MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

COVERSHEET

Minister	Hon Brooke van Velden	**Portfolio**	Workplace Relations and Safety
Title of release	Release of advice and associated material for amendments to the Equal Pay Act 1972	**Date to be published**	31 July 2025

List of documents that have been proactively released

#	Date	Title	Author
1	November 2023	Briefing to Incoming Minister: Pay equity extract	MBIE
2	6 December 2023	Email: Response to questions about pay parity explainer	MBIE
3	29 January 2024	Summary of letter from the Minister for Workplace Relations and Safety to the Prime Minister about pay equity as a portfolio priority	Office of the Minister for Workplace Relations and Safety
4	7 March 2024	PowerPoint: Pay equity: a short history	MBIE
5	8 April 2024	Email: Pay equity reset draft Cabinet paper	MBIE
6	18 April 2024	Email: Pay Equity comparators	MBIE
7	18 April 2024	Email attachment: Pay equity comparators in other jurisdictions	MBIE
8	18 April 2024	Email attachment: International comparison summary	MBIE
9	24 November 2024	Email attachments: Further information for Minister Willis' questions on pay equity & International comparison summary	MBIE
10	3 December 2024	Cabinet minute: STR-24-MIN-0021 Pay equity: Past, present and future	Cabinet Office
11	3 December 2024	Cabinet paper: Pay equity: Past, present and future	Office of the Minister for Workplace Relations and Safety
12	24 February 2025	Joint briefing: Pay equity: Pathways for change	MBIE, the Treasury

#	Date	Title	Author
13	3 March 2025	Email attachment: MBIE view of key Pay Equity questions	MBIE
14	14 March 2025	Joint briefing: Policy decisions and draft Cabinet paper on pay equity	MBIE, PSC
15	21 March 2025	Joint briefing: Revised pay equity Cabinet paper for consultation	MBIE, PSC
16	9 April 2025	Joint briefing: Draft paper seeking Cabinet agreement to introduce the Equal Pay Amendment Bill	MBIE, PSC
17	29 April 2025	Email: Updated CAB paper, DDS and decision on penalty	MBIE
18	5 May 2025	Cabinet minute: CAB-25-MIN-0143 Reviewing policy settings: Bill for Introduction	Cabinet Office
19	5 May 2025	Cabinet paper: Reviewing policy settings: Bill for introduction	Office of the Minister for Workplace Relations and Safety
20	5 May 2025	Cabinet minute: CAB-25-MIN-0093 Reviewing policy settings	Cabinet Office
21	5 May 2025	Cabinet paper: Reviewing policy settings	Office of the Minister for Workplace Relations and Safety

Information redacted **YES / NO** *(please select)*

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

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Out of Scope

Collective bargaining processes

84. Bargaining is the process used by unions and employers for negotiating collective employment agreements. The bargaining system has undergone significant reform in recent years, expanding from the Employment Relations Act to include the Fair Pay Agreements Act 2022, the Screen Industry Workers Act 2022, and the Equal Pay Act 1972 (which was amended in 2020 to establish a process for raising pay equity claims that aligns with the existing bargaining framework).

85. Bargaining is intended to enable employers and employees and their representatives to negotiate terms that are mutually beneficial and support constructive, productive industries and workplaces. However, several recent bargaining processes have been lengthy and significantly impacted actors beyond the bargaining parties, particularly in the public sector. A number of concerns have been raised with MBIE and there may be value in undertaking further policy work to ensure the bargaining system is establishing appropriate incentives for bargaining parties. However, given the public sector focus of many of the issues, consideration should first be given to whether better outcomes can be achieved via changes to the approach to bargaining taken by the Government as employer (or funder).

Topic	Description	Driver	Action/next step
Out of Scope			
Pay equity processes in the public sector	There have been concerns raised about processes for decision-making and the fiscal consequences of pay equity settlements in the public sector and the publicly funded sector. Although the claims process is enabled by the Equal Pay Act 1972, many of the decisions made in relation to these processes were made by Cabinet or as a result of guidance by Government as an employer.	Equal Pay Act Cabinet decisions Public sector guidance.	Other Ministers may wish to discuss options to change current processes. We can provide advice on the legislative context.
Out of Scope			

Document Two - Email from MBIE Policy Director sent in response to the Minister for Workplace Relations and Safety Office's request for information about pay parity

From: Privacy of natural persons
Sent: Wednesday, 6 December 2023 12:42 pm
To: Privacy of natural persons
Cc: Anna Clark; Privacy of natural persons
Subject: FW: Pay parity explainer [IN-CONFIDENCE]

Hi Privacy of natural persons

Those questions are asking about the role of Government as employer or funder not as regulator so are outside our scope of expertise/knowledge.

But to be helpful, I can share information that I am aware of. However, for accurate information, I suggest you seek information from the relevant agencies. The Public Service Commission has a pay equity claim tracker which I can ask if we can share with you if that would be helpful.

Education

- Primary teachers have pay parity with secondary teachers. Kindergarten teachers have pay parity with primary/secondary teachers.
- Free and frank opinions
- There is also a live pay equity claim for ECE teachers
- ECE teachers also initiated an FPA

Health

- There is a pay equity settlement for Te Whatu Ora nurses. There are calls for pay parity for nurses in community health, aged care and GP practices.

Other

- Social workers in Oranga Tamariki received a pay equity settlement. There was then a pay equity claim for social workers in 5 NGOs. The settlement of that pay equity claim resulted in pay parity between those social workers and those employed by Oranga Tamariki. That settlement was then "extended" to 500 other funded sector employers of social workers using the Pay Equity Funded Sector Framework so they also have pay parity (at least initially) with social workers in the NGOs.

It is a complicated landscape so it might be better to have a conversation about rather than emails. Also we are aiming to get advice on pay equity over to Ministers probably next week so perhaps we could have a chat after that is sent across?

Ngā mihi
Privacy of natural persons

From: Privacy of natural persons
Sent: Wednesday, 6 December 2023 8:31 AM
To: Privacy of natural persons
Cc: Anna Clark <Anna.Clark2@mbie.govt.nz>; Privacy of natural persons
Subject: RE: Pay parity explainer

Thanks Privacy of natu – this is really useful. A couple questions from our advisor below:

What would be useful to know is whether there are any interactions between pay equity and pay parity that the Minister should be aware of. For example:

- What occupations have either made calls for pay parity, or have an agreed pay parity deal.
- Of those occupations, are there pay equity deals in place that are driving calls for pay parity from occupations outside the scope? Are the occupations pursuing a pay equity process at the same time?

I think at the moment the aim is to understand the consequences for occupations outside of the scope of a pay equity deal. It could be that there is no overlap here. Just wanting to cover all bases.

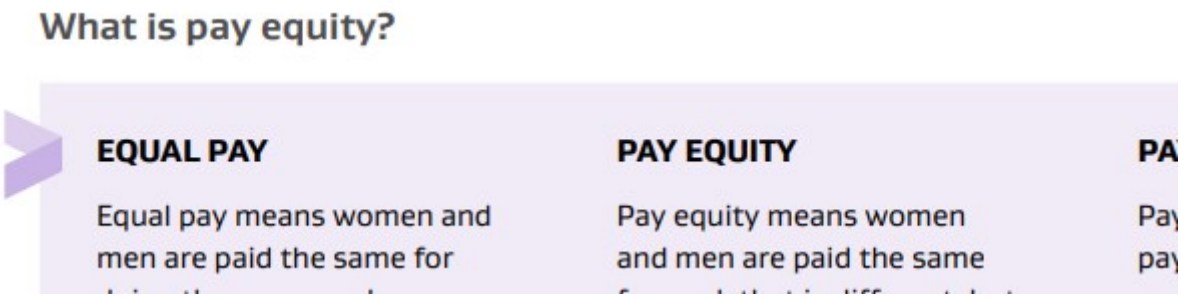
Thanks

Privacy of natural persons

From: Privacy of natural persons
Sent: Monday, 4 December 2023 12:36 PM
To: Privacy of natural persons
Cc: Anna Clark <Anna.Clark2@mbie.govt.nz>; Privacy of natural persons
Subject: Pay parity explainer

Hi Privacy of natural persons

Anna mentioned that the Minister wanted an explanation of pay parity. This text from MBIE's guide helpfully describe the different types of pay issues.



Both equal pay and pay equity are legislated requirements in the Equal Pay Act 1972.

Pay parity is a choice by an employer or funder to pay a group of workers the same pay as another group of workers. Historic examples in New Zealand are primary teachers who achieved pay parity with secondary teachers in the 1990s. This was done through collective bargaining and a public campaign by primary teachers.

There is an opt-in scheme currently available for ECE providers to "opt-in" to receive higher funding if they agree to offer pay parity for their ECE teachers with the Kindergarten rate – which is tied to the teachers rate.

There are calls for pay parity that would raise the pay of nurses working in aged care, hospices, and other community providers up to the level of public hospital nurses.

Happy to provide further information if needed.

Ngā mihi

Privacy of natural persons

Privacy of natural persons

Document Three – Summary of letter from the Minister for Workplace Relations and Safety to the Prime Minister about pay equity as a portfolio priority

I raised my whole-hearted support for equal rights within the workplace. However, I questioned the robustness and reliability of comparing remuneration between different professions in a bargaining framework. The pay equity bargaining system had resulted in significant labour market distortions and high costs to the Crown.

I was concerned about the unintended consequences of bargaining processes that had in some instances resulted in centralised setting of wages and conditions for entire workforces.

On top of meeting the immediate fiscal sustainability goals of this Government, I expressed my desire to conduct a review into the pay equity system to explore whether more fundamental changes are needed.

In terms of impact, I outlined that this work would aim to minimise the labour market distortions that result from broad-reaching pay equity processes.

Document Four

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Pay equity: a short history

7 March 2024

Budget sensitive and Negotiation sensitive

What is pay equity and how is it different from equal pay and pay parity?

Equal Pay	Pay Equity	Pay Parity
Equal pay means women and men are paid the same for doing the same work	Pay equity means women and men are paid the same for work that is different, but of equal value	Pay parity means the same pay for the same work across different employers, organisations and workplaces
e.g. women and men nurses are paid on the same pay scale	This is assessed through a job evaluation process. E.g. nurses were compared to Customs Officers, Mechanical Engineers, Fisheries Officers, Corrections Officers, Detectives, Detective Sergeants and Detective Senior Sergeants	There are calls for nurses working in aged care, hospices, and other community providers to be paid at the same level as public hospital nurses

History of gender pay policies in New Zealand

- **Equal Pay Act 1972** - requires an employer to pay all male and female employees at a rate of remuneration in which there is no element of differentiation based on sex. An employer cannot pay men and women different pay rates for doing the same or substantially similar work, if the only difference is their sex.
- **Pay and Employment Equity Taskforce** – set up in 2003. The Labour-led Government decided not to legislate for pay equity but created the Pay and Employment Equity Unit with a focus on the state sector (2004-2009).

Other jurisdictions

- Many other countries have pay equity regimes
  - Australia: Equal Pay 1969, Pay equity 1972
  - Canada: Equal Pay and pay equity 1977, a proactive duty 2010.
  - UK: Equal Pay 1970 and pay equity 1982
- There is a fundamental ILO Convention (Convention 100 – Equal Remuneration 1951) which includes pay equity (New Zealand ratified ILO 100 in 1983 but faced criticism because it did not recognise equal pay for work of equal value for many years.)

The Terranova case

- In a landmark case, usually referred to as Terranova, the Employment Court ruled that the Equal Pay Act 1972 did require employers to provide pay equity i.e. that employers had to consider what a male would be paid to do the work of a predominately female workforce and could look outside the industry for male comparators (Terranova v Service and Food Workers Union (SFWU) and Bartlett). This was upheld by the Court of Appeal and leave to appeal to the Supreme Court in 2014 was denied.
- In addition, the applicant also asked the Court to use its ability under s9 of the Equal Pay Act to make “general principles to be observed to achieve equal pay in employment agreements”.
- The National-led Government’s preferred response was for the Government to determine pay equity principles that could be supported by employers (private and public) and by unions.
  - So work began on creating a legislative process for pay equity claims – starting with a tripartite working group called the Joint Working Group on Pay Equity.
  - The Government dealt with the specific claim by negotiating a $2b pay equity settlement for all care and support workers. The only way to give effect to the settlement for all of the workers was to set minimum wages for the occupation via bespoke legislation.

Pay equity legislation development (1)

- The Joint Working Group's recommended pay equity principles became the basis for the pay equity legislation developed between 2015 and 2017.
- The intention was to enable pay equity claims to be resolved using the existing good faith bargaining arrangements. Having pay equity claims treated as grievances addressed by the courts was not seen as consistent with good faith relationships.
- In 2017, with the change to a Labour-led Government, the Joint Working Group was reconvened and asked to reconsider two major aspects:

Design aspects	Impact
The "merit" threshold for a claim to progress	This was the threshold for determining whether an employer had to enter pay equity bargaining, not whether there was a valid pay equity issue. The threshold was lowered from "merit" to "arguable".
Selection of appropriate male comparators	The hierarchy of comparators (i.e. the employer first had to look for a suitable comparator within its own workplace first, then within the same industry) was removed so comparators from any employer or industry could be used at any time.

Pay equity legislation development (2)

- Change was made to the legislation to reflect the revised principles of the Reconvened Joint Working Group and introduced in September 2018.
- After the legislation was reported back from Select Committee in May 2019, significant changes were made to key elements of the legislation:
  - Allowing unions to make claims on behalf of members and represent non-union employees covered by the work in the pay equity claim.
  - Allowing unions to make multi-employer claims.
- Legislation was passed in July 2020.

The 2018 and 2019 changes had a significant effect on the way in which pay equity claims could be raised and assessed

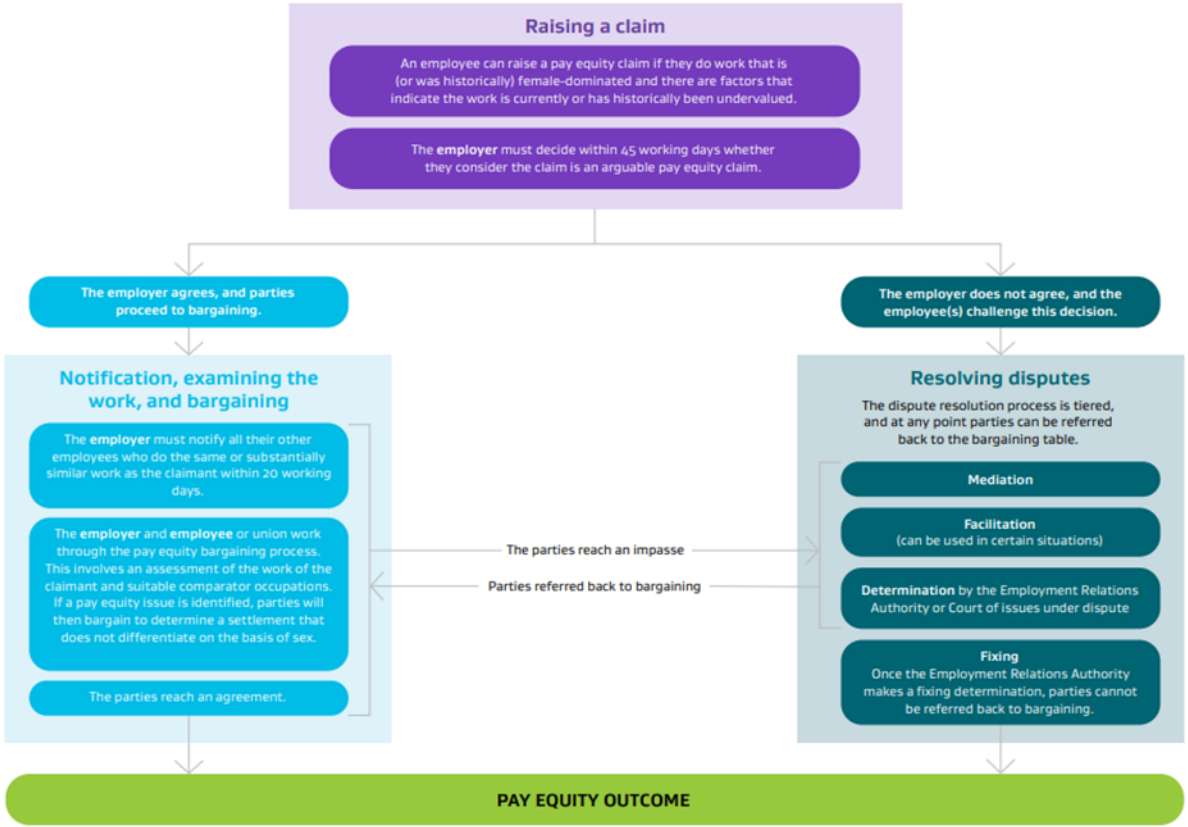
- The focus of the system shifted from:
  - individuals raising claims → to unions raising claims
  - an individual being the unit of assessment → to groups of employees doing similar work
  - claims raised with an employer → to claims raised with groups of employers
  - close comparators which have similar conditions of work → to any comparator (which puts a lot more weight on the work assessment)

- There are some important differences between the NZ pay equity regime and the structure of most overseas jurisdictions:
  - **Claim boundary** – most overseas regimes apply to each employer individually or relate to existing pay arrangements such as Modern Awards in Australia. NZ allows multi-employer pay equity claims even if those employers do not have a common pay-setting process.
  - **Identifying comparators** – because most overseas regimes apply to a single employer, comparators are usually drawn from within the same employer. The NZ regime allows comparators to be identified from anywhere – provided that the employer of the comparator allows the necessary information to be collected.

The current pay equity process

- The next two slides show the pay equity process when an individual raises a claim and when a union raises a claim
- As a result of the decision to have bargaining as the way of reaching agreement, the legislation is process-focused. It sets out the steps parties are required to follow but allows them to agree the how they undertake those steps.
- For example, the legislation specifies that a work assessment is undertaken. It does not specify a particular job evaluation tool.

