads/Methods/Organisational-gender-pay-gaps-measurement-and-analysis-guidelines/organisational-gender-pay-gaps-measurement-analysis-guidelines.pdf> (refer page 8)

February 2023 generally thought the threshold should be 50+ employees. Stakeholders have commonly suggested that the threshold could be staged downwards overtime.

28. The Equal Employment Opportunities (EEO) Commissioner considers that all businesses, regardless of size, should be included in a pay gap reporting system (although they did indicate a graduated approach, ie different requirements to apply to different sized businesses). The Ministry for Pacific Peoples indicated that they agree with the EEO Commissioner's comment. They support a graduated approach from a higher initial threshold, but consider further work is needed to understand a reporting system to support businesses with less than 100 employees as they consider all workers should have equal protections from 'discriminatory inequalities' and because small businesses make up the majority of employers in New Zealand.
29. Te Kawa Mataaho Public Service Commission indicated that under Kia Toipoto, public service agencies, Crown entities and non-public service departments of all sizes should develop action plans. They provide guidance and support for how those with under 100 employees can implement Kia Toipoto and have indicated that these organisations have needed significant support to do so.
30. We considered, but discarded, a threshold of 50+ employees for the following reasons:
 - a. **It is inconsistent with Stats NZ guidance causing concerns regarding the workability from a data perspective** – Stats NZ guidance raises concerns regarding the reliability of pay gap data for employers with less than 100+ employees. Stats NZ emphasised that to be able to tell a story over time, data reliability really matters. If smaller organisations (ie those with under 100+ employees) are required to report, there is a risk that the data would be highly volatile and could be significantly impacted by a small number of people leaving an employer.
 - b. Due to **concerns regarding the workability from an implementation perspective** – the EMA indicated that employers with about 100+ employees start to resource HR themselves (ie have internal resources to undertake this type of reporting). The Human Resources Institute of New Zealand (HRNZ) considers that for employers with 50-100 employees there is likely to only be one HR person, meaning they would find these additional requirements burdensome (although they also commented that it may be easier for employers with under 50 employees, as they would have fewer employees to report for). Payroll providers thought that organisations with 200+ employees would be more likely to have a payroll team (although it still may be only one or two payroll people). They indicated that organisations below that would not have dedicated payroll people so would purchase payroll services externally, meaning they would need to include the additional calculations and reporting as part of services sourced externally. The added costs are likely to be less if the calculation is built into the payroll system, but it would still require internal resource to consider what action is required in response to the calculation. The general view is that larger organisations would be more able to easily calculate, report and respond to pay gap data. However, other jurisdictions have indicated that even large firms can find it difficult to calculate, particularly if the firm uses multiple systems because of previous mergers. Employers with under 100 employees are also less likely to have the required number of both male and female employees to be able to report pay gaps (refer section A.2).
 - c. **It would be much less cost-effective** in terms of the number of additional employers that it would create compliance costs for, compared to the number of additional employees that would potentially benefit. If the threshold was at 50+ employees compared to 100+ employees, the requirement would apply to over twice the number of employers (6060 employers compared to 2676³), while only covering 20 percent

³ Based on Business Dynamics Statistics (BDS) data. Caveats and limitations:

more employees (1,373,200 employees compared to 1,142,400). So, between those two thresholds, the increase in the impact on employers is much higher than the potential gain for employees. In addition, if the system were to apply to a larger number of smaller employers this would also significantly **increase the costs of the regulatory system (ie the costs to government)**, due to the increased number of employers that would require support and the likelihood that smaller employers would need more support.

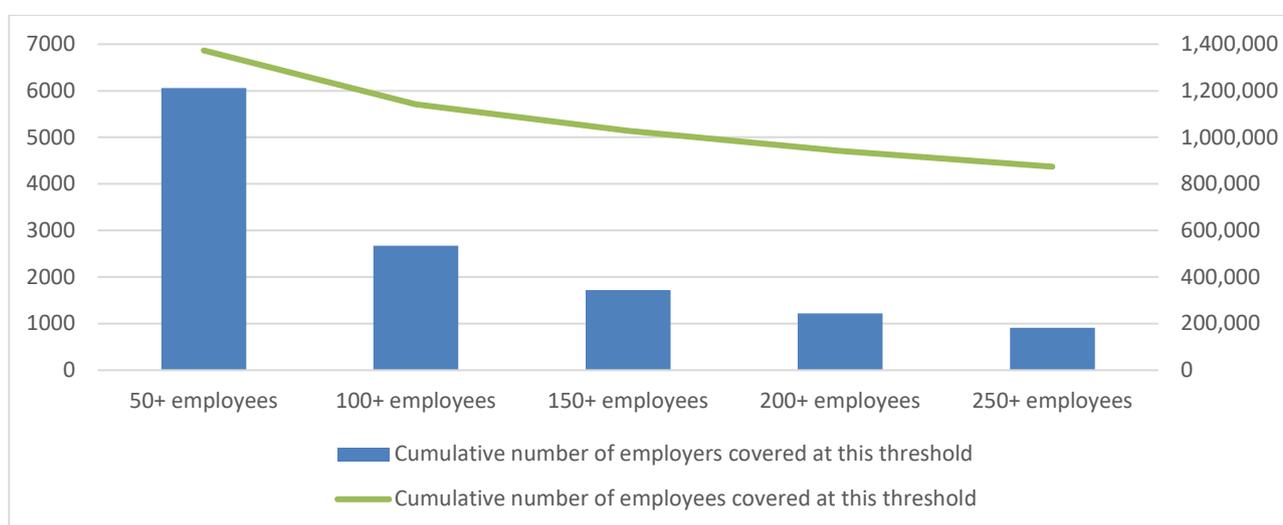
31. We, therefore, consider the lowest viable option is a threshold of 100+ employees. The EEO Commissioner has expressed concern about setting any threshold for the inclusion of businesses within the pay gap reporting system. The EEO Commissioner considers that the system should apply to all businesses but that requirements could differ for different sized businesses). She considers that all workers should have equal protection from having their human rights breached through 'discriminatory pay inequities', and that people working in small businesses shouldn't miss out on the benefits and protection of pay transparency. The Ministry for Pacific Peoples agrees with this view.
32. 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 potentially 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, raise an equal pay or pay equity claim).
33. However, the existence of a pay gap, in itself, is not evidence of discrimination as there are a range of other factors (although it may be). In addition, we consider that policy decisions relating to people becoming aware of their rights and mechanisms to address them can legitimately be assessed against a range of criteria (eg costs to small businesses of implementing a system and the lack of robustness of data vs the potential benefits to those work in small businesses). As well, we recognise the importance of guidance for those who may not fall within the system but who may want to report voluntarily.
34. Between the options of 100+, 150+, 200+ and 250+ there is still a coverage versus cost-effectiveness trade-off. As the threshold increases, the number of employers required to comply (and be supported) decreases at a greater rate than the decrease in the number of employees that would be covered at that threshold. This is shown in Table 1 and Figure 1 below.

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- We have ascertained that – within the timeframes we have – the BDS data is the best data source to provide us with an indication of who may be impacted by a pay transparency system.
 - The BDS data is indicative only, providing an annual snapshot of:
 - economically significant enterprises only; and
 - the wage/salary earners (ie employees) for the reference month only (ie February 2022)
 - This means 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 a number of different sources, mostly related to the tax system.

Table 1: The number and percentages of employers and employees that the requirements would apply based on different employer size thresholds⁴

Threshold	Cumulative number of enterprises covered by this threshold	Percentage of employers covered by this threshold	Cumulative 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%

Figure 1: Graph of employers and employees covered based on different employer size thresholds⁵



35. The key trade-off is, therefore, between the coverage of the system versus the cost-effectiveness of the system. As such, we consider the main viable options for you to choose between are:

- a. **Option 1: A threshold of 250+ employees⁶** – This would be the **most cost-effective option in terms of the trade-off between coverage and impact** on employers and would align with the approach in the UK. At this threshold, 37 percent of employees would be employed by organisations required to report. Organisations with over 250 employees are also most likely to have capacity and capability to calculate and report pay gap data. The **costs of the regulatory system will be lower**, due to the smaller number of employers required to comply and the likelihood that they would require less support to comply.
- b. **Option 2: Starting with a threshold of 250+ employees and staging down to a threshold of 100+ employees** – This option **reflects a middle ground**. The costs of

⁴ Based on BDS data. Refer to the caveats and limitations in the footnote on page 14.

⁵ Based on BDS data. Refer to the caveats and limitations in the footnote on page 14.

⁶ We do not consider setting the threshold any higher would be appropriate as it would reduce the scope of the system to cover a low number of employers (for example, a threshold of 500+ employees would apply to around 400 employers), undermining the system’s ability to create a momentum for change and achieve the intended objectives.

complying would initially apply to a lower number of employers, which are of a size that are more likely to have the capacity and capability to calculate and report pay gap data. Under this option, the threshold would later drop down to 100+ employees (which is comparable with Australia), meaning the coverage of employers (and associated compliance costs) and employees (and associated benefits) would increase. Initially 37 percent of employees would be covered, which would increase to 48 percent once the threshold was lowered to 100+ employees. Staging the threshold would **also spread the Government's costs** for supporting organisations to comply and allow any guidance to be improved before it is applied more broadly.

- c. **Option 3: A threshold of 100+ employees** – This option would provide the greatest coverage from the start (covering 48 percent of employees), meaning it would have a **greatest initial impact**. This threshold aligns with the current threshold in Australia, though noting they do not yet publish organisation level pay gap data. It would have the **lowest cost-effectiveness** in terms of the number of employers that would be required to comply compared to the number of employees that would be covered as a result. It would require **a lot of resources from government** to support all the employers with more than 100 employees with the first reporting round.

36. **We recommend option 2**, where the threshold is initially 250+ employees and then staged down to 100+ employees. This approach provides a clear pathway for increasing the coverage and associated impact of the system, while allowing organisations that may have lower capacity (due to being smaller) more time to prepare. This approach is more likely to support compliance, as momentum for pay gap reporting is likely to build as a result of the larger employers (ie those with over 250+ employees) 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). Noting, we will consider in phase two whether the regulator would be able to collect voluntarily provided pay gap information and what they would be able/required to do with it (as part of decisions on the role of the regulator).
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).
38. **Note:** The assumption in this option set, and 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. Including contractors would not be viable as contractors are paid in very different ways, which would make the pay gap calculations very complicated. In addition, the employment relations and employment standards (ERES) system only applies to employees. Excluding contractors may create a risk of employers taking on staff as contractors, rather than employing them, to avoid these requirements. However, this risk applies across the ERES system (for example, in relation to minimum entitlements such as minimum wages and annual leave requirements) and would be better addressed through the government's wider work programme focused on addressing potential risk and issues with employees being misclassified as contractors.

How would a staged approach (option 2) be implemented?

39. If you support a staged approach (option 2), there are range of options for how the threshold could be staged down:
- a. Option 2A: Specify the system will apply to employers with 100+ employees four years after it applies to employers with 250+ employees⁷ – This would provide a **clear and simple signal** to organisations with 100 to 249 employees of when they are expected

⁷ For options 2A and 2B, we would work with PCO during drafting to determine whether this is best specified in legislation or regulations and whether it would be appropriate for Minister(s) to have delegated authority to amend the threshold in particular circumstances.

to start complying with the requirements. This should **promote compliance**, by encouraging those organisations to make any required changes to their payroll systems in preparation. It will require a larger number of employers (around 1,750 more) to start complying at the four-year point (compared to option 2B), but they would have had a long lead-in time.

- b. Option 2B: Specify the system will apply to employers with 150+ employees two years, and employers with 100+ employees four years, after it applies to employers with 250+ employees – This option includes more staging of the requirements compared to option 2A. It would apply to around another 800 employers after two years and then another 950 employers after four years. It provides a **clear signal** of when these employers will be required to comply but adds **more complexity** due to the additional thresholds included in the staging (ie there would be an additional stage where employers that are near the threshold will need to determine whether they meet it).
- c. Option 2C: The decision to lower the threshold is considered after a specified review period – This would allow **more flexibility** about when the threshold is lowered and what is it lowered to. It could allow the decision to be made at the same time as decisions regarding actions plans if decisions regarding the introduction of mandatory action plans are being made after a specified review period (refer section C). It would, however, **be less clear** for employers regarding when they will be covered by the requirements, so is **less likely to encourage compliance** (ie by encouraging employers to prepare). Following the review, any changes to the threshold would need to be made by a legislative amendment, which would take time and **add complexity**.

40. We recommend option 2A, as we consider this is a simple way to lower the threshold, that would provide a clear and early signal to employers with between 100 and 249 employees about when the requirements will apply to them.

A.2: What is required if an employer meets the size threshold but doesn't have the number within each category required for data reliability?

Recommendation:

- Employers that meet the size threshold but do not have at least 20 male or female employees are:
 - a. required to calculate their gender pay gap and other mandatory measures;
 - b. but the reporting requirements may not apply or may be different.
- If an employer has employees that identify as 'another gender' but do not have at least 20 employees in that category, they are required to include 'another gender' in the calculations, but the reporting requirements may not apply, or may be different.

Note:

- We will provide advice in phase two on whether reporting requirements would apply where there are less than 20 employees in a gender category (eg whether any information is required to be provided to the regulator), or whether there should be different requirements (eg whether any information would be made public).

41. 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 female⁸) in the data. In addition, there may also be privacy issues if the analysis required involves groups with less than 20 in them.

⁸ The requirement to have 20 within a category would also apply if an employer had employees that identified as 'another gender'.

