



COVERSHEET

Minister	Hon Brooke van Velden	Portfolio	Workplace Relations and Safety
Title of Cabinet paper	Reviewing policy settings	Date to be published	6 May 2025

List of documents that have been proactively released

Date	Title	Author
March 2025	Reviewing policy settings	Office of the Minister for Workplace Relations and Safety
31 March 2025	Reviewing Policy Settings CAB-25-MIN-0093 Minute	Cabinet Office

Information redacted

YES

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Some information has been withheld for the reasons of:

- international relations
- confidential advice to Government
- legal professional privilege
- negotiations.



Cabinet

Minute of Decision

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Reviewing Policy Settings

Portfolio **Workplace Relations and Safety**

On 31 March 2025, Cabinet:

Background

- 1 **noted** that in December 2024, the Cabinet Strategy Committee asked for a report back to Cabinet by early 2025 with options for navigating current pay equity claims and a future approach to pay equity [STR-24-MIN-0021];
- 2 **agreed** that the policy intent of the proposals outlined in the paper under CAB-25-SUB-0093 is to maintain a process to raise and resolve pay equity claims, while providing a better framework for assessing whether there is sex-based undervaluation;

Policy proposals

Raising a pay equity claim: Increase the threshold for raising a pay equity claim and the timeframe for response

- 3 **agreed** to amend the Equal Pay Act 1972 (the Act) so that:
 - 3.1 the purpose aligns with the intent that the pay equity regime provides for a legislative process to facilitate the resolution of pay equity claims where there is evidence of sex-based undervaluation;
 - 3.2 the requirements that apply when an employer considers a new claim align with the revised purpose;
- 4 **agreed** to raise the entry threshold (by basing it on the entry threshold in the 2017 Employment (Pay Equity and Equal Pay) Bill so that a pay equity claim has merit when:
 - 4.1 the claim relates to work that is predominantly performed by female employees;
 - 4.2 there are reasonable grounds to believe that the work has been historically undervalued;
 - 4.3 there are reasonable grounds to believe that the work continues to be subject to systemic sex-based undervaluation;

- 5 **agreed** to amend the definition of ‘predominantly performed by female employees’ to apply where, for at least 10 years, at least 70 percent of the employees performing the work are and have been female;
- 6 **agreed** to increase the timeframe that employers have to consider whether a claim has merit from 45 working days to 60 working days;

Raising a pay equity claim: Ensure an appropriate scope of claims

- 7 **agreed** that unions must provide evidence to demonstrate how the work covered by a pay equity claim is the same or substantially similar;
- 8 **agreed** to include an empowering provision to enable regulations to be made that prescribe the evidence unions are required to provide to demonstrate how the work set out in a pay equity claim is the same or substantially similar and, for individual employees, the information about the work performed;

Assessment and bargaining: Ensure an appropriate scope of claims

- 9 **agreed** that an employer can give notice (once) to a claimant, after the merit threshold and up until the end of the assessment phase, that the work that is the subject of the claim is not considered to be the same or substantially similar;
- 10 **agreed** that if the employer, or the Employment Relations Authority (the Authority), considers the work that is the subject of the claim is not the same or substantially similar, the claim will be discontinued and will need to be raised again;
- 11 **noted** that a claimant can apply to the Authority for a determination on whether the work is the same or substantially similar (following a notice from the employer that it is not);
- 12 **agreed** to provide employers with the choice of being able to opt out of multi-employer pay equity claims without providing a reason;
- 13 **agreed** to specify that the Authority cannot make a determination in relation to an employer’s decision to opt out of a multi-employer pay equity claim;

Assessment and bargaining: Introduce a hierarchy of comparators and add more prescription to comparison methodology

- 14 **agreed** to introduce the following hierarchy for identifying appropriate comparators:
- 14.1 if one or more appropriate comparators are employed by the same employer, one or more of those comparators must be selected for the assessment;
- 14.2 if no appropriate comparator is employed by the same employer, one or more comparators from similar employers must be selected for the assessment;
- 14.3 if neither of the above applies, appropriate comparators from within the same industry or sector must be selected for the assessment;
- 15 **agreed** that if an appropriate comparator is not available within the hierarchy of comparators, the pay equity claim cannot proceed;
- 16 **agreed** to allow parties to use work that has previously been the subject of a pay equity settlement (where the claim is settled after the commencement of the amended Act) as a comparator, if both parties agree;