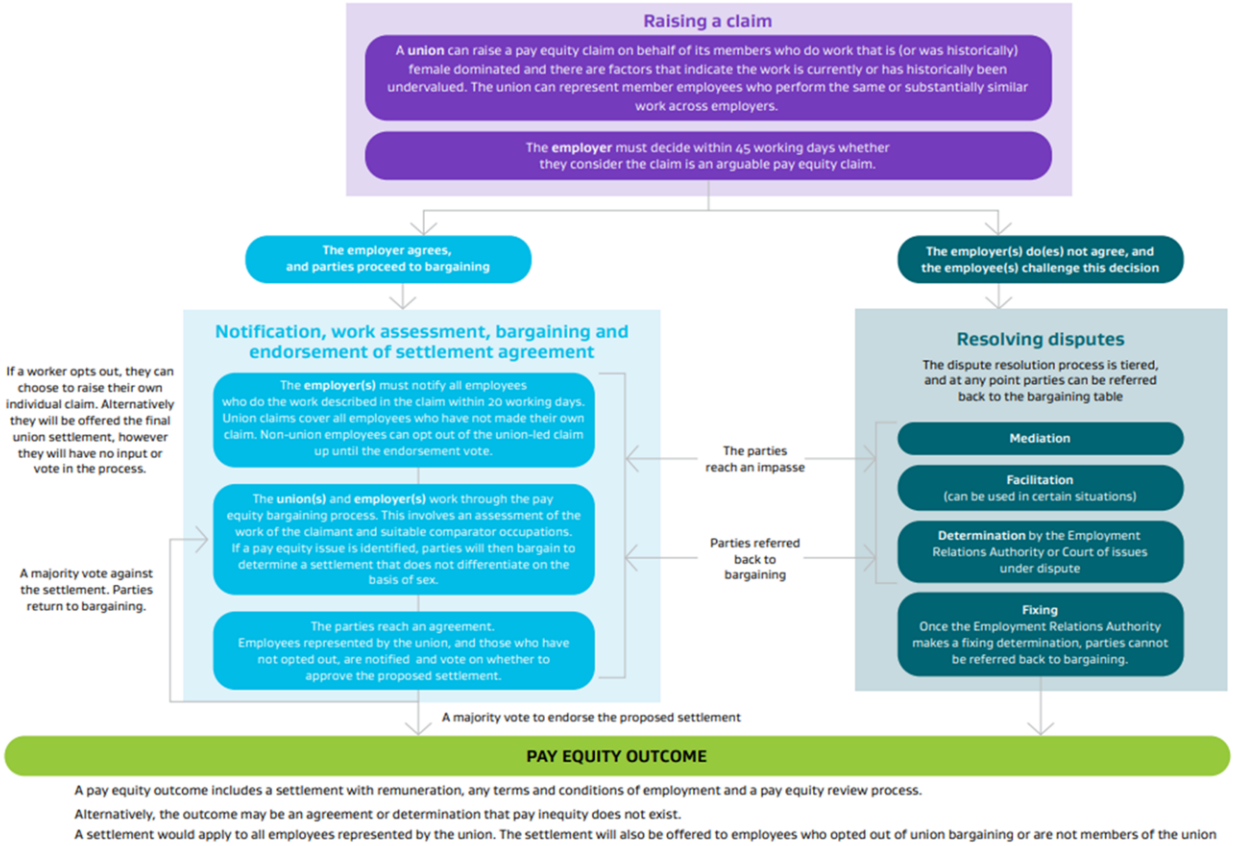
The process for pay equity claims raised by individual employees



A pay equity outcome includes a settlement with remuneration, any terms and conditions of employment and a pay equity review process.

Alternatively, the outcome may be an agreement or determination that pay inequity does not exist.

The process for pay equity claims raised by unions



Pay equity where the Government is the employer

- The legislation places responsibility for the process on employees/unions and employers
- In the private sector, the employer bears the cost of any settlement agreed so has an incentive to make choices within the process to ensure alignment with their business model.
- In the public sector, employers must have their bargaining parameters agreed by the Public Service Commission and for large workforces there may be a separate funding process which ultimately involves decisions by Ministers.
- There is no recognition of this separate funding process in the legislation.
- Free and frank opinions

Public sector pay equity process

- The Pay Equity Taskforce within the Public Service Commission took on the task of providing advice and guidance to Public Service and broader public sector employers
- The guidance and advice was more specific than MBIE's general guidance and was aimed at ensuring that the Government-as-employer took a consistent approach to pay equity claims
- The Government agreed to set up the Central Agency Governance Group (CAGG) which was designed to provide oversight and ensure public sector employers were following a proper process. Free and frank opinions
  Free and frank opinions
- Within the framework of the legislation, there is no "right" way to undertake the process provided there is agreement. There are many decision points in the process that affect the overall outcome. A number of questions were raised about the process the Taskforce recommended public sector employers use – discussed on next slide.

Some elements of the public sector's approach where questions have been raised

- **Arguable threshold** – did claims for some occupations meet the threshold Free and frank opinions ?
- **Same or substantially similar** – acceptance of claim structure rather than as a basis for negotiation e.g. admin/clerical (1,200 unique roles within 44 public sector organisations (employers)), Free and frank opinions Free and frank opinions, care and support workers (inclusion of house leaders, senior support staff etc)
- **Single work profile** (creation of a generic work role profile for care and support workers) – does not allow sufficient variation of types of roles.
- **Work assessment methodology** – individual judgement plays a large role in the outcome (care and support worker review)
- **Identifying comparators** – guidance recommends parties consider all agreed comparators including those that scored within a range of 5-10%.
- **Assessing the degree of undervaluation** – this tends to be a mathematical process which places significant weight on the accuracy of the factor score and a linear relationship between the factor score and remuneration Free and frank opinions Free and frank opinions, care and support workers)
- **Comparing remuneration** – no allowance was made where terms and conditions have been built into pay rates of comparators e.g. penal rates having been absorbed into pay rates for Corrections Officers in earlier CEA negotiations at an estimated loading of 28% (care and support workers and others)
- **Comparing terms and conditions** – the legislation does not require terms and conditions per se to be compared – differences in non-remuneration terms and conditions should be considered to the extent that it explains differences in remuneration.
- **Review clauses** – guidance includes a range of considerations beyond the re-emergence of sex-based discrimination which is all that is required under the legislation.

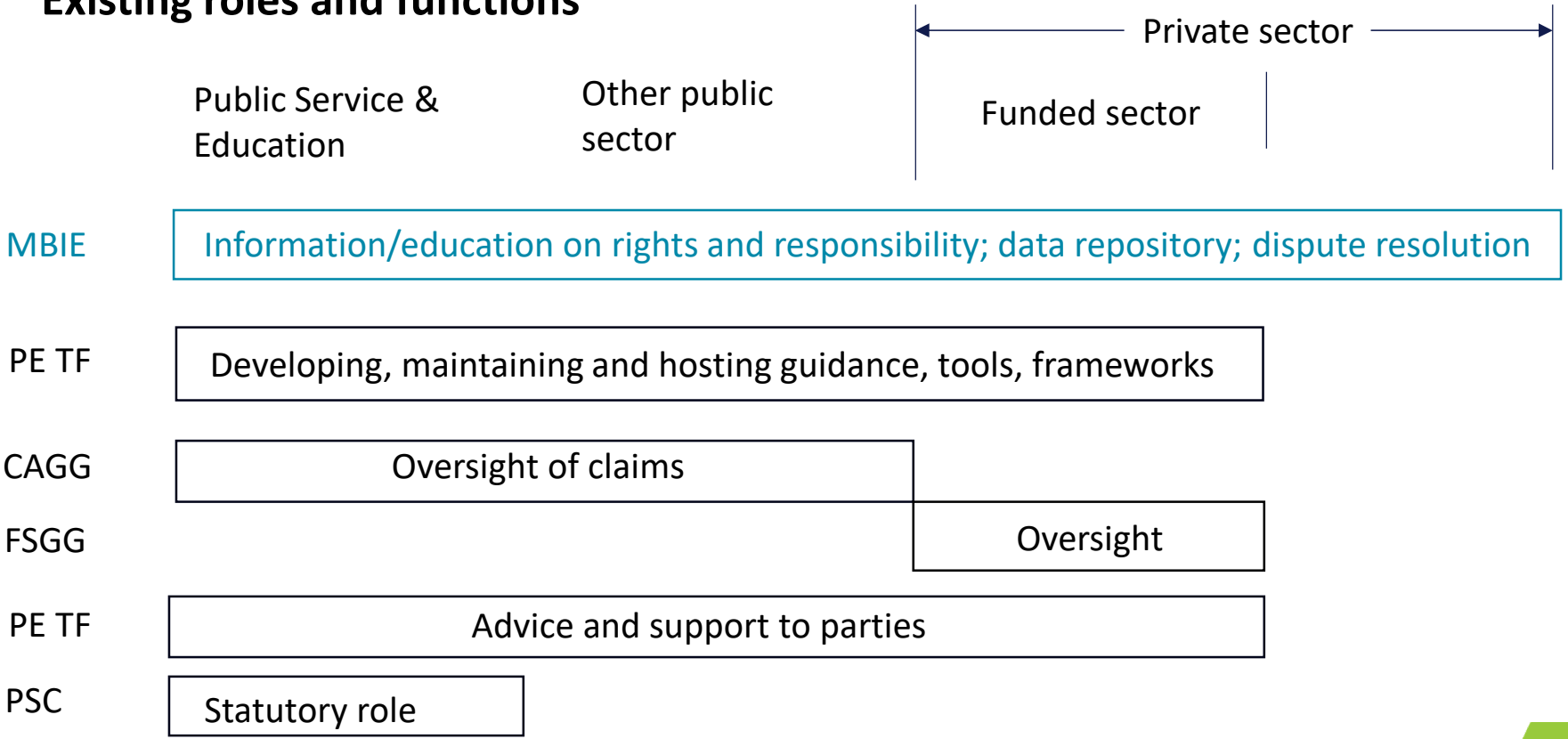
Funded sector pay equity processes

- The initial pay equity claims raised with employers who provide services that are publicly funded (e.g. NGOs providing social work) raised a particular challenge:
  - the funding agreements generally required the provision of services based on existing pay rates.
  - if a pay equity settlement required a significantly higher pay rate, the employer would either need to:
    - receive additional funding or
    - would not be able to provide the agreed services or
    - would make a loss or fail.
- To address that challenge, the Taskforce recommended, and the Government agreed, to the Funded Sector Framework which enabled funding agencies to seek Cabinet agreement to fund the outcome of a pay equity settlement for funded-sector employers.
- In addition, Cabinet agreed an “extension” framework which went beyond what was required by the legislation. Ministers could choose to extend the benefit of a settlement to all funded-sector employers who had employees that did the work that was the subject of the funded sector pay equity claim (subject to the identification of an implementation mechanism)
- This changed the incentive on those employers to moderate pay equity settlements

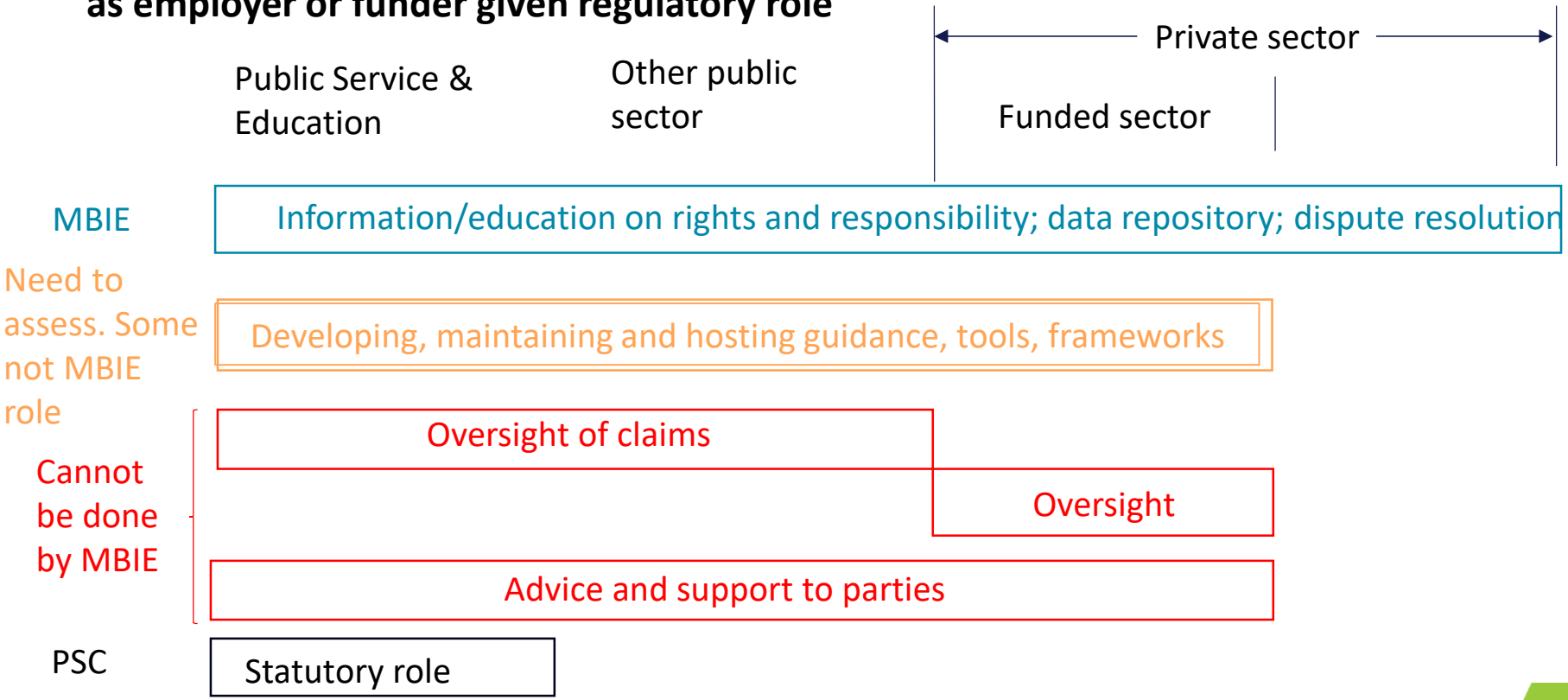
What next?

- In the Public Service Commission's memo to the Minister for the Public Service (2024-0057), the Minister has said she is interested in a reset of the system to better manage financial implications of pay equity settlements, within the limits of the legislation.
- The expectation is that the reset include the arrangements for governance of pay equity processes and for the provision of advice on the operation of the legislation governing pay equity claims.
- The PSC will now just focus on its statutory role and the Pay Equity Taskforce (PE TF) will no longer be funded.

Existing roles and functions



Future roles and functions – noting that MBIE cannot provide advice to Government as employer or funder given regulatory role



Document Five - Email from MBIE Policy Director to Minister for Workplace Relations and Safety's Office about draft Pay Equity Reset Cabinet paper

From: Privacy of natural persons
Sent: Monday, 8 April 2024 5:41 pm
To: Privacy of natural persons
Cc: Anna Clark
Subject: Pay equity reset draft Cabinet paper [SENSITIVE]

Hi Privacy of natural persons

We understand that the Minister of Finance/for Public Services will consult the Minister for Workplace Relations and Safety on her draft Cabinet paper about the Pay Equity Reset but we don't have details as to when but likely in the next couple of days. We understand the Minister is still aiming to lodge the paper on Thursday to make the Budget deadline.

We have provided comments on earlier drafts and were given a version of the paper on Friday 5 April.

The proposals do not involve changes to the legislation. The reset proposed by the paper covers changes to the way the Government oversees the process of pay equity bargaining in the public and publicly funded sectors, and provides a new fiscal management approach for pay equity settlements.

There are just ***two parts that we have provided comment on*** and these are relatively minor but important points of clarity.

1. The paper mentions MBIE's role in providing guidance (at para 9.1) - "*MBIE will continue to be responsible for providing high level advice, guidance and information on the operation of the pay equity provisions of the Equal Pay Act 1972 to all employers in the economy*"

We have asked the Public Service Commission to remove the word "advice" from this wording. This would make it clearer that as the regulator, MBIE would not provide advice but does provide information and education to all regulated parties. Our preferred alternative wording is: general, economy-wide ~~advice~~, ~~guidance and~~ information on the Act.

In a similar vein, in para 2, by including MBIE in the first part of the sentence, it implies that MBIE will be helping to support agencies implement the reset which is not the case. The second part of the sentence accurately describes MBIE's role so we have asked PSC to make the following change.

Para 2 The paper also proposes that Treasury, the Public Service Commission, ~~and the Ministry of Business Innovation and Employment (MBIE)~~ implement the necessary arrangements to support agencies to give effect to the reset, and that public sector employers look to the guidance and information on the pay equity provisions of the Equal Pay Act 1972 that the MBIE provides to all employers.

2. There is a para about existing public sector guidance:

35 *In the course of the settlement of pay equity claims to date, a large body of advice and guidance for employers and employees/unions has been produced by the Pay Equity Taskforce located in the Public Service Commission. Agencies will work to determine whether this guidance is required going forward, and if so in what form.*

We have asked the PSC to make clear that while MBIE can be involved as a sounding board, we cannot help to determine what advice and guidance the Government as employer or funder wishes to use.

Other high level points
We do have a question about how the Government ensures that public and funded sector employers understand how to give effect to the new expectation that "*no funding above the level sufficient to meet the*

provider's obligations under the Equal Pay Act will be provided". But this may be something that is figured out over time.

Ngā mihi

Privacy of natural persons

Document Six - Email from MBIE Policy Director providing international comparisons of pay equity regimes and the hierarchy of comparators in the Employment (Pay Equity and Equal Pay) Bill 2017 in response to a request from the Minister for Workplace Relations and Safety's Office

From: Privacy of natural persons
Sent: Thursday, 18 April 2024 3:01 pm
To: Privacy of natural persons
Cc: Anna Clark; Privacy of natural persons
Subject: RE: Pay equity comparators [IN-CONFIDENCE]
Attachments: 20160509 Pay equity comparators in other jurisdictions.docx; Table International Comparison Summary.docx

Hi Privacy of natural persons

I have attached a couple of international comparisons of pay equity regimes. They are a few years old now but they demonstrate that NZ is unusual in permitting comparisons outside the workplace for pay equity purposes.

You also asked about the hierarchy of comparators in the Employment (Pay Equity and Equal Pay) Bill 2017. This is a description of how it was intended to operate from the Bills Digest.

Microsoft Word - 2516 Pay Equity.doc (www.parliament.nz)

> There is a hierarchy for selecting appropriate comparators. Comparators th employer's business must be selected on the following basis:
>
> - if one or more appropriate comparators exist within the employer's those comparators must be selected for the assessment;
> - if no appropriate comparator exists within the employer's business similar businesses must be selected for the assessment;
> - if neither of the above applies, appropriate comparators from withi

In terms of specific examples of comparators used in recent cases, we only have second-hand information as we are not closely involved in the claims process. However, it does appear that there are some occupations that are used repeatedly in claims but this information is anecdotal in nature: Fisheries Officers, Corrections Officers, Customs officers. (It may be possible to find the publicly available pay equity settlements and provide a list of comparators used but this is not something we have had time to do.)

Happy to discuss.

Ngā mihi
Privacy of natural persons

From: Privacy of natural persons
Sent: Wednesday, April 17, 2024 10:56 AM
To: Privacy of natural persons
Cc: Anna Clark <Anna.Clark2@mbie.govt.nz>
Subject: Pay equity comparators

Hi Privacy of natural persons

At the pay equity policy session a month or two ago, you spoke about how as a result of the changes the previous Government made to the Equal Pay Amendment Act, the criteria to identify comparators for work types was broadened, so comparators could be drawn across industries and types of work that might be less intuitively similar.