42. Requiring employers (that meet the size threshold) to calculate and report pay gaps if they do not have 20 male or 20 female employees (or 20 employees that identify as ‘another gender’ if they have employees within this category) in their organisation (based on the gender data disclosed) could, therefore, be considered inappropriate, as the resulting pay gaps are not based on reliable data. Particularly, if the resulting pay gaps were required to be made publicly available.
43. 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, including calculating pay gaps, could create a perverse incentive to make limited efforts to collect gender information from their employees to avoid the pay gap reporting requirements.
44. We, therefore, recommend that:
 - c. all organisations that meet the threshold to report pay gaps should be required to calculate their pay gaps, and the other mandatory measures (including the pay gap for bonus pay), regardless of whether they have 20 male and 20 female employees to include in the calculations
 - d. but we will consider as part of phase two whether any of the reporting requirements would apply and if so, which reporting requirements would apply. For example, we will consider whether employers in this situation would be required to report anything to the regulator (including any of the additional measures covered in section B.8) and if so, whether any of the information provided would be made public.
45. The same rule would apply if an employer had employees that identified as ‘another gender’ (ie if they have under 20 employees that identified as ‘another gender’ they would be required to calculate the pay gap and other measures for ‘another gender’ but may not be required to report, or may have different reporting requirements).
46. As part of considering what (if any) information would be provided to the regulator in this situation, we will need to consider whether there would be any associated privacy risks with the options being considered (eg would there be a privacy risk if an employer only had very low numbers in a gender category and was required to provide information to the regulator). We will engage with the Office of the Privacy Commission on this analysis.
47. The relevance and benefits of whether any information should be provided to the regulator in this situation will depend on the role of regulator and compliance approach (ie what would be done as a result of providing this information), which is being considered in phase two.

A.3: What should the requirements be for determining if an employer meets the size threshold, and which employees are then included in the measures?

Recommendation:

- A single, specified ‘snapshot’ date be used for determining if the employer meets the size threshold, and that this snapshot date be used for determining which employees should be included in the pay gap calculation (and additional measures).

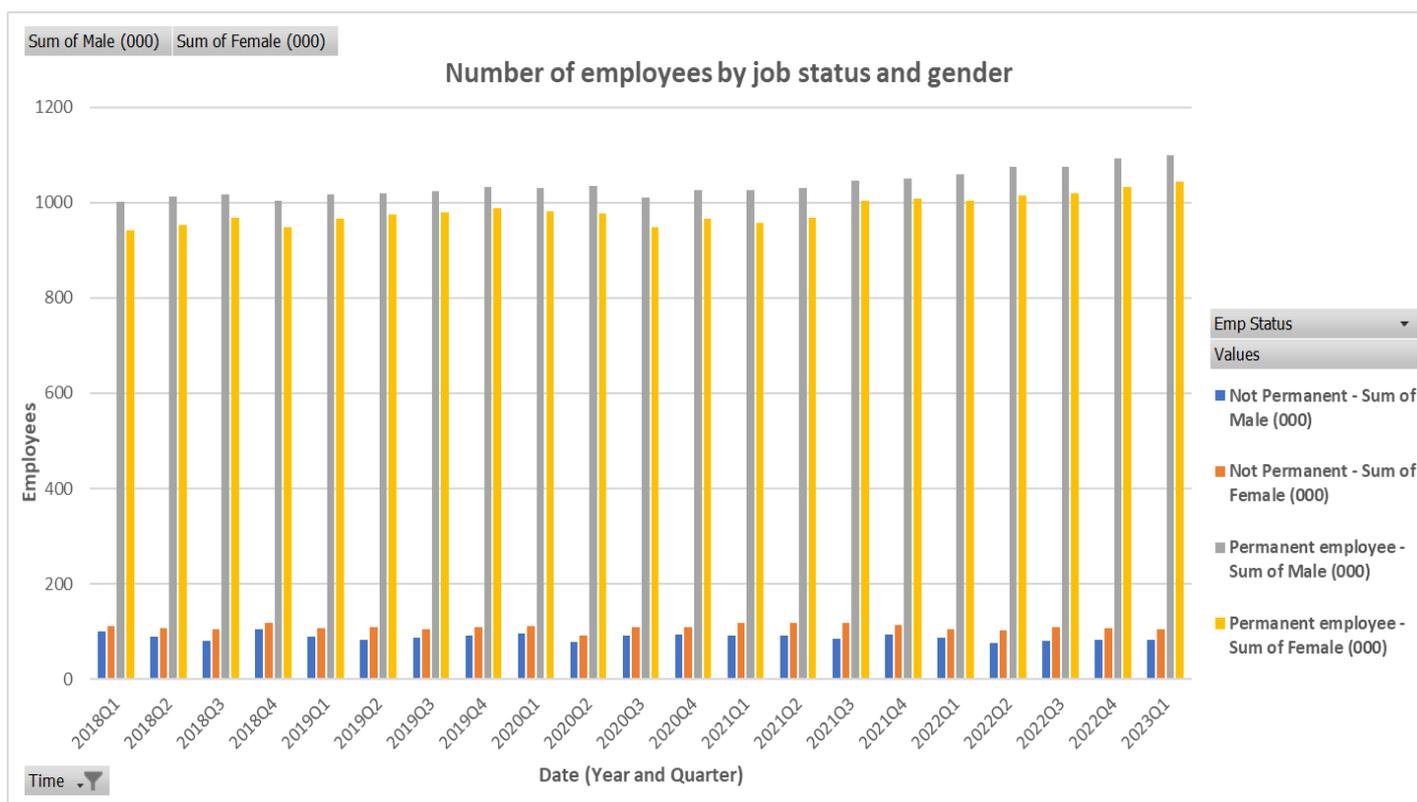
48. Internationally, there are different approaches for when and how an employer meets the size threshold and when employees’ pay is calculated. Some countries choose to use a simple snapshot date (UK) or require the employer to pick a date within a set period, for example any date in June (Ireland), to undertake both of these calculations.
49. Other countries have a more nuanced approach to the way in which they calculate the size threshold for employers. For example, in Australia if the employer has employed (or is expected to employ) 100 or more employees for six or more months (these months do not

need to be consecutive) in the calendar year, the employer will be captured by the reporting requirements. Once an employer has hit the size threshold, they can pick any snapshot date within the calendar year to assess which employees were employed by them and work out what those employees' pay was for the preceding 12 months.

50. Canada on the other hand requires employers to determine whether they met the threshold on the date when they have the highest employee headcount, and then have nuanced rules for when they calculate employees' pay. For permanent employees they have a specified snapshot date, but for temporary employees they are required to calculate pay when either the number of temporary employees is at its highest for the employer or where the temporary employees constitute 20 percent or more of the employer's workforce. The Canadian approach appears to try to ensure that the seasonal workforce is captured at the most representative point in the year for an employer, by moving the snapshot date to a point in the year where temporary employee numbers are at their highest.
51. The main trade-off between a snapshot date and a mechanism to ensure both that seasonal employers near the threshold are included and ensuring the calculation of the gender pay gap is done at a time that is representative of the seasonal workforce is **simplicity, consistency, and less compliance costs** versus the **impact** on employers from a **more complex and costly** approach that **better captures fixed term employees**, such as seasonal employees.
52. In order to understand the true value of this trade-off we consider it's important to understand how many fixed term employees there are in New Zealand and what their gender and ethnicity is to be able to understand what data might not be captured if we were to progress with a snapshot date.
53. Figure 2 below shows the proportion of females and males in permanent positions and temporary positions per quarter from 2019 to 2023. This figure shows that the proportion of females in temporary work⁹ has been consistently higher than males. However, the number of employees employed in temporary work across the quarters are relatively stable.
54. We were unable to get the number of temporary employees by employer size in the time available, so it is unclear what proportion of temporary employees could be included if a more complex employer size threshold was designed or if we designed the system to calculate the gender pay gap to pick a date of calculation where the temporary workforce is at its highest for the employer. Some fixed term employees will already be covered if they work in large firms as at the snapshot date. Some fixed term employees would not be covered if they work for small employers. The size of the group of fixed-term employees that could be included if a threshold mechanism covered seasonal workers is likely to be very small.

⁹ Temporary work in this table is made up of those that identify as 'casual employees', 'fixed term employees', 'seasonal employees' and 'temporary agency employees.'

Figure 2: The number of females and males in permanent positions and temporary positions per quarter from 2018 to 2023



55. We have looked at the variance in seasonal employment by sector over a calendar year. There is not much variance across most sectors. The greatest variance was in the Agriculture, Forestry and Fishing sector where seasonal employment is at its highest in December and drops to its lowest point in July. The variance in employment is around 10 to 15 percent. We do not consider that across the whole labour market the variance of seasonal workers justifies the complexity it would add to try to capture the seasonal workforce.
56. In the time available we have not been able to gather data on the ethnicity of those employees who are 'temporary' employees.
57. Both approaches (snapshot versus a more complex method of determining whether an employer has met the threshold and when employees should be included in the pay gap calculation) could be used in New Zealand.
58. On balance, given that temporary workers make up a relatively small proportion of the workforce and that a portion of those workers would already be employed by employers that meet the threshold count, we consider that the relative value add of a more comprehensive system would not be significant enough to warrant the **additional costs and complexity**. We consider that a snapshot date is **simple, cost effective** and **provides a consistent** approach so that data can be compared year on year. We consider the **practicalities** of only having one **consistent** snapshot date across a workforce outweigh the small added benefits of a threshold that seeks to include a small number of seasonal employers or ensure that for employers that are captured, that the date of the calculation is most representative of their seasonal or temporary workforce.
59. We recommend picking a date and not permitting the employer to choose a date for the calculation. We discussed Australia's approach with the Workplace Gender Equality Agency (WGEA) and they said if they could redesign the system they would ensure that there was a consistent snapshot date across employers so that the data is comparable. Therefore, we

would recommend that the date be specified (rather than up to the employer's discretion). We will do further work on what the actual date should be in phase two.

60. The Ministry for Pacific Peoples suggest that any snapshot be informed by the Recognised Seasonal Employers (RSE) programme so that that RSE employees are factored into the employer count and which employees are included in the gender pay gap calculation. If you progress with a snapshot, we will do further work on which date might be appropriate having regard to capturing seasonal workforces as well as the practicalities of reporting (ie if it makes sense to tie reporting to the end of the financial year).

A.4: Should this system apply to public sector employers, as well as private?

Recommendation:

- For the pay gap reporting system to apply to both public and private sector employers that meet the size threshold (including not-for-profit organisations).

Note:

- There may be some differences in how the detailed requirements of the system apply to the public sector, which will be considered as part of the detailed design work in phase two.

61. Kia Toipoto is the Public Service pay gaps action plan 2021-2024, covering approximately 233,000 employees. Under Kia Toipoto, public service agencies, Crown entities and non-public service departments report their gender and ethnic pay gaps in action plans each year, and agencies have been developing annual gender pay gap action plans since 2019. Note that local government is not included in Kia Toipoto.
62. There are currently no requirements for private sector organisations to report their pay gaps in New Zealand. However, some private sector organisations voluntarily report their gender and ethnic pay gaps in MindTheGap's Pay Gap registry (as of March 2023, 100 businesses had reported their pay gaps in this registry). Champions for Change is another example of how private sector organisations can report voluntarily. This is a group of Chief Executives who aim to promote equality in the business sector and the measurement of pay gaps is one minimum requirement for becoming a Champion for Change.
63. Although Kia Toipoto already includes the intended objectives of a pay transparency system ie incentivising employers to investigate and address drivers of their pay gaps, we recommend that for consistency and fairness, the legislative requirement be applied to all organisations, including the public sector (noting some technical differences in requirements might be justified for those covered by Kia Toipoto).
64. Comparable countries (Australia, the UK and Canada) require both the public and private sector organisations captured by the relevant legislation to report their pay gaps. They do, however, have slightly different requirements for the sectors such as reporting dates.
65. Te Kawa Mataaho Public Service 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 guidance on gender pay gaps reporting. We will continue to engage with them as we develop the detailed requirements, as there may be some areas where a slightly different requirement could be justified to align to their current system. For example, their current reporting dates would likely remain for **simplicity** purposes.
66. Those public sector organisations already implementing Kia Toipoto will be well-placed to meet the requirements of this pay gaps reporting system, but this does not include local government, state-owned enterprises, or school board of trustees (**workability**).

67. If the system is applied to all public and private organisations, this will be the first time that a pay gap reporting system would apply to local government. The Department of Internal Affairs (DIA) has not raised any concerns with this approach but did note that some councils may not meet the threshold requirements.
68. Given that comparable countries include both public and private organisations in their pay transparency systems and Te Kawa Mataaho Public Service Commission and the DIA are generally supportive of the system applying to the public service and local government, *we recommend that the system apply to all public sector organisations as well as the private sector*. We note that there may be some differences in how the detailed requirements of the system apply to the public sector and the requirements under Kia Toipoto will still apply to the public service. We will consider whether it would be appropriate for Te Kawa Mataaho Public Service Commission to provide public sector pay gap reporting to the regulator, or whether should public sector agencies would be required to report the regulator (in addition to Te Kawa Mataaho Public Service Commission) in phase two.

Section B: What should be measured and reported on

B.1: What gender categories will employers be required to collect, calculate, and report?

Recommendation:

- Employers that meet the size threshold should also be required to collect information on employee gender based on the Stats NZ recommended categories ('male', 'female', or 'another gender'), but employees' responses will continue to be optional.
- 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, that reporting requirements may not apply or may be different if they have less than 20 employees that identify as 'another gender').

Note:

- We will do further work as part of phase two to determine the most appropriate requirements for pay gap calculations involving 'another gender' (for example, identifying the appropriate comparator group).

69. Internationally, gender pay gap systems are focused on the pay gap between male and female categories. Australia is starting work on pay gap requirements for non-binary employees. Given the gender pay gap is focused on equity issues, we consider that the policy should recognise that there are non-binary gender identities.
70. 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'. Since the Stats NZ guidance on gender categories is well established and will allow for a consistent approach, we recommend using these gender categories in this pay gap reporting system (**simplicity**). We could investigate whether the legislation could be drafted in a way that enables these to be updated if Stats NZ updates its categories.
71. A number of employers already collect information on gender for other purposes, for example, in the early stages of recruitment to verify an employee's identity. It would not be appropriate from a human rights perspective to have a legislative requirement for employees to provide this information to their employer, so it will continue to be voluntary for employees to provide gender information. However, the legislation could require employers to ask.
72. While a requirement to ask employees for gender information will create some compliance costs for employers, particularly for existing employees if the employer has not collected that information or has not collected that information using the Stats NZ categories, the policy objectives could be frustrated if employers are not required to collect that information. The **costs** of collecting this information would fall over time as employers would seek this information from new employees.
73. It could be an option to require employers to *only collect* the information on whether any employees identify as 'another gender'. However, a consistent approach should be applied to all gender categories, including 'another gender'. We recommend that if any employer has employees that identify as 'another gender' the employer should be required to calculate, and report pay gaps for 'another gender' subject to any requirements on minimum numbers for statistical or privacy reasons (refer to sections A.2 and B.8 on this).