- 17 **agreed** to require a comparator to be excluded from being an appropriate comparator if the size of the workforce would not allow a meaningful comparison that can identify to what degree any differences in remuneration are due to sex-based undervaluation;
- 18 **agreed** to make it clearer that when assessing whether the claimant's work is undervalued, parties must assess whether there are any current and historical market conditions affecting remuneration which are not related to sex-based undervaluation;
- 19 **agreed** to require parties, when assessing a claimant workforce which was previously not female dominated, to only assess whether that workforce has experienced sex-based undervaluation since the time it became female dominated;

Pay equity settlements: Remove the ability for a settlement to include a review clause and limit when claims can be re-raised

- 20 **agreed** to remove the requirement for settlements to include a review clause and remove the ability for parties to agree to (or the Authority to determine) a review clause;
- 21 **agreed** to amend the requirements for raising a new claim where there is a pay equity settlement so that:
- 21.1 a new claim covering the work of a settled pay equity claim cannot be raised for at least 10 years following the settlement date;
- 21.2 parties can raise a claim during the 10-year period following the pay equity settlement if the Authority determines there are exceptional circumstances;

Pay equity settlements and dispute resolution: Provide for phasing of pay equity settlements

- 22 **agreed** that the parties may agree to phasing-in the new remuneration in the pay equity settlement across a maximum period of three years;
- 23 **agreed** that if the parties are unable to reach an agreement on phasing (and they have reached an agreement on remuneration), they may ask the Authority to determine if phasing will apply and how the full rate of remuneration will be achieved across a maximum period of three years;
- 24 **agreed** that in determining whether the employer may phase in the new remuneration that the parties have agreed to, the Authority must consider:
- 24.1 the conduct of the parties;
- 24.2 the ability of the employer to pay;
- 24.3 the size of the increase in remuneration;
- 24.4 any other factors the Authority considers appropriate;

Dispute resolution: Remove provision for the Authority to award backpay and changes to when and how the Authority can fix remuneration

- 25 **agreed** to remove the ability for the Authority to, under any circumstances, provide for the recovery of remuneration for past work (i.e., backpay) prior to the date of determination where settled;

26 **agreed** to raise the threshold to apply to the Authority to fix the terms and conditions of a pay equity settlement by removing the ability to apply to fix if ‘a reasonable period has elapsed within which the parties have used their best endeavours to identify and use reasonable alternatives to settle the pay equity claim’;

27* **agreed** that when the Authority fixes the terms and conditions of a pay equity claim, the new remuneration must be phased-in in equal yearly instalments over three years from the date of the determination (i.e., a third each year);

* Cabinet has agreed to amend recommendation 27 to: “when the Employment Relations Authority fixes remuneration of a pay equity claim, the new remuneration must be phased-in, in three equal instalments, a year apart from each other, starting from the date of the determination”

Transitional provisions for claims initiated or settled before the new changes take effect

28 **agreed** that all pay equity claims made under the Act that have been raised with the employer, or that have been filed in the Authority or the Employment Court when the Bill comes into force and that are not settled or not yet finally determined be discontinued, but may be re-raised under the provisions of the Bill;

29 **agreed** that in relation to any pay equity settlement under the Act:

29.1 all review clauses, including those incorporated into employment agreements, have no effect and are unenforceable;

29.2 any proceedings that have been filed in the Authority or the Employment Court in relation to the interpretation or enforcement of such a review clause are discontinued;

30 **agreed** that claims that were settled before the 2020 amendments to the Act can be re-raised in line with the new provisions based on the date that their claim was settled (i.e., 10 years post-settlement);

31 **noted** that the proposal in paragraph 30 above would also apply to the care and support worker claim, meaning a new claim could be raised in 2027;

32 **noted** that any claims that are raised, but not settled or fixed, will continue to have a choice of proceedings (status quo);

Legislative implications

33 Legal professional privilege

34 **authorised** the Minister for Workplace Relations and Safety to make decisions, consistent with the policy outlined in the paper under CAB-25-SUB-0093, on any issues that may arise during the drafting;

35 **agreed** that the amendment Bill have a category ^{Confidential} priority on the 2025 Legislation Programme ^{advice} _{to Government}