The office is wondering if you have any specific examples from recent pay equity cases that could be referenced here? I think I remember some being raised in the policy session but don't have any written down.

Happy to discuss if you want more context.

Thanks

Pay equity comparators in other jurisdictions

Document Seven - Attachment of Document Six

European Union	United Kingdom	Australia	Quebec, Canada	California, USA
• Article 157 of the Treaty on the Functioning of the European Union provides that each member state shall ensure that "the principle of equal pay for male and female workers for equal work or work of equal value is applied". • The comparator is, ***in principle, restricted to the workplace or company*** where the individual works or where the same collective agreement applies. A comparison across sectors and businesses with different collective agreements is, as a rule, not permitted. • According to the Court of Justice of the European Union (CJEU), it must be possible to attribute differences in the pay conditions of workers of different sex performing equal work or work of equal value to ***a single source***, as otherwise there is no body which is responsible for the inequality and which could restore equal treatment.	• The United Kingdom is an example of a similar wage-setting system to New Zealand which allows for collective and individual bargaining. The United Kingdom take on a complaints based approach. • The scope of comparators is generally ***confined to within the same employment***. • EU law allows a woman to compare herself to a man who is not in the same employment but where the difference in pay is attributable to a single source which has the power to rectify the difference. As the UK is part of the EU, it can allow this. • If there is no comparator doing work, an employee can use a hypothetical comparator. • Job evaluations are promoted as the best way to compare whether work is rated as equivalent. A job evaluation must be non-discriminatory and not influenced by gender stereotyping or assumptions about men's and women's work. • Possible defences an employer may raise in response to an equal pay claim are that the difference in pay is genuinely due to a material factor, not related to the sex of the jobholders. A material factor has to be proven to be: o the real reason for the difference in pay o causative of the difference in pay o material; that is significant and relevant not involving direct or indirect discrimination.	• Australia is another example of a complaints-based approach. However, Australia's wage-setting system differs to New Zealand. Employers and employees are able to bargain for collective or individual agreements that have higher pay rates than the minimum wage rate. • The scope of comparators has been set through case law. • A male comparator group is not required (but it may make it easier to establish a claim). • It's ***conceivable that comparators in a different industry could be used but this has not been tested***. The one completed case under the Fair Work Act, the Social and Community Services (SACS) case, used pay rates within the same industry to establish pay equity rates. • An applicant needs to establish that there is not equal remuneration and that the undervaluation is based in some way on the gender of the employees. Applicants do not need to establish that rates have been set on a discriminatory basis. The Fair Work Commission has not prescribed a method by which applicants should establish undervaluation. • In the SACS case, the applicants used econometric regression analysis for the labour market (looking at what proportion of the gender pay gap cannot be explained by differences in education, training, experience, industry characteristics etc) as a base for demonstrating that undervaluation exists and a study that identified the proportion of the job that involved 'caring work' as a proxy for gender based undervaluation.	• Quebec is an example of a proactive approach to pay equity. Employers with 10 or more employees have a statutory obligation to carry out a review to identify and correct systemic gender discrimination. A government-funded body assists employers to develop pay equity plans, monitor compliance and mediate disputes. • The scope of comparators is generally ***confined to within the same enterprise***. Comparisons must be made between 'predominantly female' and 'predominantly male' job classes. Differences can be assessed on an individual-job or overall basis. • Jobs are grouped together into a job class which have the following common characteristics: o similar duties or responsibilities o similar required qualifications o the same remuneration, that is, the same rate or scale of compensation. • If there is no predominantly male job class in the enterprise, a proxy comparator can be used. In this situation, the Pay Equity Commission approves the use of a comparator from another organisation with similar characteristics. • For jobs of equal value, pay differences are allowable where it is shown to be due to a number of factors, including: o regional variations o seniority systems o merit pay o a shortage of skilled workers.	• The state of California recently passed new pay equity legislation. This has been heralded by US media as one of the strongest initiatives to achieve pay equity in the US. • While this legislation is new and relatively untested, it appears that it is ***largely directed at pay inequities within the same employer***. It limits wage differentials between occupations doing substantially similar work to a differential based upon one or more of the following factors: o a seniority system o a merit system o a system that measures earnings by quantity or quality of production o a bona fide factor other than sex, such as education, training, or experience. This factor shall apply only if the employer demonstrates that the factor is • not based on or derived from a sex-based differential in compensation • is job related with respect to the position in question, and • is consistent with a business necessity. • Given the Act only came into force this year, it is not clear whether the Courts would envisage adopting comparators from beyond the workplace. However, from a plain reading of the legislation, it appears to solely focus on pay inequities created by the same employer.

Document Eight - Attachment of Document Six

	Australia	EU	UK	US	Canada *(Federal)*	*Ontario (Canada)*	Netherlands	Norway	Sweden	Belgium	Ireland	Finland	NZ *(post-TerraNova)*
Type of system*	Complaints-based	Complaints-based	Complaints-based / Voluntary	Complaints-based	Complaints-based / Proactive *(Public sector only)*	Proactive	Voluntary / Complaints-based	Proactive	Proactive	Complaints-based / Proactive	Complaints-based	Proactive	Complaints-based
Proactive employer obligation/duty	No	No	No	No	Equitable compensation assessment before wages are set *(Public sector only)*	Female jobs are evaluated into job classes and wages are adjusted to equal the wages of males in the job class	No	Employers in the public and private sectors must make active, targeted and systematic efforts to promote gender equality in their enterprises and have reporting responsibilities	Must undertake a pay survey and an analysis of female dominated work compared with male work; Employer with 25+ employees must draw up an action plan every 3 years	Employers obliged to outline pay differences between genders in annual audits; Employer with 50+ employees must undertake a gender wage analysis and must remedy if needed	No	Positive obligation for all employers to promote gender equality and equality planning; Employer with 30+ employees must prepare an equality plan	No
Are comparators used?	Yes *(but not necessary)*	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Level of comparator	Outside industry *(potentially)*	Within workplace *(with minor exceptions)*	Within workplace *(with minor exceptions)*	Within industry	Within workplace *(with minor exceptions)*	Within employer *(as a first step; wider if needed)*	Within workplace	Within workplace	Within employer	Within workplace	Within workplace *(with minor exceptions)*	Within workplace *(with minor exceptions)*	Outside industry
Body to deal with pay equity issues**	Fair Work Commissioner	n/a	Equality & Human Rights Commission	Equal Employment Opportunity Commission	Canadian Human Rights Commission	Pay Equity Commission	Equal Treatment Commission	Gender Equality and Anti-Discrimination Ombudsman	Equality Ombudsman	Institute for Equality of Women and Men	Equality Authority	Equality Ombudsman	No
Role of body	Complaints, Enforcement	n/a	Investigation, Enforcement, Promotion, Information	Resolution, Investigation, Settlement, Advocacy	Enforcement, Advocacy, Promotion, Information	Enforcement, Promotion, Investigation, Resolution	Investigation, Hearings, Advice, Monitoring	Investigation, Enforcement	Investigation, Settlement, Advocacy, Monitoring	Advocacy	Complaints, Research, Promotion	Consultation	n/a
Education / tools	Limited	Encouraged for member states	Limited	No	Yes	Yes	Yes	Limited	Yes	Yes	Limited	Yes	Limited
Gender pay gap***	17.1% *(2014)*	16.2% *(2013)*	19% *(2014)*	23% *(2014)*	20% *(2010)*	26% *(2011)*	17.9% *(2013)*	15.9% *(2014)*	13.9% *(2013)*	10.2% *(2013)*	13.9% *(2013)*	18.2% *(2013)*	9.9% *(2014)*

* Voluntary – employers and employees are encouraged to adopt pay equity practices but there is no legal obligation to.
Complaints-based – where legislation sets out a right for pay equity and employers are expected to comply with this principle. Compliance is tested by someone bringing a complaint.
Proactive – employers have a positive statutory duty to take steps to achieve pay equity.

** Other than the courts.

*** Figures have been collected from national statistics from each country and are indicative only.

Document Nine - Email attachments from MBIE General Manager to the Minister for Workplace Relations and Safety's Office of 29 November 2024 ahead of STR

Further information for Minister Willis on pay equity

We understand that Minister Willis asked some follow-up questions. The following sets out the questions and our responses.

- **Can I have more info on the hierarchy of comparators that was included in National's Bill?**

The hierarchy of comparators that was included in the National's Employment (Pay Equity and Equal Pay) Bill stated that:

a. if one or more appropriate comparators are employed by the same employer, that comparator or those comparators must be selected for the assessment:
b. if no appropriate comparator is employed by the same employer, 1 or more comparators from similar employers must be selected for the assessment:
c. if neither paragraph (a) nor paragraph (b) applies, appropriate comparators from within the same industry or sector must be selected for the assessment:
d. comparators from a different industry or sector may be selected for the assessment only if no other appropriate comparators exist.

- **What were the implications of its removal?**

The exclusion of the hierarchy as a key parameter to identify comparators, allows comparators to be taken from a different industry or sector, even if there are appropriate comparators employed by the same employer. Requiring consideration of comparators that are within, or closer to, the employer means that comparators that are within the same context must be considered first. Comparators that are chosen from a context further away from the employer are likely to operate in very different labour contexts, potentially making it more difficult to isolate the part of any undervaluation that is due to systemic sex-based discrimination - bearing in mind that different occupations within a single employer will also operate in different contexts.

Some submitters on National's Bill were concerned that the hierarchy of comparators would have created an inefficient process by requiring claimants to work through more proximate comparators before others that they may have considered to be more appropriate.

- **Could the slides include more detail on how legislative amendment (eg to comparators) could reduce costs?**

We have interpreted this question to be about changing the system for future claims. There is a different set of options related to current claims, and we can provide information on this if needed.

We did include a few more options in the legislative amendment for future claims row, but further detail is set out below in a table that discusses some of the high-level legislative options (though these are just high-level descriptions and further work would be needed to provide advice).

Table 1: Spectrum of legislative options

Possible legislative change	Pros	Cons	Impact
1 Remove legislative pay equity process	Free and frank opinions	International relations Free and frank opinions	Could eliminate the costs associated with managing and settling future claims BUT - Could bring forward claims if legislative change is proposed. - Some claims could be brought via other mechanisms.
2 Change the process so claims are raised directly with a court or administrative body (and they do the assessment)	- The Court or body could develop expertise in undertaking pay equity assessment processes. - Would help ensure consistency and robustness of approach (e.g. consistent assessment of comparator roles).	- Employer and union would have to accept decision by Court or administrative body.	Changing the decision-maker may not have a significant impact by itself but combined with other process changes (below) may mean assessment is more independent.
3 Change the process (with or without a change in decision-maker)			
- 3a) Prevent multi-employer claims (unless work is covered by a MECA)	- Would prevent claims being raised for groups that do not share an employment agreement. - This means decisions would be easier to implement because it	- Means that there could be multiple pay equity claims for the same or similar work across numerous employers leading to inefficiencies from multiple assessments in multiple workplaces.	Will change the bargaining dynamic so could result in lower settlements. But could increase overall administrative costs of dealing with claims.

	would fit within the existing agreement.		
- 3b) limit source of comparators or use hierarchy of comparators	- Ensuring comparators from the same firm or sector are considered first will make the assessment of sex-based discrimination easier, as other factors are more likely to be similar e.g. workplace, working conditions (though this may vary on a case-by-case basis).	- Comparators from the same firm or sector may not be suitable for other reasons.	Choice of comparators can have a significant impact on the measure of undervaluation, as they set the parameters for bargaining. If non-sex based factors are taken into account, there is a risk of over estimating the under-valuation.
- 3c) Include more specificity about the process for identifying undervaluation	- Would ensure parties were clearer about the process to follow.	- Would remove ability to adjust the process to reflect the particular circumstances of the claim.	Depends on view about whether the current process is leading to over-estimates. If yes, then potential impact is high. If no, then impact would be low.
- 3d) lift entry threshold from arguable	- Would prevent cases with only marginal likelihood of identifying undervaluation from progressing.	- Would require all claims to undertake a more rigorous assessment before progressing which could effectively duplicate the assessment.	At this stage, likely to be low impact, although could help manage the robustness of future claims.
- 3e) allow phasing	- Financial impact on employers can be spread over multiple periods.	- Takes longer for women subject to discrimination to receive the full remedy	Unlikely to change value of under-valuation but can assist with managing the financial impact of claims.

	New Zealand	Australia	UK	Ireland	Canada (federal)	Canada (Quebec)
Who can raise a claim?	Union or employee	Employee, union, Sex Discrimination Commissioner Fair Work Commission (can initiate own proceeding)	Employee, workers, apprentices, agency workers, temporary contractors, self-employed people	Employees with a contract of employment	Employees in Public Service Proactive - employer has to come up with Pay Equity plan	Employees working in a business of 10 or more employees Proactive - employer come up with Pay Equity plan
What is the scope of a claim?	An individual employee can only raise a claim with their employer A union can raise a claim with a single employer or multiple employers of people who do the same or similar work Multi-employer claims can be made irrespective of what employment agreements are in place	Can apply to entire industry. Fair Work Commissioner applies the order consistent with modern awards and enterprise agreements	Applies to employer	Applies to employer	Applies to employer	Applies to employer
Obligation focused on	Remuneration	Remuneration	Remuneration and other contractual terms and conditions (e.g benefits)	Remuneration	Remuneration	Remuneration
Source of comparators	Within or outside the employer, industry or sector	At discretion of the FWC. Can be within or outside the employer, industry or sector. Not limited to similar work, and does not need to be a comparison with an historically male-dominated occupation or industry	Within employer	Within workplace	Within workplace	Within workplace, however, if there is no male comparator in the enterprise, a “proxy comparator” can be used where the Pay Equity Commission approves the use of a comparator from another organisation with similar characteristics
Who makes the decision about the level of undervaluation that needs to be addressed?	Union/employee bargain for a pay equity settlement with the employer/s using legislated process. Claim can be lodged with the Employment Relations Authority if there is a dispute	Fair work Commission	Employees are encouraged to raise with their employer first. If parties can’t reach an agreement, mediation should be tried first. The employee can raise a claim with the Employment Tribunal	Workplace relations commission	If parties don’t agree on the pay equity plan, they can challenge the plan at the Pay Equity Commissioner	If parties don’t agree on the pay equity plan, they can challenge the plan at the Commission

Cabinet Strategy Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Pay Equity: Past, Present and Future

Portfolio **Workplace Relations and Safety**

On 3 December 2024, the Cabinet Strategy Committee:

1 **noted** the slides attached under STR-24-SUB-0021 on pay equity legislation and processes in New Zealand;

2 **directed** officials from the Public Service Commission, Treasury, and Crown Law, with assistance from the Ministry of Business, Innovation and Employment, to report back to Cabinet by early 2025 with options for navigating current pay equity claims and a future approach to pay equity;

3 **agreed** that the Minister for Workplace Relations and Safety will be the lead minister for pay equity matters, with support from the Minister of Finance.

Rachel Clarke
Committee Secretary

Present:
Rt Hon Christopher Luxon (Chair)
Hon David Seymour
Hon Nicola Willis
Hon Brooke van Velden
Hon Shane Jones
Hon Dr Shane Reti
Hon Erica Stanford
Hon Louise Upston
Hon Judith Collins KC
Hon Todd McClay
Hon Tama Potaka
Hon Nicola Grigg

Officials present from:
Office of the Prime Minister
Office of Hon Brooke van Velden
Office of Hon Nicola Grigg
Department of the Prime Minister and Cabinet
The Treasury
Public Service Commission
Crown Law
Ministry of Business, Innovation and Employment
Officials Committee for STR

Document 11

Sensitive. Not Government policy.

Why do we have a pay equity process in legislation?

STR 3 December


Male nurse


Female nurse

A requirement that women are paid the same as men for doing the same job has been a legislated right since 1972.

This is **equal pay**.


Nurse


Police

Historic gender discrimination may result in female-dominated occupations being paid less than a male dominated occupation that is different but has the same "value".

This is **pay equity**. In 2014, the Court found that the Equal Pay Act 1972 also provided for pay equity


Primary


Secondary

There are often calls for workers doing similar work in different sectors to be paid the same.

This is **pay parity**. This is not a legislated requirement but if agreed could become a contractual commitment.


Courts


Working group


Parliament


Parliament


Parliament

2014

Court of Appeal confirmed that pay equity could be read into Equal Pay Act.

This finding is consistent with the interpretation in **ILO Convention 100** which NZ has ratified

Supreme Court dismissed leave to appeal until the Employment Court had developed principles as permitted under the Equal Pay Act.

2015-16

The National-led Government's preferred response was to legislate an approach to determining pay equity principles rather than leave it to the Courts. A tripartite working group was convened.

2017

The Employment (Pay Equity and Equal Pay) Bill, based on the principles agreed by the working group, introduced.

The Government agreed to a $2 billion settlement of the "Terranova case" and passed the Care and Support Workers (Pay Equity) Settlements Act 2017 to require employers to pay the agreed rates.

2018

The Labour-led Government withdrew the Employment (Pay Equity and Equal Pay) Bill.

The Equal Pay Amendment Bill was introduced in September 2018.

Key changes:

- Lowered threshold for entering process from merit to **arguable**
- Removed requirement to consider **comparators** from same firm/industry first.
- Introduced **backpay**

2020

Significant changes to the Bill were introduced via a Supplementary Order Paper after Second Reading and passed under urgency including:

- Allowing **unions** to make a claim and represent non-union employees
- Allow unions to make **multi-employer claims**

Pay equity – past, present and future – STR 3 December 2024

Sensitive. Not Government policy.

Purpose of this STR session is to provide a shared understanding of the history of pay equity legislation, issues and options

The issue is that the legislative requirements combined with the approach of the previous Government have led to poor incentives for public sector and funded sector employers to bargain hard which has led to higher than necessary fiscal costs

Dealing with claims in the public sector is tricky…but not impossible

- Public sector employers do not have the same incentives as private sector employers as funding constraints are different. A private sector employer will aim to minimise any increase in costs but if it faces a large, unforeseen increase in labour costs, they have choices to increase prices, reduce labour input, reduce production.
- A key issue is that because of the Budget process large settlements are not internalised to the individual agency.
- Some public sector claims have resulted in no settlement for some groups, as a result of a variety of factors.

Claims in the publicly funded sector claims are even trickier

Employers who are funded by the Government for the provision of services such NGOs, early childhood providers, face difficulty negotiating claims.

Often the claims cover multiple employers. If the claim progresses as a multi-employer claim, the ability of a single employer to influence the claim is limited, but they still bear the cost.