74. We have not had time to work through the detail of how these calculations will be undertaken where there is ‘another gender’ so this work will be completed as part of phase two, including who the most likely relevant comparator group would be.

B.2: Whether to require reporting of pay gap data by mean, median or both measures?

Recommendation:

- Reporting of pay gap data includes both mean and median measures.

75. Guidance from Stats NZ indicates that using the mean and median in combination provides a balanced overview of an employer’s gender pay gap. The different functions, advantages, and disadvantages of both mean and median measures are outlined below.
76. Median pay is the middle amount of pay earned – ie half of the employees earn less, and half earn more, than the median amount. New Zealand’s national gender pay gap is based on median hourly earnings, so using the median will allow organisations to compare their results with this measure. Medians can identify ‘typical’ pay for an organisation. An organisation typically has a lot of people with low to medium income and not many people with high income. The median depends primarily on the order of the data, so it will not be impacted by outliers in the data, such as a small number of employees with high income in a small business.
77. Mean pay 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.
78. Although there is no international agreement on a standard for gender pay gap analysis, the approaches used by member countries of the Organisation for Economic Co-operation and Development (OECD) to analyse the gender pay gap in organisations have strong similarities in that they report both mean and median measures.
79. 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 (**low cost to implement**).
80. We recommend reporting of pay gap data include both mean and median measures because each provides different information about an employer’s gender pay gap (**more effective**), the costs of calculating both metrics compared to one is minimal and it is largely the approach used internationally.

B.3: Should employers report pay gaps calculated using all roles within an organisation or a subset?

Recommendation:

- The organisation-wide pay gap reporting would be required but that reporting of pay gaps at more granular levels would be encouraged.

81. The scope of the pay gap information which is reported can have a substantial effect on the of context that pay gap measures are able to convey, but also has an impact on workability, data reliability and privacy. There are three main levels of measurement that could be used to calculate the gender and ethnic pay gaps in an organisation:

- a. **Organisation level:** the difference in pay between groups in an organisation. For example, the difference in pay between all males and all females in an organisation. This is Stats NZ's recommended approach and is a common mandatory measurement in international pay gap systems. An organisation level pay gap is often used with supplementary measures, like quartile information, to provide further insights into pay gaps. It is the **most simple and cost-effective** approach to pay gap reporting, compared to by-level and like-for-like. A by-level or like-for-like system would provide a more detailed understanding of where the pay gaps are, however, these systems introduce complexity and challenges around consistency in understanding pay gaps across employers. Organisational level pay gaps are more easily comparable between employers and across a sector.
- b. **By level:** the difference in pay between groups at the same level of the organisation, such as particular pay bands or tiers, groups of managers, graduates or by departments. This measure could **provide more specific information** to employers about whether different groups of people are being paid similarly for roles at similar levels within the organisation. However, this information is unlikely to be able to be reported publicly except by very large firms due to **data reliability concerns and privacy issues** with the more granular data. Where a by-level or like-for-like (see below) approach is required overseas this is reported at the sector or national level (by a regulator) rather than by an employer at the organisation level. A by-level approach provides a different perspective on gender differences than an organisation wide measure, and potentially context to an organisation's pay gap. A legislative requirement to measure pay gaps by-level would require a definition of these levels that could be used consistently across every type of employer. This would be extremely difficult to define and would **add significant complexity** to the system. This rigidity and complexity will likely significantly increase implementation costs for employers and Government.
- c. **Like-for-like:** the difference in pay between two groups in the same or in similar roles. If organisations use job-sizing they could measure pay gaps between jobs of the same size, eg HR manager and IT manager if these jobs are sized the same. Like-for-like measures can be **useful** in identifying where horizontal gender pay differences exist within an organisation. However, this information is unlikely to be able to be reported publicly except by very large firms due to **data reliability concerns and privacy issues** with the more granular data (ie requiring 20 males and females in each occupation). However, this aggregate comparison would be **insufficient on its own** to determine whether a pay equity issue existed as there are other factors that would need to be considered to do this measurement, which is highly complex and resource intensive. As with a by-level requirement, a like-for-like approach would require standardisation across occupations (**adding complexity and costs**).

82. It is important to note that where a by-level or a like-for-like approach is required overseas, for example, Australia or Canada, they do not currently report this information at the organisational level. Rather, the regulator would collect this 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. Any consideration of a by-level or a like-for-like approach would require a substantive role for the regulator.
83. Collecting and reporting on these measures may be operationally unworkable for many employers. By level measures rely on a high level of standardisation for them to be administratively easy to implement. Pay bands and tiers are often not standardised within organisations, particularly in the private sector. This could mean that businesses may need to make significant changes to their pay band structures to be able to conduct this level of analysis. In addition, organisational and pay band structures can vary widely between employers, across the sector, and across the labour market. This would require

standardisation if it was required to be reported at the sector or national level and would not be able to be reported at the organisation level unless each level or occupation had 20 males and females within each category to ensure data reliability.

84. Similarly, role standardisation within an organisation or across sectors is highly uncommon. The cost for employers to calculate a like-for-like measurement would be compliance-heavy as it would require an analysis of all roles within an organisation to classify which roles do equal or similar work. We investigated whether the Australian and New Zealand Standard Classification (ANZSCO) could be used as a way for employers to classify jobs for the purpose of like-for-like analysis. Our view is that the use of ANZSCO for this purpose is unviable. This is because:
- a. ANZSCO codes are not regularly used by employers to determine job size or level, and employers do not use them as a reference when building job roles. This may mean that the most relevant ANZSCO code may not be appropriate for the breadth of work that an employee does, and result in potentially inappropriate code classifications for some employees. As a result, comparisons between organisations and across sectors may not be accurate as the ANZSCO code won't capture these contextual differences between roles.
 - b. Job level classification through ANZSCO does not provide accurate description for levels of seniority within an occupation – for example, a Principal Policy Analyst and a Graduate Policy Analyst would come under the same ANZSCO occupation code. This would effectively mask pay variances across different occupational levels.
85. In addition, as described above, in order for pay gap information to be statistically reliable as well as protect the privacy of employees' information, 20 people in each comparator group is required. If more granular measures such as by-level and like-for-like approaches were required to be calculated by businesses, it is likely that many organisations would not be able to meet this threshold for particular levels or occupations (ie like for like) within their organisation, and the calculations would therefore be highly affected by change, or small numbers of employees in an organisational workforce.

Organisation-wide measurement is the most workable option for reporting at the employer level

86. Internationally, a variety of approaches are taken, but in comparable countries such as Ireland and the United Kingdom the mandatory measurement calculation is at the organisational level. Organisation wide pay gap measurement is the simplest method of determining pay gaps. Employees and employers would be able to make comparisons between organisations or potentially across their or comparable sectors and gain a high-level indication of the pay gaps between them. This could incentivise employers to investigate further to better understand the drivers of their gaps.
87. The trade-off with an organisation wide measure is that it lacks detail and context, so its effectiveness in helping employers and employees identify pay inequities and the drivers of pay gaps is limited. Further, the drivers of an organisational level pay gap may be outside of the control of employers. Societal factors are an important driver of pay gaps, and BusinessNZ was worried that employers would be implicitly responsible for wider issues. For these reasons, the BusinessNZ view is that employers may be concerned about the use of organisational pay gap measurement.
88. We consider that measuring organisational pay gaps strikes the right balance **between ease of calculation and incentivising employers to investigate** the drivers of their gaps. This measure could be combined with additional measures (refer section B.8) to enable analysis that provides context and insight into why an employer's pay gap exists. In addition, a mandatory measure needs to be workable for employers at the lower end of the threshold as well as very large employers, so a **simple calculation** would be preferable to ensure the ease and **simplicity of complying**. Note that this approach does not preclude larger

employers with more capacity to voluntarily investigate their pay gaps further. We recognise the role that good guidance can play in supporting those organisations who would like to make more granular measurements to understand their gaps to do so.

B.4: What types of pay should be included in the gender pay gap calculation?

Recommendation:

- The gender pay gap calculation will include the key types of remuneration employees receive, including base pay and variable pay.

Note:

- Officials intend discretionary pay to be captured, but we are investigating how best to do so (in the gender pay calculation itself and/or in a separate measure like the 'bonus' pay gap calculation).
- We will provide advice in phase two on the definition and scope of these elements of pay, including assessing the extent to which the elements of pay can practically be included for the gender pay gap calculation.

89. The definition of pay required to be used to measure the gender pay gap in an organisation differs internationally. There are also multiple measures, aside from calculating the gender pay gap, that are required to be reported that support the understanding of the gender pay gap calculation.
90. Australia uses a total remuneration approach, meaning all elements of pay are included for the gender pay gap calculation, including benefits that are non-monetised. Most other countries, however, exclude certain types of pay. We believe that this is likely due to the complexity and additional cost of calculating every pay element. For example, to get the hourly rate of pay per employee for the gender pay gap the UK includes 'ordinary pay¹⁰' and 'bonus pay¹¹,' 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, however, includes overtime payments in their definition of pay.
91. Canada takes a slightly different approach to the UK, Ireland and Australia, it uses the base salary¹² 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).
92. The table in Annex Four sets out which elements of pay have been included for assessment by each country. The elements of pay in this table may contribute to either the gender pay gap calculation or to additional measures that are also required to be reported (ie the mean and median bonus pay as a separate measure from the gender pay gap). We also set out what elements of pay are required to be recorded and calculated for the purposes of gross earnings under the upcoming Employment (Leave Entitlements) Bill (the intended replacement to the *Holidays Act 2003*).
93. National Advisory Council on the Employment of Women (NACEW) expressed that it is important that all pay received by an employee is included in the calculation, excluding payments reimbursing employees for expenses incurred by them. There was an

¹⁰ This is made up of basic pay, allowances, pay for leave and shift premium pay (penalty rates).

¹¹ Remuneration in the form of money, vouchers, securities, interests in securities that relates to profit sharing, productivity, performance, incentive or commission.

¹² This is made up of pay for work performed by an employee before deductions, including basic pay, pay for piecework, shift premiums (penalty rates). It does not include allowances, annual leave, reimbursements for employee expenses or payment in kind.

acknowledgement that non-monetary allowances can be difficult to monetise and therefore they suggested that officials would need to weigh up the ease of calculating these benefits versus capturing all forms of allowances.

94. The NZCTU had some concerns about capturing all that comes under 'total remuneration.' They suggested that reimbursements would not be included but that monetary and non-monetary allowances should be included because 'there is clear evidence that men are provided with more of these benefits than women.' The Stats NZ guidance on the gender pay gap reporting system also recommends measuring as 'much total remuneration as practical', including monetising benefits where possible. It also recommends calculating discretionary pay, like bonus pay, separate from other pay.
95. As you can see from the international examples above, what is considered 'base pay' or 'ordinary pay' varies by country and additional elements of pay that are included in the gender pay gap calculation on top of 'base pay' also vary. We consider that these differences have likely arisen due to the practicalities and costs associated with being able to calculate the different elements of pay, and the level of sophistication of payroll or HR systems in their jurisdiction. Defining the scope of pay is a very technical area that will depend on what pay can practically be calculated based on the payroll data that is recorded currently which has interlinkages with the changes being made by the upcoming Employment (Leave Entitlements) Bill. A key consideration for whether pay can be practically calculated is the cost associated with being able to get and calculate the data.
96. We consider that base pay (earnings before tax without any deductions for superannuation or benefits), including any variable pay elements (like overtime and penalty payments that are not fixed and regular payments) should be included in the definition of pay for the gender pay gap calculation. We are considering the practicalities of including discretionary pay (bonuses, performance-based pay and incentives) in the gender pay gap calculation in addition to requiring discretionary pay as a standalone pay gap reporting measure (see section B.8). Whether to include discretionary pay is interlinked with the question about the length of time used to calculate the gender pay gap (see section B.6). We have set out possible scenarios for including bonus pay or excluding bonus pay in the gender pay gap calculation, and the different length of time used to calculate the measure in Annex Three. We intend to advise you further on this in phase two.
97. To the extent possible, monetised benefits, like monetary allowances or employer superannuation contributions, should be included. Some benefits, like non-monetised benefits (for example, where lunch is provided every day for an employee), are not always attributed to a particular individual, rather they can be recorded in the aggregate across employees. As a result, we do not consider that non-monetised benefits should be included in the definition of pay. We also recommend that reimbursements for out-of-pocket expenses should not be included in the definition of pay.
98. Assessing the extent to which the above elements of pay can be practically included for the gender pay gap calculation and defining the scope of these elements of pay will be undertaken in phase two. This scoping work may result in officials needing to refine what elements of pay are included to ensure a practical and workable system.
99. If you want to make an announcement about the types of pay that will be included in the gender pay gap calculation, we recommend you say that it will include base pay and variable elements of pay where they are practical and cost effective to calculate. We would need more information before we could say that monetised benefits and employer superannuation will be included in the calculation. We intend discretionary pay to be captured, but we are investigating how best to do so (ie in the gender pay calculation itself or in a separate measure).
100. As mentioned above, there are additional reporting measures that could be required to be reported in addition to the organisational gender pay gap calculation. These additional

measures could help explain what the drivers could be of the gender pay gap. For example, you could require the mean and median bonus pay be reported in addition to the gender pay gap. Our advice on additional mandatory reporting measures is at section B.8.

B.5: What unit of measurement should be used to assess the gender pay gap - an hourly rate of pay or an annualised figure?

Recommendation:

- The unit of comparison for the gender pay gap is an hourly rate of pay (as opposed to an annualised figure).

101. The most typical unit of measurement in the countries we most closely compare ourselves to is an hourly rate (UK, Ireland, and Canada). To assess the average hourly rate of pay countries assess pay received over a pay period (this can range from one week to 12 months depending on the country) and divide this by the hours worked during this time. For salaried workers, some countries allow the hours worked to be based on contracted hours worked rather than actual hours worked. The resulting figure is an average of what pay has been received per hour during that pay period.
102. The outlier to this approach is Australia which annualises pay to get the unit of comparison. Annualising pay requires having a common definition of what a full-time equivalent (FTE) employee is. In Australia, this differs per organisation 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.
103. We recommend using an hourly rate as the unit of comparison because it creates a **consistent and less complicated** measure regardless of how many hours or how often an employee works in the year without the need to annualise these hours based on the FTE of an organisation.