36 **noted** that the Bill should be introduced in early May 2025;

Financial implications

37 Confidential advice to Government

38 Confidential advice to Government

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Confidential advice to Government

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Confidential advice to Government, Negotiations

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Confidential advice to Government

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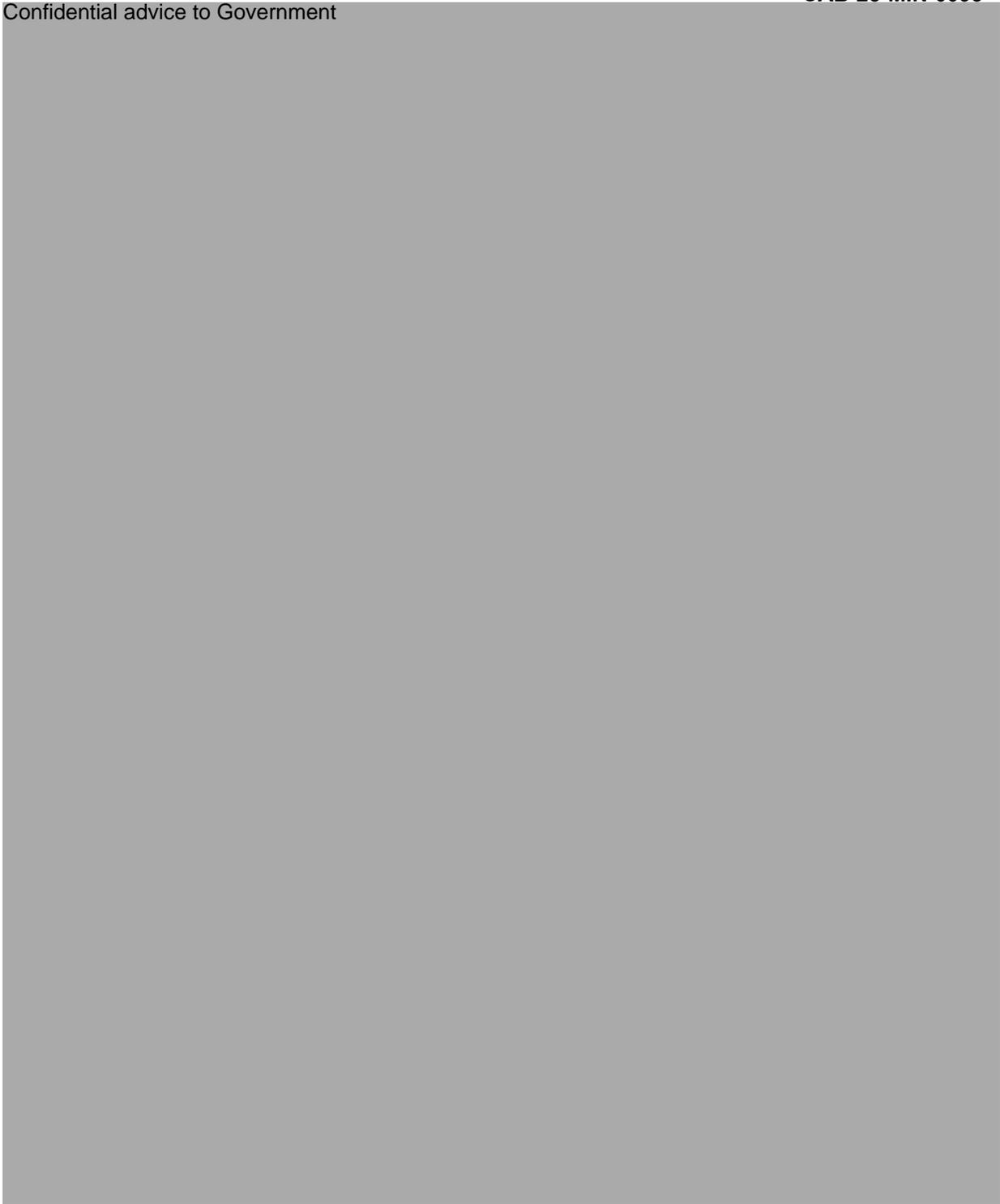
Confidential advice to Government

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Secretary of the Cabinet