Free and frank opinions

Choices by the previous Government to deal with the challenges of managing claims have led to:

- Free and frank opinions
- Limited visibility for Ministers/Cabinet of the decisions made by the employer and union during the assessment process that had an impact on the size of the identified under-valuation, which could lead to settlements that constrain future spending choices.
- A funding approach that muted incentives to negotiate hard when dealing with claims, by allowing an in-principle agreement to fund the agreed pay equity settlement to be sought upfront

Free and frank opinions

Fiscal costs of current claims is high

Current fiscal forecasts include Negotiations over the forecast period for known and reasonably expected pay equity settlements based on agency data. Following the Pay Equity Reset, these costs have been set aside in centralised tagged contingencies for the public and funded sector. If a different policy approach is taken, the amount of funding needed could be reduced.

The Free and frank opinions claims in each sector are:

- Teachers in the public sector
- Care and support workers in the funded sector (3 multi-employer claims – the first claim is at the ERA)

Public sector

Negotiations

Negotiations

Funded sector

$9.6 bn

Negotiations

Pay equity – past, present and future – STR 3 December 2024

Sensitive. Not Government policy.

The Pay Equity Reset (April 2024) made some progress towards improving the incentives for public and funded sector employers but the question is – should more be done and if so, what?

There are three potential levers: guidance/advice about the process, funding structures and a spectrum of legislative options.
The presenting issues vary by sector and the impacts of the available levers also differ. The table provides a summary.

Potential focus	Options	Likely impact? (Hard to quantify – depends on union and employer actions)	Who?
Current **public** sector claims	**Guidance/advice** - Provide more specificity about how employers can undertake the pay equity process in a way that is closer to the minimum requirements of the legislation	**Uncertain but potentially high**. Responsible agency would need to change approach based on advice. Could reduce fiscal cost to legal minimum but Legal professional privilege Some claims have resulted in low dollars.	Legal professional privilege
	Require claims to be fully **funded from Budget** allowances (i.e. close the existing pay equity tagged contingency)	**Limited**. A settlement is a legal obligation. What could change is where the tradeoff with other spending occurs (within the entity or at Budget). Degree of tradeoff may depend on the size of the claim.	Treasury
Current **public** and **funded** sector claims	**Change legislation** to alter claim outcome (including for teachers and care and support workers' claims) Legislation would need to be urgent and apply retrospectively to current claims.	Will depend on approach but **potentially high**. Could potentially change claim outcome depending on what commitments have already been made **–** Legal professional privilege. A retrospective application of legislation to current claims is rare and would need to be justified.	Advice – Legal professional privilege
Current **funded** sector claims	Wait for settlement or ERA outcome before making **funding decision** (once fixed ERA terms cannot be appealed).	**Potentially high but there could be other consequences**. Can choose not to fund directly or could choose to fund a lower amount. Likely to lead to employers seeking to renegotiate service agreements (higher funding, lower service provision) making losses or exiting, leading to service delivery issues.	Funding agencies
Public sector reviews	Interpret agreed **review processes** in line with intent of legislation (i.e. light-touch check-in)	Free and frank opinions Legal professional privilege	Legal professional privilege
	Change the contractual review commitment by **legislation**	Could potentially change review outcome – Legal professional privilege	Legal professional privilege
Future claims	Provide more specificity about how employers can undertake the **pay equity process** in a way that is closer to the minimum requirements of the legislation	Could reduce fiscal cost to legal minimum Legal professional privilege	Legal professional privilege
	Change the pay equity **legislation**: • **Remove** pay equity process • **Radical** – e.g. could change who claims are made to: Courts or an administrative body • **Amend current process e.g.:** - prevent multi-employer claims - reconsider union representation for non-members - limit source or use hierarchy of comparators - allow phasing - lift entry threshold from arguable	Will depend on: • the extent of change and • the remaining number of occupations likely to use the pay equity process – we think most of the major claims have been settled or are underway.	MBIE

Discussion questions:

- What can be achieved with non-legislative (guidance/advice and funding) levers?
- Should a legislative change be considered for current claims?
- Should a legislative change be considered for any future claims?

Document 12

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

TE TAI ŌHANGA
THE TREASURY

BRIEFING

Pay equity: Pathways for change

Date:	24 February 2025	**Priority:**	Urgent
Security classification:	Sensitive	**Tracking number:**	MBIE Briefing REQ-0009639 Treasury T2025/407

Action sought		
	Action sought	**Deadline**
Hon Nicola Willis **Minister of Finance**	**Note** assessment of options provided for managing current pay equity claims and options for changing the pay equity legislation **Indicate** which options you would like to include in the Cabinet report-back.	7 March 2025
Hon Brooke van Velden **Minister for Workplace Relations and Safety**		

Contact for telephone discussion (if required)				
Name	**Position**	**Telephone**		**1st contact**
Privacy of natural persons	Senior Analyst, **The Treasury**		Privacy of natural persons	
Vicki Plater	Director, **The Treasury**			
Privacy of natural persons	Policy Director, **MBIE**			✓
Hayden Fenwick	Acting General Manager, Workplace Relations and Safety branch, **MBIE**			

The following departments/agencies have been consulted
Crown Law, Public Service Commission

Minister's office to complete:

- ☐ Approved
- ☐ Noted
- ☐ Seen
- ☐ See Minister's Notes
- ☐ Declined
- ☐ Needs change
- ☐ Overtaken by Events
- ☐ Withdrawn

Comments

TE TAI ŌHANGA
THE TREASURY

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

BRIEFING

Pay equity: Pathways for change

Date:	24 February 2025	**Priority:**	Urgent
Security classification:	Sensitive	**Tracking number:**	MBIE Briefing REQ-0009639 Treasury T2025/407

Purpose

To provide options for managing current pay equity claims (teachers and care and support workers) and the underlying pay equity process in the Equal Pay Act 1972 (the Act).

Executive summary

Cabinet Strategy Committee (STR) asked for advice on options for managing fiscal costs of current pay equity claims (teachers and care and support workers) and the underlying legislation by early 2025.

Free and frank opinions

Negotiations

We have identified a set of options for dealing with current claims and a set of options for legislative reform. Given the interconnection between the two choices we have identified a set of feasible combinations of options or **pathways**. For each pathway, we consider its effectiveness in managing the fiscal costs of the current claim and providing certainty about the outcome, discuss potential legal risks including consistency with international obligations and an estimate of the timeframe (based on consultation with PCO). Timeframes are based on a high-level understanding of policy decisions needed to give effect to the option. Further investigation would be needed to provide a firmer estimate of the time needed. It may be possible to shorten timeframes to some extent with additional resourcing but the key constraint is the complexity of the process.

- **Pathway 1** – *repeal the current legislated pay equity process (the 2020 Amendments) and specify that the Equal Pay Act 1972 does not provide for pay equity and apply the change retrospectively to halt all current claims.*

- Claim outcome – no fiscal cost and certain, [redacted]
- [redacted]
- Timeframe – reflects the need to design what happens with each of the rights under the current legislation relating to existing claims and settlements (e.g. review clauses). Estimate 7-11 months to Introduction.
- **Overall assessment** – [redacted]

- **Pathway 2** – [redacted]
  - [redacted]
  - [redacted]
  - [redacted]
  - [redacted]

- **Pathway 3** – *use a legislative pause for current claims and design a new legislated pay equity process either based on the current bargaining framework with different legislative parameters or redesign the whole system to be more aligned with approaches used in other jurisdictions which tend to be more judicial or administrative in nature*.
  - Claim outcome – short-term certainty that claims will not progress but long-term uncertainty about claim outcomes under a to-be-designed new system. New system design should take into account factors considered to lead to unnecessarily high cost outcomes.
  - [redacted]

International relations

- Timeframe – two stages:
  i. Legislative pause – rough estimate 7-11 months to Introduction.
  ii. Legislative reform – will depend on the redesign option chosen. 12-19 months to Introduction with earlier Introduction possible if only a small number of changes were made to the existing framework.
- **Overall assessment** – International relations and Legal professional privilege

- **Pathway 4** – *allow current claims to proceed under the status quo for the meantime (or use legislative pause as above in Pathway 3) but quickly develop specific legislative changes to the current framework which will apply retrospectively with a view to having those claims proceed through the new legislative process.*
  - Claim outcome – short-term risk that claims pass further milestones. Could use a legislative pause so that claims will not progress. Long-term uncertainty about claim outcomes under a to-be-designed new system.
  - Legal professional privilege

    International relations
  - Timeframe
    i. if allowing claims to proceed while developing specific changes to the legislation, rough estimate is 8-15 months to Introduction.
    ii. if adding a legislative pause, an additional 7-11 months as per Pathway 3.
  - **Overall assessment** – Legal professional privilege but will be quicker than the options with two phases. May not provide the fiscal certainty desired given claims would be reconsidered under the new regime.

In short, officials consider pathways 2 or 4 are the most feasible to meet Ministers' objectives. The key judgement is whether pathway 4 would give Ministers sufficient certainty of fiscal outcome from current claims. If not, then pathway 2 would provide greater certainty and speed, Legal professional privilege . However, to incorporate broader change to the overall framework, e.g. revisiting a bargained approach, would lead you to pathways 2 or 3 which have different legal tradeoffs. The Treasury has provided more detail on the judgement underpinning this summary in Annex 9.

Recommended action

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

a **Note** that Cabinet Strategy Committee directed officials to provide options for addressing current pay equity claims (teachers and care and support workers) and the underlying legislation by early 2025

Noted

b **Note** that the Ministries of Education, Health and Women have not been consulted on the development of this briefing

Noted

c **Note** the assessment of the options related to pathways is presented in Annex 6

Noted

d **Indicate** which of the following pathways should be included in the Cabinet report-back:

	Minister of Finance	**Minister for WRS**
Pathway 1 (repeal current legislative process and specify the Equal Pay Act does not provide for pay equity) (*Not recommended*)	Include/ Don't include/ Discuss	Include/ Don't include/ Discuss
Pathway 2 Negotiations	Include/ Don't include/ Discuss	Include/ Don't include/ Discuss
Pathway 3 (use legislative pause for current claims and take time to design new pay equity regime)	Include/ Don't include/ Discuss	Include/ Don't include/ Discuss
Pathway 4 (non-legislative or legislative pause for current claims but quick changes to legislative framework and redo claim under new legislation)	Include/ Don't include/ Discuss	Include/ Don't include/ Discuss
Other combinations of options relating to current claims and legislated pay equity process?	Discuss	Discuss

e International relations

Noted

Next steps

f **Agree** to forward this briefing to the Minister for the Public Service

Agree / Disagree *Agree / Disagree*

Minister of Finance ***Minister for WRS***

g **Agree** to arrange a meeting for the Ministers of Finance, and the Ministers for Workplace Relations and Safety and the Public Service to discuss which options to take back to Cabinet

Agree / Disagree *Agree / Disagree*

Minister of Finance ***Minister for WRS***

h **Indicate** whether you would like to discuss how to bring in the perspectives of the Ministries of Education, Health and Women into this work

Yes/No

Minister of Finance

Yes/No

Minister for WRS

Vicki Plater
Director
The Treasury

24 / 02 / 2024

Hon Nicola WIllis
Minister of Finance
..... / ..... / .....

Hayden Fenwick
General Manager
Labour, Science and Enterprise, MBIE

24 / 02 / 2024

Hon Brooke van Velden
Minister for Workplace Relations and Safety

..... / ..... / .....

Background

1. On 3 December 2024 at Cabinet Strategy Committee (STR), Ministers directed officials from MBIE, Treasury and Crown Law to explore options for:

   a. addressing the issues arising from current pay equity claims and;

   b. future approach to pay equity and report-back in early 2025 (STR-24-MIN-0021).

2. Negotiations

3. Another timing consideration is the timing of reviews of pay equity processes that have been settled. Information provided by the Public Service Commission to the Ministerial Employment Relations Forum indicated that in the next six months, 11 pay equity reviews are due to be undertaken in the Public Service, education and health sectors.

4. There are a number of strands of advice on pay equity matters. The Minister of Finance is considering some changes to the way pay equity outcomes are managed through the Budget process. The Treasury is providing the Minister of Finance further advice on implementing this approach, which will require Cabinet agreement. Legal professional privilege

The issues identified

5. Free and frank opinions

6. It was raised that the legislated pay equity process was not well aligned with the underlying employment relations framework; the entry threshold was too low; and the process steps were open to interpretation. It was also clarified that once a claim is agreed to be “arguable”, there is no opportunity to revisit that decision under the current legislation. If one party considers there is no undervaluation, the whole process must be completed unless there is agreement by both parties. A list of specific issues with the current pay equity settings is provided in **Annex 7**.

7. In addition, many public sector and publicly funded sector parties took a technical, cooperative approach to meeting their legal obligations. While this minimised legal risk, it may not have minimised fiscal cost. While the pay equity reset has changed some incentives and expectations, the size of the change that can be achieved in terms of the expected claim outcomes is unclear.

8. Free and frank opinions Further detail about the teachers and care and support worker claims is available in **Annex 1**. Free and frank opinions

9. Free and frank opinions [redacted]

10. Negotiations [redacted]

Other current claims

11. More broadly, a number of smaller pay equity claims are currently in train in the public and funded sectors, and we anticipate these would continue to progress while work is undertaken to determine the future state of pay equity. Agencies facing claims in the public sector need to continue to meet their good faith obligations as employers and engage with unions until there is superseding legislation in force. Agencies overseeing funded sector claims are likely to continue to engage with service provider employers subject to pay equity claims until directed otherwise. A summary of the pay equity claims included in the Treasury contingency forecasts are included in **Annex 5**.

Combinations of policy options or pathways for change

12. In order to address the issues identified there are both short-term and longer-term aspects to consider. The short-term considerations related to the specific claims of interest – teachers and care and support workers. The longer-term options relate to the approach to changes to the underlying legislative framework. We identify and discuss each of the short-term and long-term options in **Annex 2** and **Annex 3** respectively.

13. However, a combination of the short and long term options are needed to address the issues identified. We have identified four sets of options or change "pathways". These pathways are assessed against three elements:

    a. Claim outcome – to what extent will the option provide certainty about the outcome for specific claims?

    b. Legal and international risk – are there legal framework considerations or specific legal challenge risks? Is the pathway consistent with New Zealand's international obligations? Further detail is provided in **Annex 8.**

    c. Timeframe – gives rough estimates of the time needed for policy and legal advice to be developed and drafting to occur prior to any legislation being able to be introduced. The high-level estimate of the drafting timeframe for each option has been developed in consultation with the Parliamentary Counsel Office (PCO). PCO advised that the drafting timeframe will depend on the size, number and complexity of changes and the completeness of drafting instructions from the outset.

Pathway 1 - *repeal the current legislated pay equity process (the 2020 Amendments), specify that the Equal Pay Act 1972 does not provide for pay equity and apply the change retrospectively to halt all current claims.*

14. Legal professional privilege

International relations

Free and frank opinions

15. The timeframe reflects the need to design what happens with each of the rights under the current legislation relating to existing claims and settlements (eg review clauses). We estimate 7-11 months to Introduction based on 3 -5 months for policy development and the cabinet policy decision making process, including ministerial/agency consultation, and 4-6 months for drafting the legislation. The usual Parliamentary process would be 6 months for select committee consideration, plus one month for final parliamentary stages (7 months is standard).

Pathway 2 - Negotiations

16. Free and frank opinions

Negotiations

Legal professional privilege

17. Negotiations

18. The outcomes of claims raised under a new pay equity process will depend on the design of that system. A move away from the current bargaining framework would mean identifying who the primary decision-maker should be and the process they should use for assessing claims of sex-based undervaluation. In other jurisdictions, the decision-maker could be the employment regulator or there could be a more direct path to a judicial decision from the existing employment dispute resolution system. Any pay equity process will involve judgements around whether a claim should enter the process, an assessment of the work undertaken by the claimants and a comparator group.

International relations

19. There are two timeframes for the two stages:

    a. The timeframe for the Negotiations We estimate 7-11 months to Introduction, based on 3 -5 months for the cabinet

policy decision making process, including ministerial/agency consultation, and 4-6 months for drafting the legislation. The usual Parliamentary process would be 6 months for select committee consideration, plus one month for final parliamentary stages (7 months is standard).

b. The timeframe for replacing the legislative process will depend on the form of the redesign. We estimate 17-19 months to Introduction, based on 9 months for the cabinet policy decision making process, including ministerial/agency consultation, and 8-10 months for drafting the legislation. Timeframes will be shorter for a redesign within the current framework. The usual Parliamentary process would be 6 months for select committee consideration, plus one month for final parliamentary stages (7 months is standard).

Pathway 3 - *use a legislative pause for current claims and design a new legislated pay equity process either based on the current bargaining framework with different legislative parameters, or redesign the whole system to be more aligned with approaches used in other jurisdictions which tend to be more judicial or administrative in nature.*

20. Legal professional privilege

21.

22.

23. International relations

24. The timeframe for replacing the legislative process will be similar to Pathway 2, that is:

    a. An estimated 17-19 months to Introduction, based on 9 months for the cabinet policy decision making process, including ministerial/agency consultation, and 8-10 months for drafting the legislation. Timeframes will be shorter for a redesign within the current framework. The usual Parliamentary process would be 6 months for select committee consideration, plus one month for final parliamentary stages (7 months is standard).

Pathway 4 - *allow current claims to proceed under the status quo for the meantime but quickly develop legislative changes to the current framework which will apply retrospectively with a view to having those claims proceed through the new legislative process.*

25. There is a risk that the current claims will reach a new milestone that will make it more challenging to impose a new solution, albeit this risk appears low given what we know about next steps. If this risk is considered high or Minister want more certainty, then a legislative pause (as discussed under Pathway 3) could be used.

26. While we would expect the fiscal cost of claim outcomes under a new system would be lower, there is no guarantee of this. It is difficult to estimate the effect of hypothetical changes to a legislative process. While some of the key provisions can be changed, any pay equity process will involve judgements around whether a claim should enter the process, an assessment of the work undertaken by the claimants and a comparator group. If the current framework is retained, these judgements will be made by the same decision-makers.

Next steps

27. Given the impact of pay equity claims on the Public Service, we recommend you forward this briefing to the Minister for the Public Service.

28. Consideration should be given to how the perspectives of other agencies should be sought. Free and frank opinions The key claims are in the education and health sectors. While central agencies have sought information from relevant agencies about live claims, the options and impacts have not been discussed with them.

29. The next step is for Ministers to discuss which options to take back to Cabinet.

Appendices:

Annex 1 - Further details about teacher and care and support worker claims

Annex 2 – Options related to current claims

Annex 3 – Options related to the end-state of the legislation

Legal professional privilege

Annex 5 – Data from Treasury on estimated claim outcomes

Annex 6 – Assessment of possible pathways

Annex 7 – Issues identified with current provisions and the degree of change that can be expected from the different levers

Annex 8 – International obligations

Annex 9 - Treasury comments ‘Pay equity: Pathways for change’ options

Annex 1 Further details about teacher and care and support worker claims

Teachers claim

The teachers' claim is a multi-employer claim which covers all public sector employed primary and secondary teachers (approximately 74,000), as well as a significant portion of private Early Childhood Education (ECE) providers (an estimated 42% of the total workforce of approximately 32,000).