B.6: The pay period used to calculate the gender pay gap

Note:

- We will provide advice in phase two on the pay period required for the gender pay calculation. Further work is required to determine the viability of requiring 12 months of pay data as compared to a single pay period.

104. The period over which pay data is collected which can be used in the measurement of pay gaps differs internationally. Australia and Ireland assess 12 months of pay data from the snapshot date¹³. The UK, however, uses the latest 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).
105. 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 require these measures look at the previous 12 months of pay data.
106. We do not consider that the UK's approach is viable because it would not provide an adequate picture of what discretionary pay is paid to employees in the gender pay calculation due to how short the pay period to calculate these elements of pay is. The UK does a

¹³ Noting that Ireland has a specific formula for variable hour employees that averages pay over a 12-week period.

separate calculation of 'bonus pay' which does use a 12-month period of bonus pay data, but it does not use this same pay period to calculate the hourly rate of pay that is used for the organisational wide gender pay gap.

107. One of the challenges that was identified by payroll providers was about the ease of extracting hours worked from payroll systems currently. Some providers highlighted that existing software does not always calculate accurate hours worked, especially where allowances are associated with hours worked (as hours can be counted twice when running a report on hours worked). However, it was noted that these issues may need to be fixed with the upcoming changes to the *Holidays Act 2003*. The risk is that with a longer pay period of 12 months, 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.
108. We asked payroll providers whether there would be a significant difference in cost between calculating 12 months of pay data compared to a single pay period. The majority considered that it would be roughly the same cost for payroll software providers (ie because you are only running one report, just over a longer period of time). Payroll providers did consider that having two different pay periods from which to extract pay data would be overly complicated and costly; without the value-add of having better data. The preference from payroll providers, both for getting the most accurate information for effectiveness of pay gap reporting and for ease of calculating the pay data, was 12 months.
109. 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).
110. We note that the National Gender Pay Gap calculated by Stats NZ is taken from the Household Labour Force Survey. This takes a snapshot of pay at a particular period in time (rather than averaging out actual pay received over a period of time). The objective of this work programme is identifying pay gaps so employers can identify and address their drivers, to do so they should be basing the measurement on a unit of time that is representative of the pay received by employees. We therefore consider that consistency with this measure is not necessary.
111. We consider that there are two viable options:
 - a. **Option 1: Requiring a 12-month period for calculating pay.** Australia and Ireland's approach of assessing all elements of pay across a 12-month period would provide the **most accurate and effective** picture of what a person gets paid. It would capture increases in the base pay over that period as well as more accurately reflect variable pay like overtime rates and penalty rates, and the total amount of discretionary pay. However, it is also likely to have the **highest compliance costs** for employers, in particular, around working out how many hours an employee worked during the 12-month period; especially if this data is not easily extractable from payroll systems. This option, as opposed to a mixed model requiring different calculations for pay across different pay periods, was the preference from payroll providers.
 - b. **Option 2: Employers can use the most recent pay period** (for a minimum of two weeks up to 12 months) **for 'base pay' if their employees pay per pay period does not regularly change. If included in the gender pay gap calculation, require discretionary pay to be reflected over 12-months.** This approach is attempting to balance lower compliance costs for those employers with employees whose pay for hours worked are the same week to week, by allowing those employers to use a single pay period of at least two weeks instead of 12-months. This would mean that for employees whose hours regularly change employers would still be required to use a 12-month pay period. It could mean when an employer has both salaried and temporary or irregular paid employees that there may be different calculations based on the type of employee, which may result in slight discrepancies across different

groups of employees. Where these employees receive discretionary pay, the employer would still be required to work out the hourly rate for that bonus pay to contribute to the hourly rate for the gender pay gap. Having a nuanced rule for some employees would add a layer of **complexity** into the system, however, by doing so we could be **reducing the impact** on employers by reducing **the compliance costs** for calculating the hourly rate of pay for the gender pay gap for a large number of employees.

112. 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 given that we have heard hours of work data is not always recorded in a way that is easily extractable. We consider there is a risk that **the costs of complying could be extensive**. While option 2 attempts to mitigate this risk for some employers by allowing the use of a smaller pay period where pay is static, further work is needed to test with employers and payroll providers whether this would **reduce compliance costs or add unnecessary complexity**. As such, we consider that we should seek a delegated authority to further explore what the length of the pay calculation should be in phase two.

B.7: Hours worked vs contracted hours for salaried employees

Recommendation:

- 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.

113. Employers are not required to record actual hours worked for the purposes of reporting payroll information to the Inland Revenue Department – Te Tari Taake.
114. The *Employment Relations Act 2000* requires a wage and time record be kept, including the number of hours worked each day in a pay period and the pay for those hours. However, an employer can rely on the 'usual hours' recorded in the employment agreement, roster or other document, if an employee's number of hours worked each day in a pay period and the pay for those hours are agreed and the employee works those hours. The 'usual hours' for a salaried employee can include any additional hours worked by the employee in accordance with the employee's employment agreement. This can mean for salaried employees that hours worked beyond those recorded in the employment agreement are not always recorded.
115. Instead of requiring actual hours worked as the unit of measurement for the gender pay gap calculation per employee, 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 recommend this approach for the New Zealand context.

B.8: Whether any other measures, in addition to pay gap calculations, will be required?

Recommendation:

- Additional measures be required to be calculated and reported (in addition to organisation-wide pay gaps), as outlined in this section.

116. As discussed in our previous briefing, [briefing 2223-2824 refers], nationally and internationally, organisations have been asked to or have chosen to measure a wider set of measures to supplement the overall pay gap calculation.

117. Organisational level pay gap reporting is a helpful first step to identifying pay gap issues within an organisation but is a blunt measure which can only identify if an aggregate pay gap exists and not what the drivers are. For example, organisational level pay gap calculations will not help to identify a disparity that may exist in an organisation between two groups. Supplementary measures are therefore used to provide context to the overall calculation and assist in identification of the drivers of pay gaps. Additional measures could enable more detailed analysis and context for the drivers of pay gaps within an organisation.
118. Note, that we have recommended above (refer section A.2), that any employers that meet the size threshold are required to calculate gender pay gap, and other mandatory measures, but the reporting requirements may not apply, or may be different, if they do not have 20 male or 20 female employees (or 20 employees that identify as ‘another gender’ if they have employees within this category) in the calculation.
119. In this section we consider three different types of additional measures: bonus pay measures, quartile-level measures, and gender and disclosure information.

Bonus pay measures

Recommendation:

- The additional measures include:
 - the mean and median bonus pay paid to male employees compared to female employees
 - the mean and median bonus pay paid to ‘another gender’ compared to a comparator group (to be determined in phase 2) for employers that have employees that identify as ‘another gender’
 - the proportion of males, females and ‘another gender’ (for employers that have employees that identify as ‘another gender’) that receive bonus pay.
- That ‘bonus pay’ for the bonus pay gap calculation be required to be calculated over a 12 month pay period.

120. Most countries report the gender pay gap on the basis of their tailored version of ‘total remuneration’ – being base pay and any other additional discretionary pay measures like bonus pay. In addition to this measure, countries also require additional reporting that provides context to the primary gender pay gap measure.
121. The UK requires the difference between the mean bonus pay paid to men compared to women and the difference between the median bonus pay paid to men compared to women, as well as the proportion of male and female employees who receive bonus pay. In addition to this, the UK requires the proportion of male and female employees in each pay quartile. Ireland also follows this approach, but also requires the percentage of males who receive benefits in kind compared to the percentage of females who receive such benefits.
122. Canada only reports the gender pay gap for base salary (ie not total remuneration) and then separately reports on the mean and median bonus pay, and the mean and median overtime pay.
123. It is worth noting that Canada and Australia receive the raw data from employers and can then undertake different calculations when the regulator reports on that data, therefore their legislation does not need to specify the exact calculations for employers to use (as this is done by the regulator). This is not the case for the UK or Ireland who require employers to do the calculations themselves and report on the results.

124. We consider that there is also value in separating out bonus pay as a separate measure to the gender pay gap calculation. This is because the experience overseas has been that there tends to be larger gaps in men and women’s discretionary pay (**effectiveness**), as compared to base pay alone. We would recommend that the difference in mean and median bonus pay paid to male employees and to female employees be mandated. We also consider that mean and median bonus pay paid to ‘another gender’ compared to a comparator group (to be determined in phase two) be reported if an employer has employees that identify as ‘another gender’. The bonus pay gap should be required to be calculated over a 12-month period because this type of pay fluctuates over the year. The scope of what constitutes ‘bonus pay’ will be refined in phase two.
125. In addition to reporting the mean and median bonus pay of females compared to males, there is value in also understanding the proportion of males, females and those of ‘another gender’ that receive bonus pay across the organisation. It would not require organisations to give granular detail about the range of bonus pay paid to each gender group. This measure draws attention to the demographic of workers who receive bonus pay and can **help employers and employees understand why pay inequities might exist**; particularly for organisations that utilise bonus pay as a core component of total remuneration.
126. Note, the reporting requirements may not apply, or may differ, for employers if less than 20 employees are represented in each gender category in the bonus pay gap calculation (for example, if only 10 females receive bonuses) due to data reliability concerns (as discussed above in section A.2).

Quartile level measures

Recommendation:

- The additional measures include:
 - the proportion of males, females and ‘another gender’ (for employers that have employees that identify as ‘another gender’) in each quartile by salary.

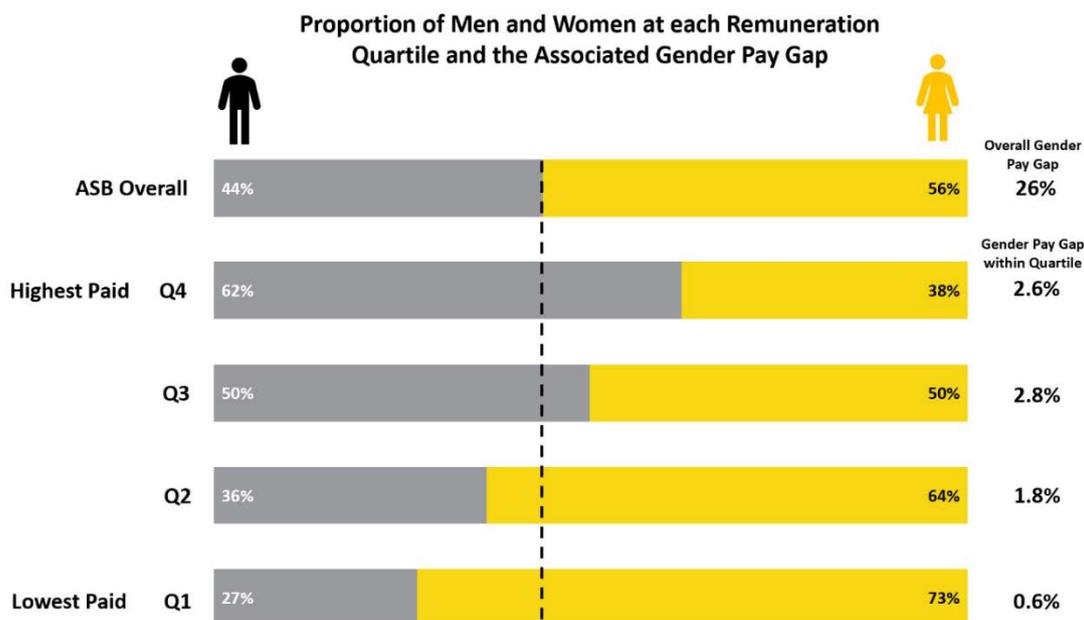
127. As discussed above, some measures such as like-for-like and by-level, if required by legislation, are likely to be compliance-heavy and costly, but there are measures that can provide additional granular context that are simpler for employers to collect and could provide valuable additional insight into pay gaps.
128. For quartiles these are:
- a. **Option one: Require employers to report the proportion of males, females and ‘another gender’ within each pay quartile:** This option would require employers to measure the quartile ranges of pay across their organisation and calculate the proportion of each gender group within each quartile by percentage. This measure would be **simple** for employers to calculate as it would be using the same data set as that required for organisational pay gap measurements. This measure draws attention to the workforce demographic at each quartile and supports businesses to **identify the potential drivers of their pay gaps**, as it will show when 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 gap measurements**. For employees, this measure may indicate levels of diversity within an organisation. Comparable jurisdictions such as Ireland and the United Kingdom require reporting of gender proportion by quartile.

Note, we also considered, but do not recommend, the following alternative and additional ways to implement option one:

- i. Reporting the actual number people who are reported in each gender category within a quartile is not a recommended approach for this option as it encounters **privacy issues** when the numbers of people in a gender category are low.
 - ii. Reporting the salary range covered at each quartile was also rejected as an option as the gender proportion measurement is supposed to assist with exploring drivers of pay gaps rather than the spread rather than overall pay ranges. Requiring salary ranges is also likely to **cause privacy and commercial sensitivity issues** that reach beyond the objectives of a pay gap reporting system.
- b. **Option two: Require employers to report pay gap percentages within pay quartiles:** This option would require employers to measure the quartile range of pay across their organisation and calculate the pay gap percentages between gender groups within each quartile. These quartiles would not reference the salary range covered at each quartile. This measure would be **relatively simple** for employers to calculate, as it would use the same data set that is used for organisational pay gap measurements, but would be **slightly more complex than option one**, as it would require additional pay gap measurements at each quartile. This measure would assist employers to understand the makeup of their pay gap, by **enabling identification of where pay gaps exist** in their organisation. This would enable employers to easily identify where efforts could be focused to remedy pay gaps. From 2024, this measure will be required as part of Australia's pay gap reporting system. Stats NZ also recommends this measure for organisations seeking to investigate their pay gaps further.

129. Figure 3 below shows how options one and two can be used to provide further context to the drivers of organisational pay gaps. The proportion of males and females at each quartile show that there are a higher proportion of females at the lowest paid quartile, and a higher proportion of males at the highest pay quartile, indicating a lack of proportionality at higher quartiles being a potentially large driver of their pay gap. The pay gap within quartile percentage shows that within each quartile, pay gaps are much lower relative to the overall pay gap, which could indicate that horizontal pay equity is not a large driver of this employer's pay gap.

Figure 3 – pay gap percentage by quartile - ASB in the MindTheGap registry in New Zealand



130. However, **option two poses some data reliability concerns** if the proportion of a gender group is low within a quartile. As noted above, pay gap calculations need to contain 20 of each comparator group to be statistically reliable. Quartile pay gaps will be statistically unreliable for employers who do not have 20 or more people in each gender category in each quartile. For option two to be statistically reliable and informative for employers, we consider that the size threshold for this requirement would need to be high (ie 250+) to ensure that most organisations could meet data reliability in each quartile each reporting year. We considered setting option two at a higher threshold than other measures but consider having different reporting requirements at different thresholds will create **unnecessary complexity** for employers.

131. We therefore consider that reporting pay gaps by quartile could be encouraged via guidance. We recommend only requiring option one (and not option two) as **option one poses no data reliability concerns** and provides a useful supplementary measure for people to **identify the drivers** of organisational pay gaps.

Gender and disclosure information

Recommendation:

- The additional measures include:
 - number or proportion of males, females and ‘another gender’ who reported their genders, as well as the number or proportion of people that did not provide a response on their gender.

132. Requiring organisations to report on the proportion of males, females and ‘another gender’, alongside the proportion of employees that did not respond would be helpful to supplement the regulator’s and public’s understanding of the overall reliability of measurements that are reported. It may also:

- a. provide employers with an initial prompt to consider the gender composition of their workforce.

- b. help inform any future improvements around reporting requirements and the compliance approach (eg if it became clear that many employers continued to have low disclosure rates for gender information).
133. Employers would already need to calculate the number of males, females and ‘another gender’ to calculate their pay gaps. We are unclear how simple it will be for employers to specify the exact number of employees that did not provide a response on their gender (ie the total number of employees), particularly for large employers. Therefore, in phase two we will consider further whether employers should be required to provide the number of employees or the proportion of employees in each category.

B.9: How often employers are required to report?

Recommendation:

- to require employers to report their pay gaps and additional measures annually.

134. We based our options for reporting frequency around the frequency requirements of overseas pay gap reporting systems and considered two options:
- a. annual reporting
 - b. reporting every two years.
135. Of the countries that have pay gap reporting or pay gap auditing systems we found that around half require information annually and most others required reporting every 2 years or longer. Key comparison countries like the UK, Canada, Australia and Ireland require annual gender pay gap information. Several European Union countries; Austria, Belgium and Italy require reporting every two years. Other countries like Germany, Iceland and Switzerland require information between every three to five years, however their employment relations systems are not directly comparable to New Zealand. We also considered reporting frequency of longer than two years would almost certainly fail to achieve system objectives.
136. We recommend that organisations report their pay gaps annually. **Annual reporting**, despite being more resource intensive for all system stakeholders, **meets system objectives** better than reporting every two years. 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 form a part of an organisation’s regular reporting cycle along with other existing annual reporting obligations. More **frequent reporting will also support people to take action to address pay gaps** as information will be more up to date than if it was available every two years. We noted that reporting every two years would offer employers and a potential regulator more flexibility than annual reporting, however we considered that flexibility is outweighed by the need for more frequent and robust data collection.

B.10: Who should employers report to?

Recommendation:

- Employers should report their pay gap information to a regulator, who will publish the pay gap information centrally.

137. Pay gap reporting generally means employers are required to report their pay gaps to another entity. Whom they report to varies significantly overseas, but often includes workers’ representatives, social partners, regulators, or the public, and sometimes a combination of a third party and a government entity. This largely reflects those countries’ own unique circumstances. For example, countries who have high union membership rates tend to

require employers to report pay gap information to workers' representatives or social partners.

138. For countries who are similar to New Zealand (Australia, UK, Canada, and Ireland), their pay reporting mechanisms also vary. For example, in the UK, employers are required to publish their pay gap information on their websites, as well as reporting them to a regulator. Ireland, on the other hand, requires employers to publish pay gaps on their websites. In contrast, Australia and Canada (for federally-regulated private sector employers with 100 or more employees) have sophisticated online databases/tools in place for employers to submit their reports.
139. These different practices largely reflect the maturity of these countries' pay transparency systems and IT set ups. They tend to evolve as well. For example, while currently individual employers' pay gap information is not publicly accessible in Australia, this information will be made available soon following the recent review of its pay transparency system. Similarly, Canada is designing a new online tool for publishing individual employers' pay gaps.
140. In designing Aotearoa's own reporting system, we have taken a first-principle approach by looking at what reporting should focus on (ie employer, employee, or the wider public) to best meet the overarching objectives, while being guided by experience of the comparator jurisdictions.
141. We have created five options:
 - a. **Option 1: Measure pay gaps but no reporting required** – this option means employers would be required to measure pay gaps but they would not be required to report this information to anyone.
 - b. **Option 2: Required to report to a regulator but information not published** – this option means that in the first instance, employers would report their pay gap information to a regulator (design of this will be covered in phase two). We note that when this model used overseas is generally accompanied by giving workers the right to access pay gap information (eg Germany and Iceland), and/or auditing requirements, where employers' pay gap reporting is assessed either internally or by a third party (independent body or government).
 - c. **Option 3: Required to report to employees** – this option means employers would share pay gap information only internally with employees. There is a possibility that this information may become public if an employee chooses to share it. This option is very rarely used overseas.
 - d. **Option 4: Required to publish the report on the employer's own website** – employers would report their pay gap information on a public-facing website. If a company does not have a website, they may also publish this information on an intranet or a parent company's website (this is the approach used in the UK for reporting to employees).
 - e. **Option 5: Report to a regulator, who will publish the pay gap information centrally**– employers would provide pay gap information to a regulator for central publishing purposes. The regulator would collect this information and publish individual employers' pay gaps on a register that is publicly accessible.

Options that do not meet the policy objectives

142. We do not consider that options 1, 2, and 3, as stand-alone options, would be effective in achieving the overarching objectives, which is to incentivise employers to investigate and address drivers of pay gaps, and support people to identify pay inequities and enable them to take actions to address them. This is because pay gap information would not be made widely accessible under these three discarded options. Option 1 depends on the employers'

willingness to report pay gaps; option 2 means no employees or the public would be able to access pay gap information; and option 3 means the pay gap information is not available for the wider public to access. Without scrutiny from their employees or the public, employers would have fewer incentives to investigate and address drivers of pay gaps.

143. Option 3 is also **difficult to implement**. Employers will all have different mechanisms for communicating with their employees, and some of them do not have a centralised way to report pay gaps to their employees. Mandating reporting to employees in a meaningful way that does not involve the high compliance **costs** of individual communication is challenging, in particular for employers who may need to build new systems to achieve this. Such a requirement would also be very challenging to enforce, because it will be difficult for the regulator to monitor whether employers are providing pay gap information to their employees internally.

While options 4 and 5 both make pay gaps widely visible, option 5 is the most effective option

144. In contrast, both employees and the wider public would be able to access pay gap information under options 4 and 5.
145. Under option 4, employees would be able to access their organisation's pay gap information. This would enable them to identify pay gaps within their organisations and ask their employer to explain them or to investigate the drivers of them.
146. This option would also help the wider public to better understand pay gaps. It could be useful, for example, for a prospective employee thinking about the awareness of a potential employer of gender pay issues. However, because each company would report their information separately, not all employers' pay gap information is accessible from one place. The public would only be able to access one organisation's pay gap information at a time. They would also need to know an organisation's name to be able to search for this. It would therefore be difficult for the public to compare pay gaps between different organisations. Similarly, because pay gap information is not as easily accessible to the public as under option 5, there would be less scrutiny of employers, and therefore less incentive for employers to investigate and address drivers of pay gaps.
147. Option 4 would incur a **cost to employers**. This may be relatively small for organisations who already have IT systems in place. The costs would be greater for organisations who do not already have a website and are unable to use a parent company's website for pay gap reporting purposes, as they would need to set up new websites to publish pay gaps. Similar to option 3, option 4 is **difficult to implement** for the regulator as well, because it would be challenging for a regulator to monitor whether employers are publishing pay gaps on their websites.
148. Option 5 is **more effective** than option 4, because putting all employers' pay gap information in one place would reduce search costs for both employees and the wider public (including media outlets). Greater visibility means greater incentives for employers to identify and address the drivers of their pay gaps.
149. This option would incur **costs to the Crown**. The costs include the initial set-up of a central register, subsequent annual ongoing costs to maintain the register, and monitoring and enforcement by a regulator. We have provided you with some initial considerations about options for the regulator in advance of providing detailed advice in phase two, including information about making funding decisions, from page 51.
150. As you have indicated your desire to seek Cabinet decisions on this in June, we note the risk of seeking Cabinet agreement on this option before securing the necessary budget funding.
151. This option would incur **costs to employers**. This includes preparing and reporting pay gap information to a regulator. We are unable to quantify these costs in phase one, largely due to the limited ability to consult. However, we will provide you with this information in phase two.

152. We have assessed the risk of breaching individual employees' identity and pay information associated with this option to be low. This is because pay gap information would only be reported where a certain business size threshold and sample size had been met. Information reported would not identify individual employees.

Agency and NACEW feedback

153. Both NACEW and Te Kawa Mataaho Public Service Commission suggested combining reporting to employees, on the employer's own website and to a register (options 3, 4, and 5.)

154. While we agree that these combinations would make pay gap information more accessible, we do not recommend either of these options because options 3 and 4 are both difficult to implement as a minimum legal requirement for both the employers and the regulator. Employers will be encouraged to both publish their report on their own website and share with employees.

Section C: Should there be any requirements on employers in addition to reporting?

This section advises on whether there should be any requirements in addition to reporting, and if so, what those requirements should be

155. Section C is set out differently to sections A and B above. Sections A and B are a series of discrete decisions that build together to make a measurement and reporting system, which are the minimum requirements of a pay gap reporting system. This section asks whether there should be any additional requirements, in addition to measurement and reporting, that employers should be required to follow, and then builds the analysis from there.
156. This is a different framing to the original request, which was whether action plans should be required, and if so, what should they contain. In talking to stakeholders, including officials from the UK and Australia, it has become clear that people have different understandings of what is meant by the term 'action plan'. We have defined action plans as actions employers can take to address drivers of pay gaps and improve pay outcomes in their organisations once they have identified pay gaps through measurement and reporting. This could include something as simple as writing a narrative to explain their pay gap. We consider this broader framing better reflects the range of options available.

International regimes and our public service take a variety of approaches, from voluntary to mandatory

157. Requirements for action plans in other jurisdictions vary significantly. Approaches range from voluntary with light touch guidance to extensive investigative and goal setting requirements.

The New Zealand Public Service has extensive action plan requirements

158. Under Kia Toipoto 2022 is the first year the Public Service is required to publish annual action plans relating to agencies gender and ethnic pay gaps. However, Te Kawa Mataaho Public Service Commission's approach does not rely on a legal requirement to achieve compliance so should be distinguished from other approaches.
159. The requirements are extensive and includes consulting with unions and employees, gathering measurement data, identifying drivers and creating measurable goals to improve the gender and ethnic pay gap.
160. The Equal Pay Taskforce at Te Kawa Mataaho Public Service Commission provides guidance and oversight. Agencies of all sizes must report, however there is an understanding that there are data robustness challenges in smaller agencies. In this case, agencies are encouraged to use their data as an indicator to focus on other measures in their action plans.

Australia has different action plan requirements depending on business size

161. The Workplace Gender Equality Agency (WGEA) questionnaire asks employers with 100 or more employees whether they have taken certain actions to address any identified pay gap, such as creating a formal policy/strategy, conducted a pay gap analysis, or provide parental leave and flexible working options.
162. WGEA's legislative framework does not require employers with less than 500 employees to take these actions but does require them to report on whether they have taken these actions.
163. 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.
164. A 2021 review of the legislation recommended relevant employers with 500 or more employees be required to commit to, achieve and report to WGEA on measurable genuine

targets to improve gender equality in their workplace. This recommendation is yet to be implemented, as WGEA is currently in consultation with businesses and stakeholders.

The United Kingdom (UK) has a voluntary system

165. While employers with 250 or more employees must report their gender pay gap, action plans and supporting narratives are optional for employers.
166. An official we spoke to in the UK estimated around 50 percent of reporting businesses voluntarily produced action plans in the first two years of reporting their pay gaps. They said, had they known there would be such a large voluntary uptake, they would have produced more explicit guidance earlier. However, they did not consider it was an indicator that they should have mandated action plans.

Other jurisdictions issue fines for non-compliance

167. France and Canada (Federal) both have monetary penalties for employers who fail to comply with their action plan requirements. More information on their systems, and the others mentioned above, can be found in Annex Five.

The evidence on the effectiveness of action plans is promising, but research is still emerging

168. A rapid evidence review on the effectiveness of action plans has been carried out by MBIE's Research and Data team. Several studies reviewed can be found in the footnotes below. The Research and Data team indicated that the review of literature was fast tracked, but there would be merit in doing a more thorough search in due course.
169. Research carried out by organisations such as the OECD¹⁴ and the Global Institute for Women's Leadership at King's College London¹⁵ found that in countries such as Spain, Sweden and France, gender pay gap reporting systems on their own have limited impact, but when paired with action plans, have the potential to assist employers to deliver more effective results in closing their pay gaps.
170. The Government Equalities Office in the UK looked at studies carried out in jurisdictions such as the US, Belgium, Wales and Italy. They found that actions in areas such as recruitment practices, transparency in promotion and reward processes, creating a diversity taskforce and encouraging salary negotiations by sharing salary range information had a positive impact. Further research about actions such as workplace flexibility, shared parental leave and mentoring/sponsorship programmes is required to improve evidence on their effectiveness and how to best implement them¹⁶.
171. For action plans to be successful in closing employers' pay gaps, they must be clear, time-bound, measurable, and use high quality data¹⁷. Research suggests that action plan requirements should also have adequate enforcement, regular monitoring and reviews¹⁸.
172. Overall, the rapid evidence review shows that a comprehensive action plan requirement has the potential to positively impact pay gaps more than pay gap reporting alone. However, to ensure success, the requirements need to be extensive and quality data is needed to ensure employers can set targets to appropriately address their drivers.
173. We note that these studies were largely based on matured systems that have had pay gap reporting and action plan requirements in place for a number of years. As a pay gap

¹⁴ [Pay Transparency Tools to Close the Gender Wage Gap.](#)

¹⁵ [Bridging the gap? An analysis of gender pay gap reporting in six countries.](#)

¹⁶ [Reducing the gender pay gap and improving gender equality in organisations: Evidence-based actions for employers.](#)

¹⁷ [Bridging the gap? An analysis of gender pay gap reporting in six countries.](#)

¹⁸ [Pay Transparency across Counties and Legal Systems.](#)

reporting system in New Zealand will be new, we expect employers would require upskilling in order to produce action plans that would drive meaningful change within their workplaces.