Next steps under current settings

Care and support workers claim

It was a claim by a care and support worker, Kristine Bartlett, against her employer, Terranova Ltd, that led to the decision that the Equal Pay Act 1972 provided for pay equity. The Government at that time decided not to allow the Employment Court to proceed to determine the case and negotiated a $2 billion settlement across the occupation which was given effect through bespoke legislation. However, as part of the negotiation, the Government agreed that the full and final settlement would expire after five years, enabling further claims to be raised under the Equal Pay Act 1972.

There are currently three claims covering care and support workers in the funded sector, which we understand collectively cover approximately 90% of the care and support workers workforce of approximately 65,000 workers. The unions for the first claim have lodged an application with the Employment Relations Authority to determine rates. The Employment Relations Authority is holding a jurisdictional hearing in May 2025, with a possible hearing date in November 2025.

In December 2022, the previous Government agreed in principle to fund any outcome of the first pay equity claim, subject to a decision on the level and methodology of funding, and criteria set out in the now disestablished Funded Framework [SWC-22-MIN-0242]. In September 2023, Ministers with Power to Act agreed to establish a tagged operating contingency to support employers to settle the first claim [CAB-23-MIN-0428].

Due to concerns with the approach taken by the employers, Health New Zealand commissioned an external report into the process taken to date on the lead claim. The review found there was likely an overestimation in the amount of undervaluation.

In May 2024, Cabinet rescinded the agreement in principle to fund and returned the contingency funding to the central funded sector pay equity contingency [CAB-24-MIN-0169]. Cabinet also agreed a set of principles for the Government's approach to the claim and that the Government will not endorse a funding contribution unless there is evidence of sex-based discrimination and the parties have acted consistently with the Act.

Confidential advice to Government

Negotiations

Negotiations

Annex 2 – Options related to current claims

If Ministers want to ensure outcomes consistent with the view that these workforces have had (a significant part of) their gender discrimination addressed through other mechanisms, there are 3 options:

- **Option C1** Non-legislative approach - Improve guidance/direction on the process for public sector employers and be clearer about the funding outcomes for funded sector employers
- **Option C2** – Negotiations
- **Option C3** - Impose a legislative "pause" on current claims, change the legislative pay equity process and then allow the claims to proceed under that revised process.

Option C1 – Non-legislative approach - Improve guidance/direction on the process for public sector employers and be clearer about the funding outcomes for funded sector employers

This option seeks to continue the direction set by the Pay Equity Reset (specifically updated guidance, disestablishment of the funded sector framework and a changed approach for accessing the public sector claims contingency). The Minister of Finance is considering changes to the fiscal management of pay equity which are likely to be implemented in parallel with Budget 2025 decisions. Further Cabinet decisions may be needed to clarify the effect of these changes on the care and support claim and funded sector component of the teachers' claim, as well as consistent messaging from the central agencies to line agencies about the need to ensure that they are giving effect to current Cabinet mandates, Budget guidance and seeking legal advice on the various options and risks.

Legal professional privilege

Negotiations

Negotiations

Legal professional privilege

Negotiations

Negotiations This will cover all of the sub-sectors including those funded by other agencies such the Accident Compensation Corporation and the Ministry of Social Development.

Legal professional privilege

Negotiations

Legal professional privilege

Legal professional privilege Negotiations

Option C2 - Negotiations

Free and frank opinions

Legal professional privilege

Legal professional privilege

Negotiations

Option C3 - Impose a legislative "pause" on current pay equity claims and change the legislative pay equity process and then allow the claims to proceed under that revised process

Legal professional privilege

Any legislative design will need to include transitional provisions to be clear about how current claims (teachers and care and support workers and also other live claims) can proceed under the new legislation.

Once new pay equity legislation is enacted, the claims Negotiations will need to proceed under the new legislation. The outcomes will depend on the policy decisions made in relation to the new legislation and the actions of the decision-maker under that legislation. This could be the courts, an administrative body or employers – depending on the final design. Clear guidance and careful monitoring will be needed to ensure the same issues around interpretation and application do not repeat with the new process.

Annex 3 - Options related to changes to the end-state of the legislation

We have identified four options for approaches to changing the legislation:

- **Option L1** – Legislate to change some of the elements of the current pay equity process within the current framework – including using the regulation making power under the Act where appropriate.
- **Option L2** –Redesign the legislated pay equity process including key framework elements
- **Option L3** – Remove the specific legislated process for pay equity and do not replace it

Free and frank opinions the Employment (Pay Equity and Equal Pay) Bill introduced in 2017. Our view is that this is not a separate option to Option L1. The 2017 Bill has known workability issues so some policy work will be needed to update the 2017 Bill to address those workability issues. For example, under the 2017 Bill, claims are made by individual employees and while the employer can deal with the individual claims jointly, the administrative processes such as notifications would potentially involve significant compliance costs if large workforces were involved. However, it is possible for elements of the 2017 Bill to be incorporated into proposals to change the legislation as covered by Option L1.

The options are discussed in more detail below. In considering any option, it is useful to keep in mind timing considerations and international obligations. These are discussed in more detail below the description of the options

Option L1 – Legislate to change some of the elements of the current pay equity process within the current framework

This option could be combined with a legislative "pause" on current (or future) claims which would mean that existing claims do not progress and new claims cannot be raised.

Option L1 would involve changes to the provisions within the current legislative framework of a bargained approach between employers and employees/unions with recourse to the employment dispute resolution system if agreement cannot be reached.

There are a range of possible options for an alternative legislative pay equity process and there would need to be a policy design process to work through these. There are some key aspects where issues have arisen such as the entry threshold, the scope of claims that would be raised (i.e. limit to a single employer or at most, coverage of an employment agreement) and the type/breadth of comparators used. Further detail on these is provided in Annex 7.

The regulation-making power under the Act could also be amended to ensure it is fit for purpose. Regulations could be developed under the empowering provision to provide more detail about how processes under a new pay equity process should be carried out, eg the assessment and comparator processes.

There will be a trade-off between the number of changes that can be considered and the timeframe in which the legislative change is needed.

Option L2 –Redesign the legislated pay equity process

This option could reconsider some of the fundamental framework aspects of the legislative design such as the use of a bargaining framework and who undertakes the assessment of a claim. It is unusual internationally to use a bargained approach to a discrimination issue. We could look to international examples, but we will also need to ensure key elements work as an end-to-end process and would operate in our broader employment law system. A longer period of time would be needed to complete the policy work for this broader redesign option.

Option L3 – Remove the specific legislated process for pay equity and do not replace it

It would be possible to remove the 2020 amendment to the Equal Pay Act 1972, but a decision would also be needed as to whether to:

- return to the position pre-2020 where the Employment Court could set principles for assessing pay equity claims and then make a pay equity determinations; or
- be clear that pay equity is excluded from interpretation of the other provisions of the Equal Pay Act.

Legal professional privilege
. International relations

A Free and frank opinions option could be to repeal the whole Equal Pay Act and rely on the Bill of Rights Act and the Human Rights Act to deal with discrimination issues. While this option is technically possible, Free and frank opinions
This option is not advised. Having a specific process in the employment jurisdiction to deal with pay related discrimination issues would be more consistent with New Zealand's current legislative approach.

International relations

Legal professional privilege

Annex 5 – Data from Treasury on claims details in contingencies

Negotiations

Negotiations

Annex 6 – Assessment of possible pathways

	Pathway 1 – repeal current legislative process and specify the Equal Pay Act does not provide for pay equity	**Pathway 2 -** Negotiations	**Pathway 3 - use legislative pause for current claims and take time to design new pay equity regime**	**Pathway 14non-legislative or legislative pause for current claims but quick changes to legislative framework and redo claim under new legislation**
Certainty of lower fiscal cost in two key current claims	Medium-High While removal of the process should provide certainty, it is likely to result in attempts to raise claims using other channels such as the Human Rights Act.	Negotiations Free and frank opinions	Low Difficult to predict. Outcome will depend on policy design and on decisions made by decision makers based on new unknown process. Would ideally be lower than status quo but no guarantee.	Medium – Low Difficult to predict. Outcome will depend on policy design and on decisions made by existing decision makers based on new unknown process. Would ideally be lower than status quo but no guarantee.
Consistent with legal norms	Legal professional privilege			
Consistent with international obligations	International relations			
Timing	**Time for repeal legislation** Would require policy and legal processes to design plus drafting time. Policy/CAB – 3-5 months incl ministerial/agency consultation Drafting – 4-6 months Parliamentary process – 6 months SC, plus one month final stages (7 months standard)	**Time for specific leg solution** Would require policy and legal processes to design plus drafting time. Difficult to estimate time needed because of novelty of approach and legal risks involved. **Additional time for Option L2** Policy/CAB – around 9 months; less able to scale the work as per Option L1 to fit a shorter timeframe as a whole new system needs to be designed and advised on Drafting – 8-10 months Parliamentary process – 7 months standard but could go faster.		**Time for leg pause** Would require policy and legal processes to design plus drafting time. Difficult to estimate time needed because of novelty of approach and legal risks involved. **Additional time for Option L1** The timeframe will depend on the number and scope of changes and the available resources. Estimates: Policy/CAB – 4-9 months incl ministerial/agency consultation Drafting – 4-6 months Parliamentary process – 6 months SC, plus one month final stages (7 months standard)

Annex 7: Issues identified with current provisions and the degree of change that can be expected from the different levers

Issue	Who affected?	Level of impact from a change in...		
		Non-leg processes (guidance/advice)	**Funding**	**Legislation**
Multi-employer claims not aligned to a current industrial instrument	Mainly funded sector	Low (without risk of litigation). If claim is for same work, must proceed as single claim unless an employer has a genuine reason based on reasonable grounds	Low. Will not change the claim structure but there may be some impact on funded sector claims through a change some employer party behaviour. Unlikely that changing contingencies will impact public sector claims that have been clubbed together.	High. Could reduce scope of claims to a single employer or multiple employers where they already have a collective agreement. This would align with other regimes internationally
Any comparators	All	Medium. Employers could make different judgements about comparators. But if union disagrees, could end up at ERA.	Low There are few available comparators so option set is limited even if employers wanted to use alternatives	High. Could narrow pool of comparators in line with other regimes internationally
No phasing of settlements	All, but particularly acute for settlements where there is significant undervaluation	None	Makes funding choices tricky.	High. Could allow phasing of settlements
Arguable threshold is low	Employers of claimants where it is unclear whether a workforce faces undervaluation	Medium. Employers could make different judgements about arguable. But if a union disagrees, could end up at the ERA. Unclear how ERA will apply Act.	Low	High. Could change the threshold
Review clauses	Crown parties	Medium, going forward	No impact	High impact, if can clarify policy intent of review clauses (i.e. when undervaluation can be proven to have reemerged) May depend on whether a change in the legislative provisions has an impact on the interpretation of existing contractually agreed review clauses.
The separation of employer responsibility for claims from the funding source changes employer incentives.	Crown?	Likely limited There is scope for clearer articulation of the Government's objectives through Cabinet minutes, funding policy and engagement with senior officials in lead agencies	Low- medium Changes to contingencies will allow for greater testing with Ministers throughout the process (particularly with funded sector claims)	Unclear Given obligations sit on employer, would need to consider whether the approach to public sector employer claims could be an exception in the Act (carveouts for Government is not usually recommended though)

Annex 8 - International obligations

Annex 9 – Treasury comments 'Pay equity: Pathways for change' options

This note supplements the joint advice you have received on reform option for pay equity. It is intended to support discussion among Minsters on the options by outlining how the Treasury weighs up the options. You may wish to forward this note to the Minister for Workplace Relations and Safety and the Ministry for the Public Service ahead of your discussion.

Treasury notes that pathway 3 has the advantage that it would deliver a more robust framework consistent with international practice. Legal professional privilege

Pathway 1 – repeal the current legislated pay equity process (the 2020 Amendments) and specify that the Equal Pay Act 1972 does not provide for pay equity and apply the change retrospectively to halt all current claims.

The Treasury considers the current bespoke negotiated pay equity framework is unaffordable, and out of step with other jurisdictions' approaches to pay equity. However, we do not recommend pathway 1. This step does not contribute to predictable and stable long-term employment relations settings and therefore may increase the costs and uncertainties of settling questions of policy within the courts. Legal professional privilege

The first principle policy solution would be a full policy design process managed the risks of claims under existing law. We would recommend a shift to a non-negotiated framework, drawing from approaches where employers are required to proactively manage pay equity issues through their usual remuneration design and bargaining frameworks. This approach will still likely have cost to Government, but we expect design considerations would significantly reduce the costs compared to the current regime.

Negotiations
Legal professional privilege

Pathway 2 – Negotiations

Legal professional privilege

Legal professional privilege

Negotiations [redacted]

Pathway 3 – use a legislative pause for current claims and design a new legislated pay equity process either based on the current bargaining framework with different legislative parameters or redesign the whole system to be more aligned with approaches used in other jurisdictions.

Pathway 3 is likely to reduce costs but with less certainty and would require a lengthy suspension of remedies. Legal professional privilege [redacted]

Legal professional privilege [redacted]

Pathway 4 – allow current claims to proceed under the status quo for the meantime (or use legislative pause as above in Pathway 3) but quickly develop legislative changes to the current framework which will apply retrospectively with a view to having those claims proceed through the new legislative process.

Pathway 4 could reduce immediate costs without long-term change. Legal professional privilege [redacted]

MBIE have indicated 8 to 15 months to introduce legislation. This timeframe risks the Employment Relations Authority determining rates in the interim. If you were to progress this option, we would recommend prioritising agency, Parliamentary Counsel Office, and House time towards passing the legislation as soon as practicable.

Interaction with pay equity forecasting

In T2025/231, we indicated you could close and return the Funded Sector Pay Equity Contingency but that we would signal higher cost pressures in future Budgets without sufficient certainty of Cabinet's direction on pay equity. We signalled that there Public Sector Pay Equity Contingency could also be closed and returned, but doing so without policy change would strain the credibility of future Budget allowances.

A Cabinet decision with sufficient certainty on the policy direction by the time of the Budget Cabinet paper would allow us to change the wording in the forecast or to allow for the return of the Public Sector Pay Equity Contingency. If you wish to achieve this, we can discuss with you options for direction and getting a paper to Cabinet.

Pay Equity key questions

Do you want to change the underlying bargaining framework of the Act? The key question is: who is the primary decision-maker? Who undertakes the assessment in the process?
When the Terranova case was first decided, the Government decided they did not want the Court deciding how pay equity was determined.

Option 1 - Current framework – employer focused		***Option 2 - Alternative – judiciary or administrative body***	
Pros	Cons	Pros	Cons
Could do quickly		Would need to be specific about the assessment process intended to be used	Would need to fundamentally rewrite the Act which will take time
Employers involved in process (better knowledge of the workforce)	Employers involved in process (misaligned incentives for the public and funded sector)	Would be independent	Would be independent (unlikely to give weight to fiscal impacts)
			Each party would bear the costs of providing information

What process should be used for the assessment?
Need to change some steps in the legislation. See attached slide for suggestions. Many of these will involve tradeoffs.

Do you want this new process to apply to all existing claims?
This does not usually happen with a new law. Existing claims would normally proceed under the laws that applied at the time. However, it is possible to apply the new process to existing claims retrospectively. This would mean that all claims would need to start again and go through the entire process again even if they were near completion – unless decisions were taken to preserve the position of some claims.

Will this change the outcome in the care and support worker claim?
Free and frank opinions However, it is the employers of care and support workers that will decide on the entry criteria (or ERA if challenged by the union) under the current framework or the independent judiciary/administrative body under a revised framework.

Free and frank opinions

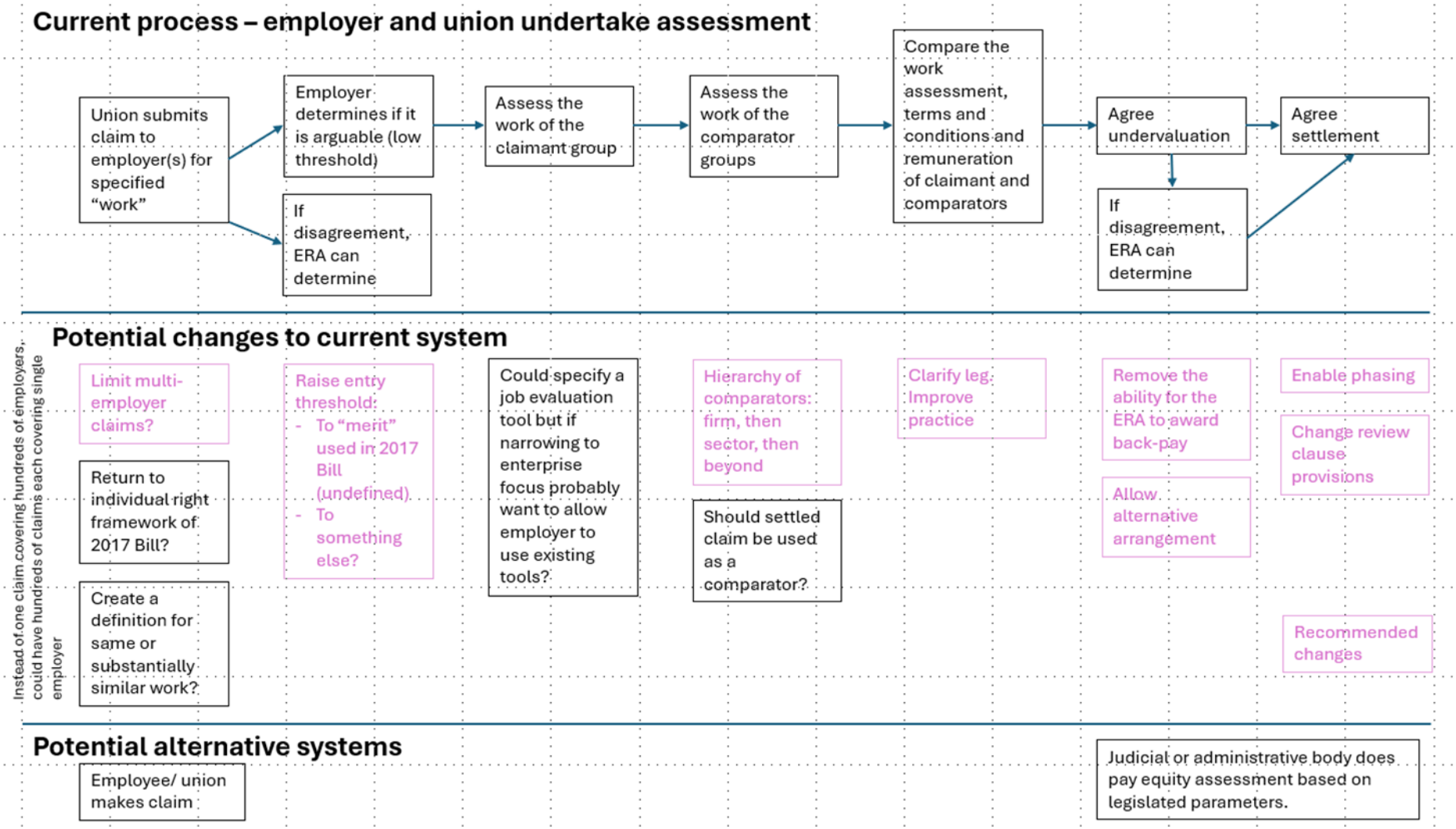
Will this change the outcome for the teachers' claim?
There can be no guarantees about the answer to this question. Free and frank opinions

Free and frank opinions

Would this provide sufficient certainty for Treasury to change the public sector contingency?
Treasury to answer

Free and frank opinions

Do you want as much certainty as is possible about the outcomes of the care and support worker and teachers claims?
For as much certainty as is possible, need to legislate for a specific outcome. Legal professional privilege


Current process – employer and union undertake assessment
Union submits claim to employer(s) for specified "work"
Employer determines if it is arguable (low threshold)
If disagreement, ERA can determine
Assess the work of the claimant group
Assess the work of the comparator groups
Compare the work assessment, terms and conditions and remuneration of claimant and comparators
Agree undervaluation
If disagreement, ERA can determine
Agree settlement
Potential changes to current system
Instead of one claim covering hundreds of employers, could have hundreds of claims each covering single employer
Limit multi-employer claims?
Return to individual right framework of 2017 Bill?
Create a definition for same or substantially similar work?
Raise entry threshold:
- To "merit" used in 2017 Bill (undefined)
- To something else?
Could specify a job evaluation tool but if narrowing to enterprise focus probably want to allow employer to use existing tools?
Hierarchy of comparators: firm, then sector, then beyond
Should settled claim be used as a comparator?
Clarify leg. Improve practice
Remove the ability for the ERA to award back-pay
Allow alternative arrangement
Enable phasing
Change review clause provisions
Recommended changes
Potential alternative systems
Employee/ union makes claim
Judicial or administrative body does pay equity assessment based on legislated parameters.