Feedback from consultation indicates most employers would not be ready to produce an action plan, but many employers would want to have the chance to explain their gender pay gap

174. In consultation with overseas jurisdictions and stakeholders, we have received a wide range of feedback relating to action plans. This feedback indicates that action plan requirements can take a number of forms. It also indicates that most organisations would need upskilling to understand and produce action plans.
175. NACEW recommends **option 2**, with a review period after *two* reporting cycles. The group noted it was important for action plan requirements to become a compulsory part of a pay transparency system in due course.
176. Officials from the UK, Australia and Te Kawa Mataaho Public Service Commission stated that many employers wanted an opportunity to provide a narrative along with their pay gap calculation. Both HRNZ and the UK sensed there would be an estimated 50 percent who would be willing to participate in voluntary requirements with the right guidance.
177. BusinessNZ and the EMA indicated their preference for a voluntary approach, but expressed the importance of good guidance, clear and simple requirements, and to be consistent with overseas models with anything mandatory.
178. NZCTU believed that it was not fair for someone to be left out of any legislative requirements just because they work for a business that falls out of the threshold but recognised the different capabilities amongst businesses to produce action plans. Therefore, they suggested all businesses should have some level of action plan requirements, with larger businesses having more requirements than an SME.

We have enough information to recommend a voluntary system, but not enough information to recommend or design in detail the options for mandatory systems

Recommendation:

- Government encourages employers to voluntarily develop an action plan, and provides support for businesses to do so (option 2).

179. We have considered five broad options:
 - a. **Option 1: No further intervention**, including no further encouragement or guidance from government.
 - b. **Option 2: Encourage employers to produce a voluntary action plan**, which would identify tasks the firm could undertake to improve its gender pay gap. A voluntary action plan would allow the employer to choose from a range of actions depending on their circumstances. They could do some or all of: explain their gap, produce more detailed measures of their gaps, identify the drivers of their gap, and identify and take actions to address the drivers of their gap. There is a wide scope of options as to what form the encouragement could take, depending on available budget (**recommended**).
 - c. **Option 3: Delay a decision on whether there should be additional requirements (for example action plans) until phase two of this work** – this would allow us to get a better understanding of the effectiveness of the models used overseas, and to better design a system that would meet New Zealand's needs.

- d. **Option 4: Agree to require employers to take actions beyond reporting, with the details of what these actions are to be developed in phase two** – there is a wide scope of what could be included within in this option – from a light-touch and flexible set of requirements to a comprehensive and detailed system.
- e. **Option 5: Agree to require employers to take actions beyond reporting, with the details of what those actions are to be agreed to now** – officials do not have enough information to recommend a set of requirements for option 5. A minimum option would be to require the employer to write a narrative description explaining their gender pay gap, and to provide and publish this at the same time they provide and publish their gender pay gap figures. If Ministers wanted to specify further design elements on this, we could provide additional examples of what it could contain, but we are not able to make a recommendation at this stage.

We do not recommend having no further intervention (option 1)

180. We do not recommend **option 1** because at least some businesses will want to be able to explain their pay gaps or take action to address the gap. An official from the United Kingdom noted that they did not realise how many people wanted to produce a narrative or an action plan, and that they would have liked to put out guidance earlier.

We recommend government encourages businesses to produce voluntary action plans (option 2)

181. While the rapid evidence review suggests that action plans hold promise, we currently do not have sufficient understanding of what type of action plans would be workable for New Zealand, given that pay gap reporting will be a new concept for many employers. Therefore, we are unable to recommend or design a suitable mandatory system at this stage without getting more information on its effectiveness relative to cost. However, there is sufficient evidence to recommend that government encourages businesses to voluntarily produce an action plan that explains their gender pay gap and details what they intend to do to address it.
182. The available evidence suggests that when the measurement and reporting of pay gaps is paired with action plan requirements that are time bound, investigate drivers, are adequately enforced and target related actions, it is more effective at closing the gender pay gap than reporting alone. In this regard, introducing a mandatory action plan potentially meets the effectiveness criteria.
183. However, research also finds that without proper enforcement and regular reviews, action plans are unlikely to embed change. We note that studies of these systems are still new and based on evidence gathered from jurisdictions with established pay gap reporting systems. There will also need to be some work to design a system that takes the parts that work best from overseas and translates them into a New Zealand context.
184. We have not been able to complete work on effective actions in phase one. Announcing a decision about potential mandatory action plans now means that we would be creating requirements that may not be the most effective and comes at an unknown cost to businesses and the Crown. We also note the risk of doing so without substantial engagement with businesses, which may create a reluctance to participate in the measurement and reporting system or to commit to reduce pay gaps in their organisations.
185. Furthermore, the rapid evidence review does indicate that action plans hold promise, but the key is designing any requirement in a way that reflects business' capability and the maturity of a pay transparency system. As noted above we consider it is unlikely that businesses will be ready to produce action plans while also upskilling in preparation for the measuring and reporting requirements. Feedback from stakeholders (including the EMA and BusinessNZ) strongly supported the idea of phasing in requirements.

We do not recommend option 4 or option 5

186. We do not have enough information to recommend mandating action plans, either with the option to design the requirements in phase two (**option 4**) or with creating a set of designed requirements in phase one (**option 5**).

We recommend reviewing whether to introduce a mandatory action plan requirement after three reporting cycles

Note:

- If you select option 2 (government encourages voluntary action plans), you could signal that you plan to undertake a review of the effectiveness of voluntary action plans and consider whether to make them mandatory at a specified time in the future.

Recommendation:

- To schedule a review to consider whether to make action plans mandatory after three reporting cycles.

187. Option 3 is to delay the decision on whether to introduce a mandatory action plan requirement to phase two. However, we do not recommend this if it is intended to announce phase one decisions, as it provides enough certainty for businesses now.

188. With the information available to us, we do consider that there is some merit in exploring the possibility of introducing mandatory action plans in the future when employers and the regulator are more familiar with the pay gap reporting requirements. For this reason, we recommend a review after three reporting cycles. This review would consider:

- a. whether businesses have been reducing their gender pay gap through just reporting (and voluntary action plans), and
- b. what actions businesses are taking to reduce their gender pay gaps, and whether these actions are having an effect, and
- c. further observations from overseas as to the effectiveness of mandatory action plan requirements within pay gap reporting systems, in contrast to systems with voluntary action plans.

189. After three reporting cycles, businesses over 250 employees should have a handle on measuring and reporting, and will have a better idea of their gaps, including potentially understanding some of the drivers of their gaps. We will also understand what types of actions they have voluntarily been taking and early information about their effectiveness.

190. Furthermore, the question of whether to introduce mandatory action plans, and what they should contain, would benefit from stakeholder input at a level that is more detailed than we have been able to achieve in the available timeframe.

191. We have suggested three reporting cycles as that would give employers time to get familiar with the reporting requirements and identify whether any actions taken are having an impact. We would expect:

- a. year one will focus on employers coming up to speed on reporting requirements and embedding the requirements
- b. year two will focus on embedding what was learned in year one, and those who wish to do a voluntary action plan will be able to use two years of data to do this

- c. year three will further embed voluntary action plans, and after this cycle we consider business will have good information on what is working well for them.
192. After three reporting cycles businesses over 250 employees should understand measuring and reporting, and have a better idea of their gaps. We will also understand what types of actions they have voluntarily been making and may have early information about their effectiveness.
193. If you wish to signal a shorter or longer period before this review, you have the option to do this (the option is in the recommendation table on page 7).

If you choose option 2 (voluntary action plans), there are some supporting decisions that you will need to make for voluntary action plans

194. If you agree to option two, there are supporting decisions about the scope and type of support the government will provide, which impact the associated costs. For example:
- a. **Options for encouragement that are more than just guidance.** There could be merit in doing more – for example, we could provide a series of workshops to help employers work through what they should include in the action plan, or we could provide an online tool that helps them to build the action plan (similar in concept to the MBIE’s Employment Agreement Builder). This would be inconsistent with your expressed preferences for a light-touch system as it would come at a greater cost than just guidance.
 - b. **Allowing businesses to provide their action plan to the regulator for publishing on the register or being able to include a link to the businesses’ website from the register.** The advantages of this are that it highlights those who are voluntarily producing action plans, and it allows businesses with a large gap to be able to point to what they are doing about it from the place that is reporting their gap. It would come with an additional cost in maintaining the register.
195. We will discuss these with you as part of phase two.

There are some supporting decisions that will need to be made, if you select options 4 or 5

196. MBIE and MfW do not recommend options 4 or 5.
197. Option 4 is to agree to require employers to take actions beyond reporting, with the details of what these actions are to be developed in phase two.
198. Option 5 is to agree to require employers to take actions beyond reporting, with the details of what those actions are to be agreed to in phase one. We have suggested that the requirement could be a written narrative explaining the pay gap (what we would consider is the minimum necessary to call something an action plan), but you may wish to include more content requirements, or some process requirements.
199. If you do want to progress either of these options, then there are some supporting decisions that will need to be made now (noting that officials will not be able to provide advice on these elements due to the timeframe). These include:

	Option 4	Option 5
What will the content requirements be?	Would need to signal something in phase one, with detailed requirements to be developed in phase two	Would need to determine in phase one
What will the process requirements be?	May need to signal something in phase one, with detailed requirements to be developed in phase two	Would need to determine in phase one
What size business will need to produce an action plan – is it the same as the reporting threshold, or will it be larger?	Would need to determine in phase one	Would need to determine in phase one
When would the requirements come into force? At the same time as measurement and reporting requirements or a different time?	Would need to signal something in phase one	Would need to signal something in phase one
What will the role of the regulator be? Will it be a yes/no compliance check, or will it be more of an analysis?	May need to signal something in phase one, with more detail in phase two	May need to signal something in phase one, with more detail in phase two

200. If you do want to make this decision as part of phase one, we will need to get your direction on the content to be provided in the Cabinet paper. We could confirm by email after the joint Minister's discussion on 29 May 2023.

The recommended option set reflects a middle ground between complexity and effectiveness

201. For each element, the options involve a trade-off between the scope/impact of an option against the costs/complexity associated with it. Therefore, there is a cumulative effect on impact/costs depending on which options are selected.
202. To provide a sense of this, the table in Annex One provides a summary of the different options considered and recommended and the degree to which they involve trade-offs between complexity and effectiveness.
203. The options are ordered from simple but more limited in scope to more complex but with a broader scope, with the impact/coverage and complexity/costs increasing as they progress from simple to broader. This is indicative only, as we have not been able to quantify the relevant increase in impact/coverage or complexity/costs between the various.
204. The recommended options largely reflect the middle ground option between applying simple requirements that will not be overly not burdensome on employers, while still ensuring the system is broad enough to achieve its intended outcomes.
205. One area where we have recommended the simplest option is in relation to the level for pay gap reporting, where we consider organisation-level is the only viable option. While by-level pay gap information is the more useful information for identifying horizontal gender differences than organisation-level pay gap information, requiring it from all organisations (that meet the size threshold) would require the legislation to specify what is meant by 'by-level'. This would be extremely difficult to define and add a level of rigidity that would undermine the value of the information for organisations. In addition, it would add significant complexity and costs to the system.
206. Instead, we consider a more effective outcome can be achieved by combining a simple requirement to report organisation-level pay gaps with a reporting requirement that has broad reach. Increasing the visibility of the organisation-level pay gap information through the reporting requirements will incentivise employers to conduct further analysis (including by-level pay gaps) so they can explain the basis for any organisation-level pay gaps.
207. Similarly, we recommend a relatively simple approach to action plans to reflect the need for businesses to upskill and time for the pay gap reporting system to mature before considering if mandatory action plans could be required. This decision would be made after a review which would be started after a minimum of three reporting cycles.
208. Annex Two includes a summary comparing the recommended options with the systems of comparative countries.

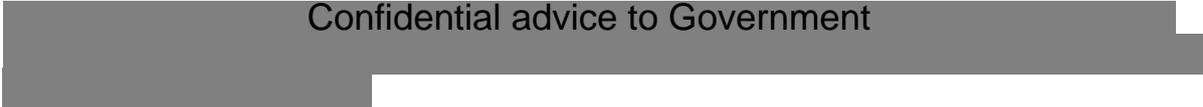
Consultation with NACEW

209. We discussed with NACEW the main options being considered (noting, as discussed with your offices, we did not signal which options we were intending to recommend). In general, the options recommended in this briefing align with what NACEW indicated as their preferred options.
210. Differences in the recommended options in this briefing and NACEW's approach are in areas such as sample size requirements and bonus pay gap reporting. NACEW believe that employers who meet the size threshold but not the sample size threshold should still have the same measurement and reporting requirements. They also believe that additional measures such as bonus pay may be too complex for employers initially and should be added in when the system is reviewed. NACEW agreed to an initial voluntary approach to action plans but thought there should be a review of this after two reporting cycles, not three.

211. NACEW members strongly highlighted the importance of addressing ethnic pay gaps as part of this work. While members understood there may be some difficulties in reporting and collecting ethnic data, the issue of intersectionality was a key part of employers understanding their pay gaps. These views are shared with Dr Sumeo, the Equal Employment Opportunities Commissioner, who has emphasised the importance of including ethnicity in this work.
212. The group also wanted to ensure that measurement of disability pay gaps for disabled peoples was considered in this work in due course.

Decisions outlined above will commit government to providing some level of regulatory functions, which come with currently unknown costs

Note:

- The decisions outlined above will require some level of regulatory activity which will require government funding to implement.
-  Confidential advice to Government
- Legislation to enable a pay gap reporting system should not be introduced until funding has been secured.

213. Regulatory functions are an important aspect of supporting the robustness and transparency of the overall pay gap reporting system. Internationally, regulatory roles and functions vary widely depending on the scope and intended aims and outcomes of pay transparency legislation, and the way pay transparency legislation interacts with other aspects of each jurisdiction's employment legislation.

214. Some options within this paper recommend or require regulatory actions:

- a. The recommendation to **report pay gap information to a regulator** who will publish pay gap information on a central register will require regulatory functions:
 - i. Creating and maintaining a register
 - ii. Issuing guidance for employers on how to report
 - iii. Monitoring for compliance
 - iv. Enforcing against non-compliance.
- b. The recommendation to **encourage voluntary action plans** will require guidance from a regulator on employer best practice for creating action plans.

215. You have indicated a preference to take a light-touch approach to compliance and enforcement of the pay gap reporting system. The compliance and enforcement components of a regulatory system are made up of:

- a. the enforcement tools available to the regulator, ranging from letters encouraging compliance, formalised 'improvement notices' instructing compliance, being able to 'name and shame' non-compliers, pecuniary penalties through infringement offences, right up to prosecution through the courts. As an example, Australia can prevent non-compliant firms from being eligible for government procurement contracts.
- b. whether there are offences and penalties associated with non-compliance, and if so, deciding on the types of actions that are considered offences, and the nature of the associated penalties within the legislation (eg a low-level infringement fee issued by the regulator or a non-criminal monetary penalty imposed after court proceedings).
- c. the compliance strategy of the regulator, including the funding it has available for monitoring and enforcement, where it chooses to focus its efforts, and how it chooses to use the tools available to it.

216. A light-touch approach can be achieved in different ways through the choices made on these components. The work to design a compliance strategy and any potential penalty regime will be undertaken in phase two as a part of our advice on regulatory functions. These are key tools for ensuring the scheme provides the right incentives for employers to comply and achieve the scheme's objectives. Until this work is done, it is not advisable to make any decisions about these matters. The Legislation Design and Advisory Committee (LDAC) advises that regulatory options should be effective and efficient, workable in the circumstances that they are required to operate in, and appropriate in light of the nature of the conduct and potential harm they are intended to address.
217. We have used the word 'regulator' throughout this briefing to reflect whichever part of government (or authorised third party) will perform regulatory functions. In phase one we have considered regulatory functions but have not designed these in detail and have not determined where any regulatory function should sit. Our current view is that the limited nature of the functions is unlikely to justify a new regulatory body, but functions could sit within an existing agency or be performed by a third-party authorised by government.

There are costs associated with regulatory functions, and the more functions you add, the greater the cost

218. Costs associated with supporting these regulatory functions will require upfront and ongoing funding. In the time that has been given to develop these proposals, we have not been able to develop detailed costings on individual regulatory functions, and we have not had time to consult with the Treasury on these options. The full scope of regulatory functions and the corresponding costs will be explored as part of phase two. We will also consult with the Treasury on these options and corresponding costs in phase two.

219. Confidential advice to Government

220. It is difficult to make cost comparisons with the Australian pay transparency system, as WGEA provides a greater level of data analysis and support to employers than we are proposing. The WGEA budget for a gender pay gap reporting system covers approximately 11,000 organisations. Confidential advice to Government

221. More detailed work would need to be done to cost individual regulatory functions for pay gap reporting, but we note that each additional function performed by the regulator comes with (as yet) unknown costs.

Pay gap reporting legislation should not be introduced until funding has been secured

222. Treasury recommends that the funding is approved before any legislation to enable the pay gap reporting system outlined in this paper is introduced. We will include a note to Cabinet along these lines in the draft Cabinet paper.

223. In phase two we will provide you with detailed costing options for the system. Confidential advice to Government

224. Confidential advice to Government

Te Tiriti o Waitangi

There is room for improvement in how the Crown upholds its Te Tiriti obligations in relation to pay gaps

225. Pay gaps experienced by Māori, especially wāhine Māori, are larger than that of the population as a whole.¹⁹ There are numerous reasons for pay gaps, including societal factors (such as occupational segregation, with certain genders or ethnicities tending to work in particular sectors, or not in others), differences in educational achievement, but also some aspects remain unexplained. Unconscious bias is likely to play a role. The Crown itself as employer has gender and ethnic pay gaps, and has the Kia Toipoto plan in place to address this. Overall, there is room for improvement.
226. Claimants in the Mana Wāhine kaupapa inquiry have mentioned pay gaps in their claims, including:
- a. Noting the gendered pay disparity in workplaces, including government agencies.
 - b. The intersections of gender and ethnic pay gaps for wāhine Māori.
 - c. A flow-on effect to retirement savings.
227. Claimants say that wāhine Māori have not been protected by the Crown in the field of employment and pay when they ought to have been and should be in contemporary times – resulting in lower pay rates, a loss of mana and wairua.

The proposal would contribute to upholding Te Tiriti

228. Phase one only proposes an intervention in relation to gender pay gaps. Phase two 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.
229. The proposed introduction of gender pay gap reporting has two objectives: incentivising employers to investigate and address drivers of pay gaps; and support employees to identify pay inequities and enable them to take action to address them. Both objectives can contribute to better upholding Te Tiriti, and decisions in this briefing could further enable that.
230. Below is an initial assessment of how this proposal to require some businesses to measure and report their gender pay gaps conforms with or upholds Te Tiriti. We expect this assessment to evolve as we hear different perspectives.
231. Te Tiriti reserves for the Crown the right to govern for all New Zealanders. 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 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.
232. 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. In particular, if an option is chosen to send the reporting to a regulator, that

¹⁹ A full table of pay gaps for selected groups is on p10 of briefing MW 22-23 0168 / MBIE 2223-2010, dated 15 December 2022.

enables employees to compare different employers' pay gaps. 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.

233. 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.
234. The views of some wāhine Māori have been sought during the preparation of this advice. Several wāhine Māori are members of NACEW, including the Chair – NACEW's joint view is outlined elsewhere in this paper. The NACEW Chair and officials also met with a group of four wāhine Māori in leadership roles in February 2023. Points raised in that hui included:
 - a. Māori are underrepresented in more areas than pay.
 - b. Wāhine often opt not to earn, to look after whānau and whare.
 - c. Pay gaps have wider implications, affecting the way wāhine live and look after their whanau, and plan for their future (noting the effect on retirement savings). Participants spoke about helping wāhine out of a place of financial dependency.
 - d. Privacy needs to be respected and protected.

Next steps

There is a very short timeframe for turning these decisions into a Cabinet paper (phase one)

235. To provide advice to Cabinet before the 30th of June 2023, we are working to the following timeframes:

Step	Date
Joint Ministers meeting to confirm package of options to progress in Cabinet paper	29 May
Draft Regulatory Impact Statement (RIS) provided to RIS panel	1 June
Draft Cabinet paper provided to Ministers	8 June
Ministerial and agency consultation on Cabinet paper	9/10 to 15 June
Lodge Cabinet paper (and RIS)	16 June
Cabinet Social Wellbeing Committee (SWC)	21 June
Cabinet	26 June

236. Officials will meet with you on 29 May 2023 to confirm your decisions on this advice so that these can form the basis of the June Cabinet paper. If you require further analysis (for instance, if your decisions differ significantly from what has been recommended), this is likely to impact our ability to achieve the intended timeframe.

237. To support the high-level Cabinet decisions sought in the June Cabinet paper, it will be necessary to make further detailed design decisions for the drafting instructions. The Cabinet paper will, therefore, seek a delegated decision-making authority from Cabinet in relation to the detailed design elements that flow from Cabinet's high-level policy decisions.

238. The delegated decision-making authority would cover (but not be limited to) the elements where we have highlighted further analysis is required. In particular:

- a. 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)
- b. whether there should be any differences in how the detailed requirements of the system apply to the public sector
- c. the most appropriate requirements for pay gap calculations involving 'another gender' (for example, identifying the appropriate comparator group)
- d. the definition and scope of the core elements of pay, including assessing the extent to which the elements of pay can practically be included for the gender pay gap calculation, and
- e. the pay period required for assessing the elements of pay.

239. In addition, 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).

Matters to be covered in the phase two Cabinet paper

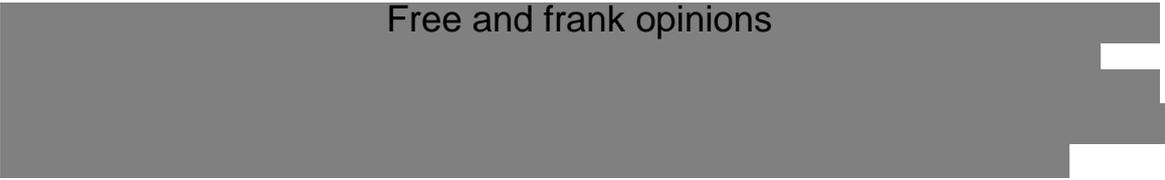
240. The Cabinet paper will seek policy decisions on:

- a. what support government will provide to businesses to encourage them to develop a voluntary action plan
- b. possible requirements for ethnic pay gap information
- c. the support, compliance monitoring, enforcement and penalty aspects of the system
- d. which entity/ies should have the regulatory functions described above, and
- e. how the system will be funded.

241. This next Cabinet paper will cover the remaining policy decisions required to issue drafting instructions for a pay gap reporting system (coupled with the delegated decision-making authority) and seek approval to draft legislation.

242. A timeframe for the phase two advice and Cabinet processes has not yet been determined. The large amount of detailed, technical advice still needed on the policy decisions in this paper and the broad scope of the decisions needed around the regulatory functions means phase two will be more resource intensive than phase one. The time required will depend on the resource available to progress the work.

243. **Free and frank opinions**



Annexes

Annex One: Summary of options considered and recommended

Annex Two: Table comparing the recommended features for a New Zealand pay transparency system with the pay transparency systems of comparative countries

Annex Three: Scenarios that explain trade-offs where bonus pay is included or excluded from the gender pay gap calculation and different lengths of pay for calculation

Annex Four: Types of pay included in mandatory reporting by country and new definition of gross earnings recommended by Holidays Act Taskforce

Annex Five: Table of action plan requirements in other jurisdictions

Annex One: Summary of options considered and recommended

Key – Considered and dismissed Recommended option Viable option

Element of the system	Options					
	Simple, but limited in scope			Complex, but with a broader scope		
What sized employers should report	250+	200+	150+	250+ staged down to 100+	100+	50+
What is required if an employer meets the size threshold but doesn't have the numbers in each category to produce reliable data?	Not required to measure		Required to measure but diff. reporting requirements		Required to measure and same report requirements	
How is it determined whether an employer meets the size threshold, and which employees should be included?	Snapshot approach			An approach designed to capture more temporary employees		
Should this system apply to public sector employers, as well as private?	Apply only to private			Apply to private and public		
What gender categories employers will be required to collect, calculate and report?	Male/Female/No response		Male/Female/Another gender/No response		Wider range gender categories	
Require pay gap data by mean, median or both?	Median		Mean		Both	
What level pay gap data should be reported at?	Organisation-level		By level		Like for like	
What type of pay should be included in the pay gap calculation?	Base pay		Base pay (including variable pay) & exploring discretionary pay (ie bonuses) and monetised allowances		Total remuneration	
What unit of measurement should be used to assess the gender pay gap?	Hourly rate of pay			Annualised pay		
The pay period used to calculate the gender pay gap?	The most recent pay period at snapshot date.		Most recent pay period for 'base pay' if their employees pay per pay period does not regularly change. 12-months for discretionary pay.		12 months for base pay & discretionary pay	
Hours worked vs contracted hours for salaried employees?	Hours worked for all employees			Salaried employees can use contracted hours of work to calculate hourly pay		
Whether any other measures, in addition to pay gap data, will be required?	None		Gender and disclosure information		Mean and median bonus pay + proportion of men and women receiving bonus pay. Proportion of men and women in each quartile by pay. Gender and disclosure information	
How often employers are required to report?	A period longer than every 2 years		Every two years		Annually	
Who employers should report to?	No reporting	Regulator but not public		To employees	Own website	Regulator and public
Should action plans be required?	Voluntary, no further intervention		Voluntary, active encouragement and three-year review		Delay decision until phase two	Yes, but requirements developed in phase two
					Yes, mandatory narrative and examples of further requirements	

Annex Two: Table comparing the recommended features for a New Zealand pay transparency system with the pay transparency systems of comparative countries

Country	Recommended for NZ	Australia	UK	Ireland	Canada
What sized organisations should report?	250+ staged down to 100+	100+	250+	250+ but staged down to 50+ (150+ in 2024 and 50+ in 2025)	100+
How is it determined whether an employer meets the size threshold, and which employees should be included?	Snapshot	Measure peak number of employees to assess threshold. Snapshot for calculation of all employees.	Snapshot	Snapshot	Measure peak number of employees to assess threshold. Snapshot for which full-time employees include. Comprehensive for which 'temporary employees' to include
Should it apply to private & public organisations?	Apply to private and public	Private and public (commonwealth public sector employees, may not include state or local govt employees)	Private and Public (with some limited exceptions)	Private	Federally regulated private-sector organisations and the public sector (only the ones determined in legislation)
What gender categories employers will be required to collect, calculate and report?	Male/Female/Another gender/No response	Male/ Female (note non-binary is collected but not reported on currently)	Male/Female	Male/Female	Men/Women
Require pay gap data by mean, median or both?	Both	Both	Both	Both	Both

At what level should pay gap data be reported?	Organisation-wide level	Currently occupational level across a sector (not at the organisational level), industry level and national level. Moving to organisational level in 2024	Organisational-wide level only	Organisational-wide level only	Occupational-wide level across a sector (not by firm).
What type of pay should be included in the calculation?	Base pay, variable pay and possibly discretionary pay, including where practicable monetised allowances	See Annex Four	See Annex Four	See Annex Four	See Annex Four
What unit of measurement should be used to assess the gender pay gap?	Hourly rate of pay	Annualised pay	Hourly rate of pay	Hourly rate of pay	Hourly rate of pay
The pay period used to calculate the gender pay gap?	12 months for discretionary pay. Exploring options of either a pay period of a minimum of 2 weeks or requiring 12 months for base pay including variable pay.	12 months for all pay	The latest pay period (ie could be one week, fortnight, monthly depending on what a typical pay period is for an employer)	12 months for all pay	12 months for overtime and bonus pay Pay period for 'salary' (this includes penalty rates)
Whether any other measures, in addition to pay gap data, will be required?	<ul style="list-style-type: none"> - Mean and median bonus pay & proportion of males and females receiving bonus pay. - Proportion of males and females in each quartile by pay. - Number or proportion of each gender and the number of employees who have not disclosed information on their gender 	<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"> - Pay gaps by quartile - Percentage of male/females in quartile 	<ul style="list-style-type: none"> - Mean/median bonus - Percentage of male/females receiving bonus - Percentage of male/females in quartile 	<ul style="list-style-type: none"> - Mean/median bonus - Percentage of male/females receiving bonus - Percentage of male/females in quartile 	<p><i>Note: Their reporting is at the sector level, not by organisation</i></p> <ul style="list-style-type: none"> - Mean/median bonus pay - Mean/median overtime pay - Proportion of men/women receiving bonus and overtime pay - Quartile salary bands by occupation (sector wide)
How often organisations are required to report?	Annually	Annually	Annually	Annually	Annually
Who organisations should report to?	Central government publishing	Central government publishing	Combination	Employers' websites	Central government publishing

Annex Three: Scenarios that explain trade-offs where bonus pay is included or excluded from the gender pay gap calculation and different lengths of pay for calculation

These diagrams show five different scenarios. Diagram 1 is where bonus pay is required to be included in the calculation of the gender pay gap, and it shows what would happen if 12 months of pay data is required vs a single pay period. Scenario B takes a snapshot pay period where bonus pay is included. Scenario C is a snapshot pay period where bonus pay is not included.