Potential change	Options	Done quickly?	Impact
Scope of claim	Limit multi-employer claims?	Medium	High on scope of claim. Medium on outcome of claim
	Return to individual right framework of 2017 Bill?	Yes/medium, there is existing wording but need to ensure it still works in context	High on scope of claim. Would reduce efficiency of claim process to point where admin costs may exceed outcome costs
	Create a definition for same or substantially similar work?	No	High on scope of claim. Medium on outcome of claim
Entry threshold	Merit	Yes/medium, there is existing wording but need to ensure it still works in context	Unclear. Terms is undefined so will require judgement
	Require some confirmation of factors in s13F?	Medium	Unclear. Factors require judgement
Work assessment	Specify job evaluation tool	No	Unclear. Judgement required
Choice of comparator	Hierarchy of comparators	Yes/medium, there is existing wording but need to ensure it still works in context	Medium on choice of comparators. Should make assessment more balanced if same firm, sector etc
	Should settled claims be used as a comparator?	Medium	
Remuneration assessment	Clarify role of terms and conditions in remuneration assessment	No	Medium – should eliminate some of the unbalanced comparisons
Agree undervaluation	Allow alternative arrangement by agreement	Yes/medium, there is existing wording but need to ensure it still works in context	Medium – can reduce admin costs of claims if parties agree
	Remove the ability for the ERA to award back pay	Yes/medium, remove existing wording – ensure remaining wording still works	Low
Agree settlement	Enable phasing	No	Medium – can spread increase in cost
	Change review clause provision	Medium?	

Document 14 - Briefing following meeting on 4 March 2025 with the Prime Minister, Minister of Finance, and Minister for the Public Service

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

BRIEFING

Policy Decisions and Draft Cabinet Paper on Pay Equity

Date:	14 March 2025	**Priority:**	High
Security classification:	Budget - Sensitive	**Tracking number:**	REF-00110980

Action sought		
	Action sought	**Deadline**
Hon Brooke van Velden **Minister for Workplace Relations and Safety**	**Forward** this paper to the Ministers of Finance, Health and Education, the Attorney-General and Ministers for the Public Service and Women. **Discuss** at the Ministers' meeting at 2.00pm on Wednesday, 19 March 2025.	18 March 2025
	Agree on the changes to be made to the pay equity process in the Equal Pay Act 1972. **Provide** feedback on the draft Cabinet paper.	20 March 2025

Contact for telephone discussion (if required)			
Name	**Position**	**Telephone**	**1st contact**
Nic Blakeley	Deputy Secretary, Labour, Science and Enterprise, MBIE	Privacy of natural persons	✓
Arati Waldegrave	Associate Commissioner, Public Service Commission	Privacy of natural persons	

The following departments/agencies prepared this paper
MBIE, PSC, DPMC, Treasury
The following departments/agencies have been consulted
Although not consulted on this briefing itself, the briefing includes content developed following conversations with the Ministry of Education, Health NZ, Crown Law Office, Parliamentary Counsel Office, Ministry of Justice.

Minister's office to complete:

- ☐ Approved
- ☐ Noted
- ☐ Seen
- ☐ See Minister's Notes
- ☐ Declined
- ☐ Needs change
- ☐ Overtaken by Events
- ☐ Withdrawn

Comments

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

BRIEFING

Policy Decisions and Draft Cabinet Paper on Pay Equity

Date:	14 March 2025	**Priority:**	High
Security classification:	Budget - Sensitive	**Tracking number:**	REF-00110980

Purpose

This paper seeks:

- your agreement on the changes to the pay equity process in the Equal Pay Act 1972 (the Act) that you would like to recommend for Cabinet consideration on 31 March 2025
- your feedback on a draft Cabinet paper ahead of ministerial consultation from 22 March 2025.

Executive summary

1. Cabinet Strategy Committee asked for a report-back by early 2025 with options for navigating current pay equity claims and a future approach to pay equity [STR-24-MIN-0021].
2. Following the Ministers' meeting on 4 March 2025, officials from MBIE, the Treasury, Public Service Commission and Department of Prime Minister and Cabinet have identified the proposals set out in this paper. You are meeting with the Ministers of Finance, Health and Education, the Attorney-General and the Ministers for the Public Service and Women on 19 March 2025 to discuss these proposals.
3. The intention is to pass any changes ahead of Budget 2025, which requires Cabinet agreement to the amendments on 31 March 2025, and Cabinet approval and introduction of the Bill in early May.
4. This paper seeks your agreement to amendments to the pay equity claims process in the Act that would:
    a. raise the threshold for making a claim for pay equity so that claims must be assessed to have 'merit' before they can progress to the assessment phase and bargaining
    b. enable employers to be able to rescope claims, and send them back to be reassessed, where the work that is the subject of the claim is not the same or substantially similar
    c. enable employers to opt out of multi-employer bargaining without needing to provide reasons
    d. clarify which comparators may be used, and the hierarchy under which they must be selected, when assessing a pay equity claim
    e. provide for pay equity rates under a settlement to be phased in over time
    f. remove the ability for the Employment Relations Authority (the Authority) to award remuneration for past work (ie backpay) and restrict settlements to being prospective rates of pay
    g. remove the requirement for pay equity settlements to have a review clause (see paragraph 5 below)

h. set out transitional provisions to deal with all existing rights in the system, including to discontinue current claims, at whichever stage they are in the system and transition them into the new pay equity process, and ensure all review clauses in settlement agreements have no effect and are unenforceable.

5. We are seeking your decisions on options relating to removing the requirement to include review clauses in settlements. Our recommendation is to remove the ability for settlements to include a review clause and restrict claimants from re-raising a claim for at least 10 years after settlement (except in exceptional circumstances). This will mitigate the current risk of regular reviews ratcheting settlement amounts (without assurance that the outcome is what is required to maintain pay equity) while providing a safeguard if new sex-based discrimination develops over time. The alternative option is to remove the ability for settlements to include a review clause and make a settlement full and final (except in exceptional circumstances) but this would not be consistent with the objective of the Act. Further details are set out in Annex One.

6. There has been limited testing and analysis of the policy proposals in this paper due to the short timeframe to develop proposals and we will continue to work on refining them ahead of Cabinet consideration. It might be necessary to amend some Cabinet decisions before the Bill is introduced. There remains the risk of the changes not achieving the policy intent and unintended consequences arising once the Bill has been passed.

7. The proposed transitional arrangements are most likely to be contentious as they will retrospectively remove and alter people's rights and override and remove some aspects of existing settlements. They will further apply to all existing claims that have been raised or otherwise are not finally settled or determined. The transitional provisions are necessary and justified to meet the policy objective of ensuring the regime achieves pay equity, whilst better managing claims, and ensuring costs are related to sex-based differences in remuneration. Without such transitional provisions, it is likely that the amendments will not achieve the policy objective, and there could be a large number of claims filed and potentially determined under the existing Act. We will work with your office on a comprehensive communications pack to assist with responding to questions about the Bill.

8. Because of the short timeframes, we have drafted a Cabinet paper ahead of your agreement to the policy proposals set out in this paper (see Annex Two). We will provide your office with a revised Cabinet paper, reflecting your feedback and any necessary refinements to the proposals, on 21 March 2025 for ministerial consultation. Legal professional privilege [redacted]

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

Policy decisions

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

a **Agree** to amend the Equal Pay Act so that 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, and to align the requirements that apply when an employer considers a new claim with the new purpose.

Agree / Disagree

b **Agree** 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:

- the claim relates to work that is predominately performed by female employees; and
- there are reasonable grounds to believe that the work has been historically undervalued; and
- there are reasonable grounds to believe that the work continues to be subject to systematic sex-based undervaluation.

Agree / Disagree

c **Agree** to amend the definition of "predominately performed by female employees" to apply where, for at least 10 years, at least 66% of the employees performing the work are and have been female.

Agree / Disagree

d **Agree** to increase the timeframe that employers have to consider whether a claim has merit from 45 working days to 60 working days.

Agree / Disagree

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

e **Agree** that unions must provide evidence to demonstrate how the work covered by a pay equity claim is the same or substantially similar.

Agree / Disagree

f **Agree** 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.

Agree / Disagree

Assessment and bargaining: Ensure an appropriate scope of claims

g **Agree** that an employer can give notice (once) to a claimant that the work that is the subject of the claim is not considered to be the same or substantially similar.

Agree / Disagree

h **Agree** that claims that the employer, or Authority, considers not to be the same or substantially similar will be discontinued and would need to be raised again.

Agree / Disagree

i **Note** 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).

Noted

j **Agree** to provide employers with the choice of being able to opt out of multi-employer pay equity claims without providing a reason.

Agree / Disagree

k **Agree** to specify that the Authority cannot make a determination in relation to an employer's decision to opt-out.

Agree / Disagree

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

l **Agree** to introduce the following hierarchy for identifying appropriate comparators:

- If 1 or more appropriate comparators are employed by the same employer, that comparator or those comparators must be selected for the assessment:

- If no appropriate compactor is employed by the same employer, 1 or more comparators from similar employers must be selected for the assessment:
- If neither of the above applies, appropriate comparators from within the same industry or sector must be selected for assessment:
- Comparators from a different industry or sector may be selected for the assessment only if no other appropriate comparators exist.

Agree / Disagree

m **Agree** 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.

Agree / Disagree

n **Agree** to add 'size of workforce' to the list of factors to determine what an appropriate comparator is.

Agree / Disagree

o **Agree** to require parties to explicitly assess whether there are any current and historical market conditions affecting remuneration which are not related to sex-based undervaluation.

Agree / Disagree

p **Agree** to require parties, when assessing a claimant workforce which was previously not female dominated, to only assess whether the workforce has experienced sex-based undervaluation since the time it became female dominated.

Agree / Disagree

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

q **Agree** to remove the requirement for settlements to include a review clause and remove the ability for parties to (or the Authority to determine) a review clause.

Agree / Disagree

r **Agree** to either:

Option 1 **(Recommended):**

Agree to amend the requirements for raising a new claim where there is a pay equity settlement so that:

- a new claim covering the work of a settled pay equity claim cannot be raised for at least 10 years following the settlement date; and
- parties can raise a claim during the 10-year period following the pay equity settlement in exceptional circumstances.

Agree / Disagree

OR:

Option 2: Agree to make pay equity settlements full and final and remove the ability to raise a new claim covering the work to which a settlement relates, except in exceptional circumstances.

Agree / Disagree

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

s **Agree** that the parties may agree to phasing in the new remuneration in the pay settlement across a maximum period of three years.

Agree / Disagree

t **Agree** 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.

Agree / Disagree

u **Agree** that in determining whether the employer may phase in the new remuneration that the parties have agreed to, the Authority must consider:

- the conduct of the parties; and
- the ability of the employer to pay; and
- the size of the increase in remuneration; and
- any other factors the Authority considers appropriate.

Agree / Disagree

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

v **Agree** to remove the ability for the Authority to, under any circumstances, provide for the recovery of remuneration for past work (ie backpay) prior to the date of determination where settled.

Agree / Disagree

w **Agree** to raise the threshold to apply to the Authority to fix 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'.

Agree / Disagree

x **Agree** 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 (ie a third each year).

Agree / Disagree

y Legal professional privilege

Noted

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

z **Note** that, while the proposed transitional provisions are necessary to give effect to the policy intent, they would retrospectively remove and alter people's rights and override and remove some aspects of existing contracts.

Noted

aa **Agree** 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 Employment Court (the Court) when the Bill comes into force and that are awaiting final determination, be discontinued, but may be raised under the provisions of the Bill.

Agree / Disagree

bb **Agree** that in relation to any pay equity settlement under the Act:

- all review clauses, including those incorporated into employment agreements, have no effect and are unenforceable, and
- any proceedings that have been filed in the Authority or Court in relation to the interpretation or enforcement of such a review clause are discontinued.

Agree / Disagree

cc **Agree** that claims that were settled before the 2020 amendments to the Equal Pay Act will be allowed to raise new claims in line with the new provisions based on the date that their claim was settled or last reviewed (ie 10 years post settlement or review date).

Agree / Disagree

dd **Note** that if you agree with option 1 in recommendation r, recommendation cc would also apply to the care and support worker claim, meaning a new claim could be raised in 2027. If you agree with option 2, then further work is required.

Noted

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

Noted

Next steps

ff **Agree** to forward this paper to the Ministers of Finance, Health and Education, the Attorney-General and the Ministers for the Public Service and Women ahead of your meeting at 2.00pm on Wednesday, 19 March 2025.

Agree / Disagree

gg **Provide** feedback on the draft Cabinet paper by 9:00am on Thursday, 20 March 2025.

Agree / Disagree

hh **Note** that any delays in the proposed timeframe may mean that legislation is unable to be passed before Budget 2025.

Noted

ii **Note** that we are preparing a communications pack to support you and all statements should be reviewed by Crown Law before they are released.

Noted

Nic Blakeley
Deputy Secretary, Labour, Science and Enterprise, MBIE

14/03/2025

Hon Brooke van Velden
Minister for Workplace Relations and Safety

..... / ..... / .....

Background

1. In April 2024, Cabinet agreed to reset the approach to pay equity to place a greater emphasis on fiscal management, and reinforce employer and employee responsibility for reaching settlements, while maintaining the Crown's commitment to meet its obligations under the Equal Pay Act 1972 (the Act) [CAB-24-MIN-0136]. In December 2024, Cabinet Strategy Committee asked for a report back by early 2025 with options for navigating current pay equity claims and a future approach to pay equity [STR-24-MIN-0021].

2. On 4 March 2025, Ministers considered high-level recommendations in relation to eight design principles for amending the pay equity process in the Act. Ministers directed officials from MBIE, the Treasury, Public Service Commission and Department of Prime Minister and Cabinet to further develop the recommendations in order to seek Cabinet approval on 31 March 2025 for the proposed amendments to the Act.

3. On Wednesday, 19 March 2025 you are meeting with the Ministers of Finance, Health and Education, the Attorney-General and Ministers for the Public Service and Women. This meeting is to agree on the policy proposals to be considered by Cabinet on 31 March 2025.

We are seeking your agreement on the policy proposals to be taken to Cabinet

Proposals to address the identified issues and reflect Ministers' objectives are outlined in the attached table (Annex One)

4. Ministers have asked for a system that continues to have a process to consider pay equity claims whilst better managing claims, ensuring settlements are related to sex-based differences in remuneration. The policy proposals identified in this paper are those that align most closely with these objectives and are feasible to include within the current timeframes. Annex One sets out these proposals and an initial assessment of the pros and cons of each.

5. We are seeking a decision on your preferred option for the proposal relating to removing the requirement to include review clauses in settlements. Our recommendation is to remove the ability for settlements to include a review clause and restrict claimants from re-raising a claim for at least 10 years after settlement (except in exceptional circumstances) (option one). This will mitigate the risk of regular reviews ratcheting up settlement amounts (without assurance that the outcome is what is required to maintain pay equity) while providing a safeguard if new sex-based discrimination develops over time.

6. Applying a 10-year limit before a new claim can be raised is intended to enable parties to determine whether any concerns regarding remuneration reflect a re-emergence of sex-based undervaluation. The alternative option is to remove the ability for settlements to be reviewed and make settlements full and final (except in exceptional circumstances) (option two). This would not be consistent with the objective of the Act as once a settlement reached, there would be no safeguard if pay equity issues reoccur. Further details are set out in Annex One.

7. In the draft Cabinet paper and this briefing, the impact on settled claims in the transitional provisions section is based on option one (refer paragraph Cabinet paper paragraph 52.2 and recommendation 20; and recommendation cc above). If you chose option two, further work would be required to consider the legal implications of this approach on settled claims and determine appropriate transitional provisions (particularly for the care and support worker settlement).

8. Legal professional privilege

While it is not possible to significantly shift the type of pay equity system in the time available, these amendments allow Ministers to meet their objectives for the system

9. On 4 March, one of the options considered by Ministers was to redesign the pay equity system to be more aligned with approaches used in other jurisdictions that tend to be more judicial or administrative in nature. It would not be possible to redesign a new pay equity system within the current timeframe. Moving away from the current bargaining framework would involve numerous policy and design decisions to create a new framework and system, including identifying who the primary decision-maker should be, how a claim should enter the process and the process that should be used for assessing pay equity claims.