Diagram 2 is where bonus pay is not required to be included in the gender pay gap. Scenario D looks at what pay would be included over a 12 month pay period, and Scenario E looks at what pay would be included at a snapshot in November (even when bonus pay is paid out in this pay period, it would not be included because it is not required to be included in the Gender Pay Calculation).

The table below the diagrams assesses each scenario against three criteria – whether the resulting gender pay gap is comprehensive (ie most representative of what the employee was actually paid), whether the gender pay gap is easy to calculate and whether the scenario impacts on employers' decision to pay bonuses.

Diagram 1

Scenarios where the Organisational Pay Gap Calculation must include bonus pay as part of the calculation

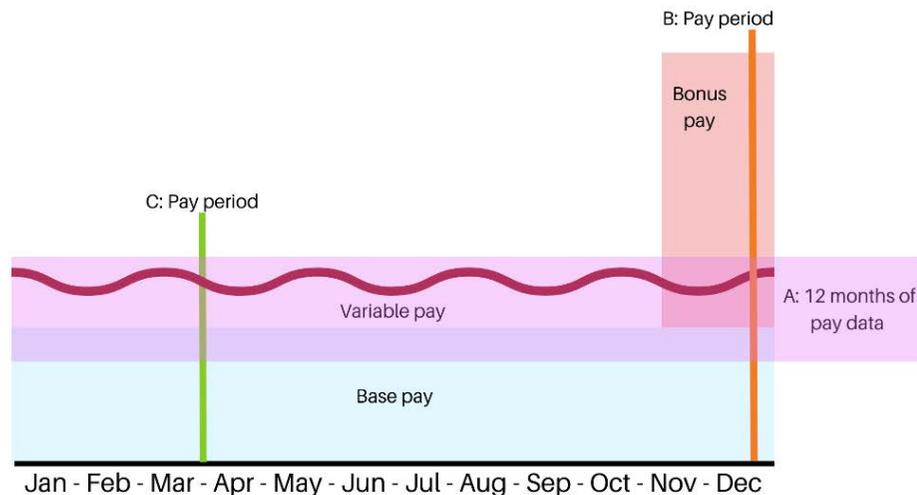
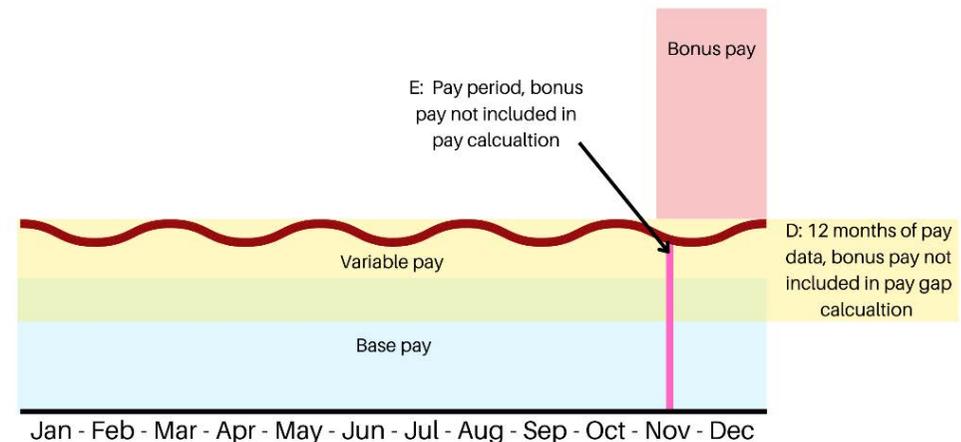


Diagram 2

Scenarios where the Organisational Pay Gap Calculation does not require bonus pay to be included in the calculation



	Key features of option			Criteria for assessment		
	Bonus included in organisation pay gap calculation	The length of the pay period for measurement	Whether bonus is included as a result of the date that the calculation happens.	Most comprehensive organisation pay gap measure	Easy to Calculate	Doesn't impact on employers' decision to pay bonuses
Scenario A: 12 months of pay is for the gender pay gap calculation. Bonus pay is required.	Yes	12 months	Yes	✓	Unsure. Possibly after Employment (Leave Entitlements) Bill.	✓
Scenario B: A single pay period is used to calculate the gender pay gap. Bonus pay falls within the pay period when pay is calculated.	Yes	Pay period	Yes	✓	✓	✗
Scenario C: A single pay period is used to calculate the gender pay gap. Bonus pay does not fall within the pay period when pay is calculated.	Yes	Pay period.	No	✗	✓	✗
Scenario D: 12 months of pay for the gender pay gap calculation. Bonus pay is not required to be calculated as part of this.	No	12 months	No	✗	Unsure. Possibly after Employment (Leave Entitlements) Bill.	✓
Scenario E: A single pay period is used to calculate the gender pay gap. Bonus pay is not required to be calculated as part of this.	No	Pay period	No	✗	✓	✓

Annex Four: Types of pay included in mandatory reporting by country and new definition of gross earnings recommended by Holidays Act Taskforce

Types of pay	UK	Ireland	Canada	Australia	New definition of Gross earnings ²⁰
Base pay – for example, wages, salary, piecework	✓	✓	✓	✓	✓
Allowances – for example, money paid for a duty that is ancillary to the main duty eg board/lodgings, purchase/lease/maintenance of an item – excludes reimbursement incurred during employment	✓	✓	✗	✓	✓
Bonuses – for example, including pay for performance in the form of money, vouchers, securities, security options, interest in securities and profit sharing, incentives, or commission	✓	✓	✓	✓	✓
Pay for leave – for example, annual leave, sick leave (not parental leave)	✓	✓	✗	✓	✓
Employer funded parental leave	Unclear	Unclear	Unclear	✓	✓
Penalty payments	✓	✓	✓	✓	✓
Overtime payments	✗	✓	✓	✓	✓
Superannuation payments – could include both employee and employer contribution.	Unclear	Unclear	Unclear	✓	✗ - employer superannuation
Reimbursement for expenditure relating to work	✗	✗	✗	Unclear.	✗
Remuneration in lieu of leave – ie cashing out your leave	✗	✗	✗	✓ (salary sacrificed items)	✓
Redundancy/termination pay	✗	✗	✗	Unclear.	✗
Workers' compensation (ACC payments)	Unclear	Unclear	Unclear	✓	First week only then not after ✓ ✗
Other payments in a form other than cash?	✗	✗	✗	✓	✗

²⁰ This is the definition recommended by the Holidays Act Taskforce

Annex Five: Table of action plan requirements in other jurisdictions

Jurisdiction	Purpose	Content requirements	Regulator and size (phase two considerations)
New Zealand Public Service (not a legal requirement)	To support transparency, embed system change and sustainable gains. This is done through measurement, data and goal setting requirements.	<p>Engage and develop action plans with unions, women, Māori, Pacific peoples and ethnic employees, and employees from disabled and rainbow communities.</p> <p>Update pay and representation data. This includes data on both gender, Māori, Pacific peoples and ethnic pay gaps, and the proportion of women, Māori, Pacific peoples and ethnic employees in leadership and occupational groups.</p> <p>Identify and describe the drivers of gender and ethnic pay gaps. This includes differences in representation in occupational groups and leadership, starting salaries, same or similar roles, removing bias, equitable progression and the impact of actions including flexible working.</p>	<p>While there is no regulator for Public Service pay gap reporting, the Equal Pay Taskforce reviews and provides feedback on the quality and effectiveness of the plans.</p> <p>Agencies and entities of all sizes must report, and there is guidance for those with fewer than 100 employees on how to apply Kia Toipoto appropriately for their size, with less emphasis on quantitative data and pay gaps.</p> <p>Agencies and entities are able to caveat information and investigate other measures in their action plans.</p>
Australia	The purpose of action plans is to outline policies and practices that will be implemented to realise the gender equality vision.	<p>The Workplace Gender Equality Agency questionnaire collects information on whether employers have taken certain actions such as if they have a formal policy and/or strategy in place in relation to certain areas, conducted a gender pay gap analysis, provide employer-funded paid parental leave, provide flexible working arrangements. WGEA's legislative framework does not require employers with less than 500 employees to take these actions, but it does require them to report on whether or not they have taken these actions.</p> <p>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:</p> <ul style="list-style-type: none"> • Gender composition in the workforce. • Gender composition of governing bodies. • Equal remuneration between women and men. • Availability and utility of employment terms, conditions and practices relating to flexible working arrangements and to 	<p>The Workplace Gender Equality Agency (WGEA) was created under the Act as a standalone agency tasked with promoting and improving gender equality in Australian workplaces. WGEA is a government statutory agency responsible for enforcing the Act. It supports employers (including smaller employers not required to report) through education and resources, and individual one-on-one assistance.</p> <p>There are two thresholds in Australia</p> <ul style="list-style-type: none"> • Employers with more than 100 employees must answer the questionnaire • Employers with more than 500 employees must have policies and strategies in place (from 2024).

		<p>working arrangements for supporting employees with family or caring responsibilities.</p> <ul style="list-style-type: none"> • Consultation with employees on issues concerning gender equality in the workplace. • Any other matters specified by the minister, including sex-based harassment and discrimination. 	
The United Kingdom	N/A	<p>Action plans and supporting narratives are optional, and employers can choose to publish these.</p> <p>The regulator recommends that the action plan includes clear, specific targets that the employer commits to achieving within a specific amount of time.</p>	The Government Equalities Office (the regulator) provides guidance on actions, including specifying which actions are effective, promising, and have mixed results.
Canada	Achieve equality in the workplace and, in the fulfilment of that goal, to correct the conditions of disadvantage in employment experienced by women, Aboriginal peoples, persons with disabilities and members of visible minorities.	Carry out regular gender pay audits and take proactive steps to ensure employers are providing equal pay for work of equal value. Employers must establish a pay equity plan within three years that analyses whether there is a difference in compensation between men and women. This includes increasing the compensation of those mostly female positions to eliminate the differences in compensation identified within the plan. Employers must revise and update their plan at least every five years.	<p>In Federal Canada, employers with more than 10 employees fall under obligations.</p> <p>The Department of Employment and Social Development Labour Programme has the authority to issue a notice of a monetary penalty of up to \$10,000 (USD) for a single violation and to \$50,000 (USD) for repeated or continued violations when a private sector employer fails to file an employment equity annual report, does not include all required information, or knowingly provides false or misleading information in the report. However, no such monetary penalties have been issued since 1993.</p>
Ireland	To explain reasons of pay gaps and actions employers are taking to reduce these pay gaps	Reasons for gender pay gaps, and measures (if any) employers are taking or planning to take to eliminate or reduce these pay gaps.	An employee can bring a claim against their employer to the Workplace Relations Commission (WRC) in respect of non-compliance with the Act. While the principal Act (the <i>Employment Equality Act 1998</i>) does not provide for sanctions in the form of compensation for the employee or for a fine to be imposed on the employer, the Director General of the WRC can make an order

			<p>requiring the employer to take a specified course of action to comply with the Act. All decisions will be published and will include the names of the employer and employee.</p> <p>There is also scope for the Irish Human Rights and Equality Commission to apply to the Circuit Court or the High Court for an enforcement order.</p>
France	<p>To enforce the 2018 Equal Pay Principles by mandating employers to adopt the goal of eliminating the gender pay gap.</p>	<p>Employers must publish in annual reports, specific information on gender equality, including actions to achieve gender equality and of the tools to remedying gender inequality including sexual harassment. Every firm must appoint a staff elected representative to the Social and Economic Committee to combat sexual violence. Employees with 250 or more employees must appoint a Human Resources representative to the Committee as well.</p> <p>Companies scoring below 75 points must engage in mandatory negotiations on gender equality and define with unions any corrective measures including possible pay rises.</p>	<p>Employers with 50 or more employees must comply. Those with 250 or more employers have more obligations.</p> <p>The Labour Ministry and Labour Inspectorate are actively engaged in applying, monitoring, and enforcing the Law and the action plan.</p> <p>Employers who miss reporting deadlines, do not budget to close their gender pay gaps in three years and all companies that have not met a score of 75-100 may be fined one percent of the company payroll. Labour authorities may give companies an additional year to become compliant, especially SMEs with limited budgets and capacity.</p>