10. However, a more extensive redesign of the system should not be necessary to give effect to Ministers' objectives. We consider that the proposed changes should enable constraint around the size, scope and number of claims that would need to be considered under the amended Act. Noting that judgments under the legislation (eg relating to the entry threshold and the assessment and comparison of work) will continue to be made by the same decision-makers (ie employers). Accordingly, the precise legal effect and outcome of bargaining as a result of the proposals will be impacted by the degree to which they change behaviour following the legislative changes. Consequently, how agencies give effect to these changes through implementation will be important.

11. The Treasury is continuing to work on estimates about the impact that the amendments will have on fiscal costs, and its current estimates are reflected in the draft Cabinet paper.

We are seeking your feedback on a draft Cabinet paper

12. Due to the available timeframes, we have drafted a Cabinet paper reflecting the policy proposals outlined in this paper (Annex Two). We would appreciate any feedback on the paper before 9.00am on Thursday, 20 March.

13. We will provide you with a revised Cabinet paper, reflecting your preferred options and feedback, on 21 March for ministerial consultation (from 22 to 24 March).

Risks and mitigations

There has been limited testing of the policy proposals

14. Officials have developed the package of policy proposals with limited time to assess options, understand their implications, assess costs and benefits, test assumptions, or gather evidence.

15. If it becomes clear during drafting that a recommendation is unworkable or has implications that have not been previously understood, it would be possible to amend some of Cabinet's decisions prior to introduction and the passage of the Bill. However, despite this mitigation, there remains a risk that the amendments to the Act will not meet the policy intent and have unintended consequences, and further legislative change may be required to rectify any issues.

Free and frank opinions

Free and frank opinions

The transitional provisions would apply retrospectively and override some aspects of existing settlements

17. The proposed transitional provisions are likely to be contentious, particularly in relation to existing claims.

18. The proposed transitional provisions will depart from the default approach in the Legislation Design and Advisory Committee Guidelines by:

    a. applying new legislation to matters that are the subject of ongoing or potential litigation

    b. preventing a person from relying on a right or defence that existed at the time they undertook the conduct that those rights or defences related to.

19. They are also inconsistent with the general principle against the retrospective application of legislation.

20. The transitional provisions are necessary and justified to meet the policy objective of continuing to have a process to consider pay equity claims, whilst better managing claims, and ensuring settlements are related to sex-based differences in remuneration. Without such transitional provisions, it is likely that there could be a large number of claims filed and potentially determined under the existing Act.

Legal professional privilege

Legal professional privilege

International relations, Legal professional privelege

22. Legal professional privilege

23. International relations

24. International relations

A communications pack is being developed to help manage some risks

25. A comprehensive communications pack including an overarching narrative, set of key messages and questions and answers is being developed. This will ensure there is consistency of messaging as media and stakeholder questions are asked to Ministers and agencies.

26. We recommend that any announcements or statements about the proposed amendments must be made after the introduction of the Bill. This is because there is a risk of a large increase in the number of claims being raised if information about the proposed changes is made public beforehand. While these would be overridden by the proposed transitional provisions, it may create additional noise and unnecessary compliance and cost for employers.

27. Legal professional privilege

28. In the event of unauthorised disclosure of material prior to the information being made public, a communications approach will be developed and shared with Ministers.

Implementation

29. The Public Service Commission and Treasury are working with the key agencies with claims (the Ministry of Education and Health New Zealand) to ensure they are ready to implement the new regime in relation to any new claims that are submitted once the Bill is passed.

International relations

Next steps

30. The timeframes for amending the Act are:

Date	Action
19 March	Ministerial meeting to agree on amendments to the Act
19 March – 29 April	PCO draft amendment Bill
20 March	Minister for Workforce Relations and Safety makes final decisions on amendments and provides feedback on draft Cabinet paper Officials revise draft Cabinet paper
21 March	Revised draft Cabinet paper to Minister
22 – 24 March	Ministerial consultation on draft Cabinet paper seeking policy decisions to amend the Act
25 – 27 March	Officials revise draft Cabinet paper to reflect Ministers' feedback
28 March	Final Cabinet paper seeking policy decisions lodged with Cabinet office
31 March	Cabinet consideration
April	Ministry of Justice examine whether draft Bill meets NZBORA requirements
25-29 April	Ministerial and coalition consultation on draft Bill and Cabinet paper seeking agreement to introduce the Bill
1 May	Draft Bill and Cabinet paper lodged with Cabinet office
5 May	Cabinet consideration of draft Bill
6 May (TBC)	Amendment Bill introduced and passed through all stages under urgency

31. These timeframes are significantly contracted in order for the Bill to be passed and reflected in Budget 2025.

Annexes

Annex One: Proposals table

Annex Two: Draft Cabinet paper

Annex Two withheld in full under free and frank opinions.

A final copy of the Cabinet paper is included as Document 21 in this release.

Annex One: Proposals table

Design Principle	Problem	Option(s)	Comment
1A: Raise the entry threshold - Purpose	• Current purpose section is focused on setting a low threshold to raise a claim. • Employers are required to take a light touch to assessing if the claim is arguable. • Claims with little merit are being progressed.	• Amend the purpose to focus on providing a legislative process to facilitate the resolution of pay equity claims where there is evidence of sex-based undervaluation; and • Align the requirements for employers to consider a new claim to match the revised purpose.	• Will better target the system towards where there is evidence that there is a pay equity issue.
1B: Raise the entry threshold - Requirements	• Current test is that the claim is 'arguable', and a claim can be raised if work is currently undervalued or has historically been undervalued. • This is a low threshold and claims with little merit are being progressed. • It is then difficult for claims to be ceased. • Claims can also be raised where the work has only recently become predominately performed by female employees.	Raise the entry threshold for claims, by: • Raising the threshold so that they can only be raised where there is merit and require both historical undervaluation and continued systematic sex-based undervaluation; and • Redefining "predominately performed by female employees" by raising the percentage required from 60 to 66% (as per the 2017 Bill) and require that this has been the case for at least 10 years. Reflecting the change in threshold: • Increase the time employers have for considering whether a claim has merit from 45 to 60 working days (in line with the 2017 Bill).	• Expected to better target the system by requiring a more considered assessment of whether a pay equity issue exists. • Elements of test will still be subject to judgement.

2A: Narrow the scope of claims - Rescoping	• Unions have raised broad pay equity claims.
	• Difficult to determine an appropriate comparator for broad claims.
	• Can result in an inaccurate comparison and a risk of male-dominated occupations being included.
	• Unclear whether rescoping is possible after the entry threshold test and whether rescoped claims must go back through the entry threshold.
	• Unions are only required to provide a brief explanation of why the work covered by the claim is considered to be the same or substantially similar.
		• Make it clear that:
		  ○ employers can assert that the work that is the subject of the claim is not considered to be the same or substantially similar; and
		  ○ this can be done at any point up to the end of the assessment phase (under s13ZD); and
		  ○ claims that are not considered to be the same or substantially similar would need to be raised again.
		• Require unions to provide the evidence on why the work covered by the claim is the same or substantially similar.
		• Allow regulations to prescribe what evidence unions are required to provide to demonstrate why the work covered by the claim is the same or substantially similar.
			• Makes it explicit that employers can assert that claims are not the same or substantially similar at any point up to the end of the assessment phase and rescoped claims must meet the threshold to progress.
			• Will better enable employers to ensure claims are scoped appropriately.
			• Risk of gaming by employers, but risk is low due to the associated administrative costs. Good faith obligations will still apply.

2B: Narrow scope of claims - Multi-employer opt-out	• Unions can raise pay equity claims across multiple employers. • Claims across multiple employers do not necessarily align with collective bargaining structures. • High threshold for employers (or unions) to opt-out of a multi-employer pay equity claim.	• Allow employers to opt-out of a multi-employer claim raised by the union(s) without needing to provide a reason (employers would still need to progress a single employer claim); and • Ensure the opt-out decision cannot be challenged. *Note:* Employers cannot decide to join similar claims across multiple employers (which the 2017 Bill allowed for individual employee claims). We haven't included this option, as it isn't consistent with the focus of narrowing the scope of claims.	• More likely to align with existing bargaining situations. • May increase the number of settlements but lower the complexity of each.
3: Add prescription to selection of comparators	• The current Act provides little direction on how comparators should be selected. • Parties can choose comparators more favourable for their bargaining position, rather than the comparators most closely connected to the work. • Choosing comparators in closer proximity to the work better addresses what the workforce would be paid if it were not predominantly female. • Settled claims can be used as a comparison. In some situations, this could have a ratcheting effect.	• Introduce a hierarchy of comparators similar to that proposed in the 2017 Bill, which requires the closest comparator in terms of employer be selected, if an appropriate one can be found. • Allow parties to use settled claims as a comparator (from commencement) only if both parties agree. • Amend the factors used to determine the appropriate comparator to include 'size of the workforce'.	• Likely to result in fewer comparators being considered. • Leads to a better assessment of what the employer would have paid the workforce if it were not predominantly female. • Risk that a small comparator workforce will be used but this can be mitigated by including the 'size of workforce' as a factor when determining an appropriate comparator.

Design Principle	Problem	Option(s)	Comment
4: Add more prescription to comparison methodology	Free and frank opinions [redacted]	• Require parties to explicitly consider whether there are market factors that affect remuneration that are not related to sex-based undervaluation; and • Require parties to only assess whether the workforce have experienced sex-based discrimination since the work became predominantly performed by women.	• Encourages a deliberate consideration of market factors. • Reinforcing that the assessment should establish what the employer would have paid if the workforce were male.
5A: Provide for phasing - as part of bargaining	• Large settlements may impact an employer's financial viability or require trade-offs that impact on the provision of goods and services, and investments to improve productivity.	• Allow employers and employees to agree on phasing in pay equity settlements across a maximum period of three years; and • Allow the Authority to determine phasing (across a maximum period of three years) and require the Authority to consider: the parties' conduct; the ability of the employer to pay; the size of the increase in remuneration; and other relevant factors.	• Enables employers to better manage significant increases in their wage costs. • Could be seen as delaying access to a right, which may engage the Human Rights Act and Bill of Rights Act. Restricting the phasing to a maximum of three years may help mitigate this risk.
5B: Provide for phasing - when Authority fixes remuneration	• Bargaining may be unnecessarily prolonged if employers are reluctant to seek Authority assistance because of uncertainty about the potential impact on their wage costs. • Employees or unions may seek a determination (rather than a bargained outcome) if they consider the Authority will provide for a higher rate.	• Where a determination on remuneration is sought, require the Authority to phase in the new rates in equal yearly instalments over three years.	• May increase incentives for unions to agree remuneration through bargaining. • May increase incentives for employers to seek a determination but balanced by uncertainty regarding determined rates. • Delays the introduction of remuneration free from discrimination, which may engage the Human Rights Act and Bill of Rights Act.
6: Remove provision for backpay	• Authority can provide for the recovery of remuneration for up to 6 years. • Employers are incentivised to more readily agree to backpay clauses to avoid a perceived risk that the Authority might determine a more substantive backpay time period.	• Remove the Authority's ability to order backpay under any circumstances. *Note:* Parties would still be able to reach an agreement on backpay.	• Increases the likelihood that any agreed backpay is affordable. • Employers may prolong bargaining if there is no ability for a claimant to apply for a determination on backpay. Good faith obligations will still apply. • May engage the Human Rights Act and Bill of Rights Act.
7: Remove review clauses	• Settlements must be reviewed in line with the applicable collective bargaining round or at least every three years. • Short timeframe for review makes it difficult to determine if there is evidence of a re-emergence of pay equity issues. • Regular reviews are resulting in unnecessary administrative costs and may be ratcheting settlement amounts.	• **Option 1:** Remove the ability to include review clauses and enable a claim to only be raised after 10 years if it meets the entry threshold again (unless there are exceptional circumstances); or • **Option 2:** Remove the ability to include review clauses and make settlements full and final (unless there are exceptional circumstances).	**Officials recommend option 1** • Provides a safeguard but only allows new claims to be raised if there is evidence that a pay equity issue has re-emerged. • Restricting a claim for 10 years will better enable parties to determine whether any concerns regarding remuneration reflect a re-emergence of sex-based undervaluation. • May engage the Human Rights Act and Bill of Rights Act. Officials do not recommend Option 2 • Most effective in managing pay equity claims but once a settlement is reached, there would be no safeguard if pay equity issues reoccur. • Would not be consistent with the objective of the Equal Pay Act and will engage the Human Rights Act and Bill of Rights Act.
8: Threshold for fixing determinations	• Current threshold for fixing remuneration is lower than for collective bargaining and in the 2017 Bill. • It allows for a determination where a reasonable period has elapsed during which parties have used best endeavours to settle the claim. • May increase likelihood of settlements being fixed rather than bargained.	• Raise the threshold when a party can apply for a determination to fix remuneration by returning to the 2017 Bill criteria (ie remove the 'reasonable period' option).	• Will make threshold slightly higher and aligned with the 2017 Bill. • Slight risk of parties intentionally dragging out the dispute resolution process, but good faith obligations will still apply.

Document 15 - Briefing following meeting with Ministers

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

BRIEFING

Revised Pay Equity Cabinet Paper for Consultation

Date:	21 March 2025	**Priority:**	High
Security classification:	Budget - Sensitive	**Tracking number:**	REF-0011204

Action sought		
	Action sought	**Deadline**
Hon Brooke van Velden **Minister for Workplace Relations and Safety**	**Agree** to undertake ministerial and coalition consultation on the draft Cabinet paper.	21 March 2025
	Provide feedback arising from the consultation on the draft Cabinet paper.	10.00am, 25 March 2025

Contact for telephone discussion (if required)			
Name	**Position**	**Telephone**	**1st contact**
Nic Blakeley	Deputy Secretary, Labour, Science and Enterprise, MBIE	Privacy of natural persons	✓
Arati Waldegrave	Associate Commissioner, Public Service Commission	Privacy of natural persons	

The following departments/agencies prepared this paper/Cabinet paper
MBIE, Public Service Commission, Treasury, DPMC
The following departments/agencies have been consulted
Although not consulted on this briefing or the Cabinet paper, the documents include content developed following conversations with Ministry of Education, Health NZ and Crown Law

Minister's office to complete:

- ☐ Approved
- ☐ Noted
- ☐ Seen
- ☐ See Minister's Notes
- ☐ Declined
- ☐ Needs change
- ☐ Overtaken by Events
- ☐ Withdrawn

Comments

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

BRIEFING

Revised Pay Equity Cabinet Paper for Consultation

Date:	21 March 2025	**Priority:**	High
Security classification:	Budget - Sensitive	**Tracking number:**	REF-0011204

Purpose

To provide you with a revised Cabinet paper, reflecting your feedback and ministerial decisions, for ministerial and coalition consultation.

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

a **Agree** to undertake ministerial and coalition consultation on the draft Cabinet paper from 22 March to 10.00am, 25 March 2025.

Agree / Disagree

b **Provide** feedback on the draft Cabinet paper by 10.00am, Tuesday 25 March 2025.

Agree / Disagree

c **Note** officials will undertake further work (and review) ahead of finalising the Cabinet paper, and we will advise you of any suggested changes.

Noted

Nic Blakeley
Deputy Secretary, Labour, Science and Enterprise, MBIE

21 / 03 / 2025

Hon Brooke van Velden
Minister for Workplace Relations and Safety

..... / ..... / .....

Ministers considered a draft Cabinet paper on 19 March

1. On 14 March 2024, you received a paper with proposals to amend the Equal Pay Act 1972 (the Act) [REF-00110980], in response to the Cabinet Strategy Committee request for a report back by early 2025 with options for navigating current pay equity claims and a future approach to pay equity [STR-24-MIN-0021].

2. On 19 March 2025, you met with the Ministers of Finance, Health and Education, the Attorney-General and Ministers for the Public Service and Women to discuss the proposed changes. The draft Cabinet paper has been updated to reflect the feedback and decisions agreed at that meeting.

A revised draft Cabinet paper is attached for ministerial and coalition consultation

3. We have amended the draft Cabinet paper you received on 14 March to reflect your feedback and decisions made at the meeting on 19 March. The main changes to the revised Cabinet paper (Annex One) are summarised below.

4. We have provided more information on the overarching **problem definition** to focus on the issues with the current pay equity process and included **examples** of these issues. We have also strengthened the problem definition for each of the individual proposals. The main changes to the paper are as follows:

5. The **threshold for predominantly performed by female employees** has been changed to 70 percent, reflecting Ministers' decisions on 19 March.

6. Also following decisions on 19 March, the **hierarchy for comparators** has been changed to remove the last level where the parties could select comparators from a different sector or industry (if there were no appropriate comparators in any of the other layers). The paper notes that there is a low risk that, in some situations, there may not be an appropriate comparator available.

7. The preferred option for **re-raising pay equity settlements** after 20 years, if the settlement meets the new entry threshold, has been included in the paper.

8. The **Financial implications** section clarifies the changes to the pay equity contingency.

9. We have revised the sections on **Relation to Government Priorities**, **Population Implications** and **Treaty of Waitangi Analysis** to reflect your feedback. We have also made **minor editorial** changes to the paper.

10. If you are happy with the changes to the Cabinet paper, we recommend undertaking ministerial and coalition consultation as soon as possible. We need to receive any feedback by 10.00am, Tuesday, 25 March in order to finalise the paper before it is lodged with Cabinet office on Thursday, 27 March.

Further work is needed before the paper is considered by Cabinet

11. We will undertake the following work in the next week:

    a. International relations

    b. Legal professional privilege

    c. undertake further review of the paper to ensure consistency.

12. We will advise you of any changes to the Cabinet paper we would suggest after completing the above.

Next steps

13. The timeframes for amending the Act are set out below:

Date	Action
21 March	Revised draft Cabinet paper to Minister
22 – 10am 25 March	Ministerial and coalition consultation on the draft Cabinet paper
25 – 26 March	Officials revise draft Cabinet paper to reflect consultation feedback
27 March	Final Cabinet paper lodged with Cabinet office
31 March	Cabinet consideration
April	Ministry of Justice examine whether draft Bill meets NZBORA requirements
25-29 April	Ministerial and coalition consultation on draft Bill and Cabinet paper seeking agreement to introduce the Bill
1 May	Draft Bill and Cabinet paper lodged with Cabinet office
5 May	Cabinet consideration of draft Bill
6 May (TBC)	Amendment Bill introduced and passed through all stages under urgency

14. These timeframes are significantly contracted in order for the Bill to be passed and reflected in Budget 2025.

Annexes (attached)

Annex One: Revised draft Cabinet paper (track change)

Annex Two: Revised draft Cabinet paper (clean)

Annex Three: A3 summary of changes

Annex One & Two withheld in full under free and frank opinions

[BUDGET - SENSITIVE]

[NEGOTIATIONS- SENSITIVE]

Amendments to the Equal Pay Act 1972

The proposed suite of legislative changes aim to maintain a process to raise and resolve pay equity claims, while providing a better framework for assessing whether there is sex-based undervaluation.

	Raising a pay equity claim	Assessment	Pay equity settlements	Fixing remuneration
Description of current process	An employee or union can raise a pay equity claim if they do work that is (or was historically) female-dominated and there are factors that indicate the work is currently or has been historically undervalued.	If the employer considers that a claim is arguable, the parties can proceed to bargaining. This includes an assessment of the work of the claimant and the work of appropriate comparators.	Pay equity settlements must include a settlement remuneration rate and a pay equity review process.	If the parties cannot come to an agreement, disputes may be brought to the Employment Relations Authority. The Authority may fix remuneration (ie set a remuneration rate) and award backpay. Phasing is not permitted.
Key issues	• The threshold for raising a pay equity claim is low, with claims only needing to be 'arguable'. • The low threshold enables claims to go through to the assessment process even where there is no strong evidence of undervaluation.	• There is insufficient guidance on how to choose comparators, and it is not explicit how all relevant factors should be taken into account. • Claims can be wide in scope. Broadly scoped claims make it difficult to assess any sex-based undervaluation. • Claims can cover multiple employers and there is a high threshold for employers to opt out.	• There is insufficient guidance on what factors to consider in reviews, which can make it difficult to understand if differences are due to sex-based undervaluation. Regular reviews are also resulting in unnecessary administrative cost.	• It may be considered inappropriate for an employer to be held liable for backpay as pay equity relates to systemic social issues. • Bargaining may be unnecessarily prolonged if employers are reluctant to seek Authority assistance because of uncertainty about the potential impact on their wage costs. • Certain factors relating to an application to fix rates are inappropriate.
Proposals	1. Increase the threshold for raising a pay equity claim and the timeframe for response from the employer. 2. Require unions to provide evidence that the work of a claim is the same or substantially similar and include an empowering provision to enable regulations to be made that prescribe the evidence.	3. Introduce a hierarchy of comparators. 4. Add more prescription to the comparison methodology. 5. Allow employers to opt out of a multi-employer claim without needing a reason. 6. Allow employers to provide notice to claimants that they need to rescope the claim and raise a new claim(s).	7. Remove the ability for settlements to include a review clause and enable a claim to be re-raised 20 years after settlement and only if it meets the new entry threshold (unless there are exceptional circumstances).	8. Remove provision for the Authority to award backpay. 9. Provide for phasing of pay equity. 10. Ensure parties go through all the steps before being able to take the claim to the Authority.
How will it change the current regime?	• Better target the system by requiring a more considered assessment of whether a pay equity issue exists. • Allow employers to rescope the claim when raised so that the work that is the subject of the claim is the same or substantially similar.	• Choosing comparators in close proximity to the employer reduces the level of judgement that needs to be applied when undertaking the comparison. • Signals that factors that do not contribute to sex-based differences should be appropriately accounted for. • Allow employers to rescope the claim during the assessment phase so that the work that is the subject of the claim is the same or substantially similar.	• This will mitigate the risk of regular reviews ratcheting settlement amounts, without the confidence that they are addressing sex-based undervaluation, while providing a safeguard if new sex-based undervaluation develops over time.	• Phasing will allow employers to better manage significant increases in their wage costs. • Parties would still be able to reach an agreement on backpay on their own but could no longer rely on the Authority if they are unable to agree.

Costs to the Crown

- The total costs of all settlements to date is **$1.55 billion a year**.
- These proposals allow $**12.8 billion** of the Negotiations that the Government has set aside to address pay equity claims to be returned to Budget operating and capital allowances.

Transitional provisions

- All *existing claims* that have been raised with an employer or lodged with the Authority or the Court and have not been settled or determined, will be discontinued.
- All *review clauses* under existing settlement agreements will become unenforceable.

Document 16

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

BRIEFING

Draft Paper Seeking Cabinet Agreement to Introduce the Equal Pay Amendment Bill

Date:	9 April 2025	**Priority:**	High
Security classification:	Budget - Sensitive	**Tracking number:**	REF-0011646

Action sought		
	Action sought	**Deadline**
Hon Brooke van Velden **Minister for Workplace Relations and Safety**	**Agree** to two detailed policy issues that have arisen during drafting. **Agree** to circulate the draft Cabinet paper for Ministerial and coalition consultation,subject to your feedback.	11 April 2025

Contact for telephone discussion (if required)			
Name	**Position**	**Telephone**	**1st contact**
Nic Blakeley	Deputy Secretary, Labour, Science and Enterprise, MBIE	Privacy of natural persons	✓
Arati Waldegrave	Associate Commissioner, Public Service Commission	Privacy of natural persons	

The following departments/agencies contributed to the attached paper
MBIE, PSC, Treasury
The following departments/agencies have been consulted

Minister's office to complete:

- ☐ Approved
- ☐ Noted
- ☐ Seen
- ☐ See Minister's Notes
- ☐ Declined
- ☐ Needs change
- ☐ Overtaken by Events
- ☐ Withdrawn

Comments

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

BRIEFING

Draft Paper Seeking Cabinet Agreement to Introduce the Equal Pay Amendment Bill

Date:	9 April 2025	**Priority:**	High
Security classification:	Budget - Sensitive	**Tracking number:**	REF-0011646

Purpose

To seek your agreement to two detailed policy issues and your feedback on the draft paper seeking Cabinet agreement to introduce the Equal Pay Amendment Bill.

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

a **Note** that the Equal Pay Act 1972 contains a penalty for an employer who does not comply with an Employment Relations Authority (the Authority) determination that requires an employer to enter into pay equity bargaining (as the Authority determined the claim is arguable).

Noted

b **Agree** to expand the penalty above to also apply for any non-compliance by an employer to a determination that requires them to continue with the bargaining process (if the Authority determined that the work covered by the claim is the same or substantially similar and, therefore, cannot be discontinued).

Agree / Disagree

c **Agree** to clarify that, when the Authority fixes the 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.

Agree / Disagree

d **Note** that the Cabinet paper includes two draft recommendations covering recommendations b and c above.

Noted

e **Provide** feedback on the draft Cabinet paper by 11 April 2025.

Agree / Disagree

f **Agree** to undertake ministerial and coalition consultation on a revised Cabinet paper reflecting your feedback from 16 to 28 April 2025.

Agree / Disagree

Nic Blakeley
Deputy Secretary, Labour, Science and Enterprise, MBIE

9/4/2025

Hon Brooke van Velden
Minister for Workplace Relations and Safety

..... / ..... / .....

Background

1. Cabinet agreed to a suite of proposals to amend the Equal Pay Act 1972 (the Act) to maintain a process to raise and resolve pay equity claims, while providing a better framework for assessing whether there is sex-based undervaluation in the remuneration of work predominantly performed by females [CAB-MIN-25-0093 refers].

We seek your decision on two detailed policy issues

2. Cabinet authorised you to make decisions, consistent with the policy in the Cabinet paper, on any issues that may arise during the drafting [recommendation 34, CAB-MIN-25-0093 refers].

3. Through the drafting process, we have identified two detailed policy issues which require your decision. In both instances, we recommend you seek Cabinet's approval of these decisions, as they are on the boundary of your delegated decision-making powers. We have included draft recommendations 3 - 5 seeking Cabinet approval as part of the attached draft Cabinet paper (subject to your approval).

Policy issue one: Expanding an existing penalty

4. On 31 March 2025, Cabinet agreed that:

    a. 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 sustainably similar; and

    b. if an 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.

5. A claimant who receives a notice can challenge the employer's decision at the Authority. If the Authority determines that the work of the claim is the same or substantially similar, the employer must continue with the pay equity bargaining process, as required by the Act.

6. The Act currently includes a provision (refer section 13ZZA) that covers the situation where a determination results in a requirement for the employer to enter into bargaining because the Authority determined that the claim is arguable (noting, the reference to 'arguable' will be changed to 'has merit' by the Bill). The Bill amends this provision to also cover the situation where the Authority has determined that the work of the claim is the same or substantially similar, meaning the claim is not discontinued and the employer must continue with the bargaining process.

7. We are seeking your approval for the penalty that can be applied if an employer does not comply with a determination that requires them to begin bargaining, to also be applied if an employer does not comply with a determination that requires them to continue with the bargaining process.

8. We consider that this expansion is consistent with the current intention of that penalty; however, as it amends a penalty provision, we consider it prudent to seek Cabinet approval.

9. The offences and penalty team at the Ministry of Justice should be consulted on any penalties created or amended by a Bill. However, as we consider this to be consistent with the intent of the existing penalty, and because of the sensitivities of this project, we have not consulted with them.

Policy issue two: Clarifying how phasing will work when the Authority is fixing remuneration

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

11. We consider that the intention of this policy is that the total increase in remuneration would be spread over three increases of equal amounts with each increase being a year apart. However, as the first increase starts on the date of the determination, then the third and final increase would be on the second anniversary of the determination, ie the total increase is spread over two calendar years not three.

12. We are seeking your agreement to change the recommendation to remove any potential confusion about the period that applies for phasing when the Authority is fixing remuneration, to help minimise risks of potential legal challenges about the interpretation of this provision.

13. We recommend clarifying that, when the Authority is fixing remuneration, the remuneration must be phased-in in three equal instalments, a year apart from each other, starting from the date of the determination. An alternative is to spread the total increase over four increases. This does not appear consistent with Cabinet's intention of the increases being "a third each year". A decision on whether to specify that there should be three or four increases depends on whether more weight is given to removing undervaluation more quickly (by having three increases) or to giving employers more time to make the necessary adjustments (by having four increases).

14. If you agree with our recommendation, then different timeframes for phasing would apply depending on whether the Authority is fixing remuneration or the parties are bargaining about phasing (as a maximum of three years applies to bargaining). The difference in time periods may slightly shift incentives for both employers and employees/unions depending on whether they considered bargaining or fixing would provide them with a more favourable outcome. We do not have any evidence to estimate the impacts on behaviour, but we consider that it would be a relatively minor shift in incentives (especially when compared with the shift in incentives that is being created by introducing the requirement for the Authority to phase when making a determination on fixing remuneration, irrespective of whether it is for two or three years).

15. To minimise the number of changes being made, given the timeframes for finalising the Bill and seeking Cabinet approval, we recommend not making any changes to the maximum period that applies when the parties are bargaining about phasing (including if they need to apply for an Authority determination when they cannot reach an agreement). The attached draft Cabinet paper reflects the above recommendations subject to your agreement.

Progress update on the Bill

16. The Parliamentary Counsel Office has provided a first draft of the Bill, and officials have provided initial feedback. The Bill is on track for introduction on 6 May 2025.

17. We have provided a draft Bill to the Ministry of Justice to assess the Bill's consistency with the New Zealand Bill of Rights Act 1990 (NZBORA). We expect that the Ministry of Justice's assessment will be provided to the Attorney-General prior to Cabinet's consideration. We will keep you updated on the Ministry of Justice's assessment.

18. Officials are drafting supplementary materials for the Bill and to support you through the Parliamentary process, including a departmental disclosure statement, legislative statement, speeches, clause-by-clause analysis, and questions and answers. We expect to provide your office with draft materials on 16 April 2025. We are also drafting communications material to support the announcement of the Bill, which will be provided to your office on 11 April 2025.

We seek your agreement to circulate a draft Cabinet paper seeking approval to introduce the Bill, subject to your feedback

19. A draft paper seeking Cabinet's approval to introduce the Bill is in Annex One. The paper includes two placeholders for:

    a. your decisions on the two policy issues outlined above. We have included placeholder text assuming you agree with the recommendations

    b. the Ministry of Justice's NZBORA vet.

20. We are seeking your feedback on the draft Cabinet paper by Friday, 11 April 2025. We will provide you with a revised paper on Tuesday, 15 April, for ministerial and coalition consultation from 16 to 28 April.

21. We have provided an initial draft of the Cabinet paper to the Ministry of Justice to support the NZBORA vet. We intend to provide the Department of Prime Minister and Cabinet with a draft paper alongside ministerial and coalition consultation.

Next steps

22. The timeframes for the introduction of the Bill are set out below:

Date	Action
11 April	Draft communications pack to Minister
15 April	Minister receives revised draft Cabinet paper
16 April	Minister receives draft materials to support the Parliamentary process
16-28 April	Ministerial and coalition consultation on draft Cabinet paper seeking agreement to introduce the Bill
30 April	Revised draft Cabinet Paper to Minister
April	Ministry of Justice completes examination on whether draft Bill meets NZBORA requirements
1 May	Revised drafts of materials to support the Parliamentary Process Final Cabinet paper, draft Bill and departmental disclosure statement lodged with Cabinet office
5 May	Cabinet consideration of draft Bill
5 May	Minister receives final versions of materials needed for the Parliamentary process
6 May (TBC)	Bill introduced and passed through all stages under urgency
7 May (dependant on commencement date)	Relevant public facing materials live (including MBIE website) Commencement

Annexes

Annex One: Draft Cabinet paper

Annex One withheld in full under free and frank opinions. The final version of this paper is included in this release as document 19.

Document 17 - Email from MBIE Policy Team Leader seeking agreement from the Minister for Workplace Relations and Safety on a policy issue to be included in the Reviewing Policy Settings: Bill for Introduction paper (document 19 in this release)

Sent: Tuesday, 29 April 2025 6:01 pm
To: Privacy of natural persons
Cc: Nic Blakeley Privacy of natural persons; arati.waldegrave@publicservice.govt.nz; Privacy of natural persons

Subject: Project 10 - Updated CAB paper, DDS and decision on penalty [SENSITIVE]
Importance: High

Kia ora Privacy of natural persons

Out of Scope

We have also set out below a decision for the Minister relating to an additional penalty that would need to be included in the CAB paper, if she agrees.

Out of Scope

Out of Scope

Decision on additional penalty to be included in CAB paper, if Minister agrees
As we have been working through feedback on the draft Bill, we now consider that another penalty needs to be added to the Bill.

In the cover briefing for the draft Cabinet paper seeking to introduce the Bill, you agreed to expand an existing penalty to also apply where an employer fails to comply with an Authority determination that requires an employer to continue with the pay equity bargaining process (because the work of the claim is the same or substantially similar and it cannot be discontinued) - briefing attached above.

There is a similar situation in the Bill where the employer may fail to comply with an Authority determination that requires the employer to continue with the pay equity bargaining process because there is an appropriate comparator available, and therefore the claim cannot be discontinued. To be consistent, we consider that the Bill should also enable a penalty to apply in this situation. Because of the time constraints, we are suggesting to include this decision in the Cabinet paper, subject to your approval.

For your information, section 18 in the Act sets out the level of penalty for an individual (not exceeding $10,000) and for a company or another body corporate (not exceeding $20,000).

As set out above, the CAB paper includes tracked changes to the body of the paper (para 7.1) and recommendation (rec 4) to reflect this proposed change if you agree to it.

It would be great if you could please ask if the Minister is ok to approve this change and confirm by email.

Here are the relevant recommendations (with the change highlighted in red):

3) note that the Equal Pay Act 1972 contains a penalty for an employer who does not comply with an Employment Relations Authority determination that requires an employer to enter into the pay equity bargaining process (as it determined the claim is arguable, now merit);

4) agree to expand the penalty in recommendation 3 in the Cabinet paper to introduce the Bill amending the Equal Pay Act (see below) to also apply for any non-compliance by an employer to a determination that requires them to continue with the bargaining process (as the Authority determined that the claim cannot be discontinued as the work covered by the claim is the same or substantially similar or there is an available appropriate comparator);

Ngā mihi

Privacy of natural persons

Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Reviewing Policy Settings: Bill for Introduction

Portfolio **Workplace Relations and Safety**

On 5 May 2025, Cabinet:

1 **noted** that on 31 March 2025, Cabinet agreed to a number of amendments to the Equal Pay Act 1972, and agreed that the Equal Pay Amendment Bill (the Bill) be accorded a category 2 priority on the 2025 Legislation Programme (must be passed by the end of 2025) [CAB-25-MIN-0093];

2 **noted** that the Bill will amend the Equal Pay Act 1972 to:

2.1 maintain a process to raise and resolve pay equity claims; and

2.2 provide a better framework for assessing whether there is sex-based undervaluation in work predominantly performed by females;

3 **noted** that the Equal Pay Act 1972 contains a penalty for an employer who does not comply with an Employment Relations Authority determination that requires an employer to enter into the pay equity bargaining process (as the Authority determined the claim is arguable);

4 **agreed** to expand the penalty referred to in paragraph 3 above to also apply for any non-compliance by an employer to a determination that requires them to continue with the bargaining process (as the Authority determined that the claim cannot be discontinued as the work covered by the claim is the same or substantially similar or there is an available appropriate comparator);

5 **agreed** to clarify that, 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;

6 **approved** the Equal Pay Amendment Bill [PCO 27059/9.2] for introduction;

7 **agreed** that the Government propose that the Bill be introduced and passed under urgency on 6 May 2025.

Rachel Hayward
Secretary of the Cabinet

BUDGET-SENSITIVE

NEGOTIATIONS-SENSITIVE

Office of the Minister for Workplace Relations and Safety

Cabinet

Reviewing Policy Settings: Bill for introduction

Proposal

1 This paper seeks approval for the introduction of the Equal Pay Amendment Bill, which contains a suite of changes to ensure the pay equity framework is workable and sustainable.

Policy

2 This Bill gives effect to the 31 March 2025 Cabinet decision to amend the Equal Pay Act 1972 (the Act) [CAB-MIN-25-0093 refers]. The Act establishes a process for raising and resolving pay equity claims. Pay equity is where women and men receive the same pay for doing jobs that are different, but of equal value.

3 The permissive settings in the Act have resulted in the pay equity framework not working as intended. This is particularly as a result of the low entry threshold and insufficient guidance in the Act for comparator choice and comparison methodology.

4 Cabinet agreed to a suite of legislative changes that maintain a process to raise and resolve pay equity claims, while providing a better framework for assessing whether there is sex-based undervaluation. These include:

4.1 increasing the threshold for raising pay equity claims by requiring claims to have merit and by increasing the threshold for what qualifies as work that is “predominantly performed by female employees”;

4.2 requiring unions raising a claim on behalf of multiple employees to provide evidence to demonstrate how the work covered by a pay equity claim is the same or substantially similar;

4.3 making it clear that employers can give notice to claimants during the assessment phase if they consider that the work that is the subject of a claim is not the same or substantially similar. The claim would be discontinued and would need to be raised again;

4.4 allowing employers to opt out of a multi-employer claim without needing to provide a reason;

4.5 introducing a hierarchy of comparators so that comparators in closer proximity to the employer must be selected, where they exist, and

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allowing parties to agree to use a pay equity settlement (if settled under this Amendment Act) as an additional comparator;

4.6 making it clearer that parties must assess market factors that affect remuneration but are not related to sex-based discrimination;

4.7 requiring parties to only assess whether the workforce that is the subject of the claim has experienced sex-based undervaluation since the work became predominantly performed by females;

4.8 removing the ability (and requirement) for settlements to include a review clause;

4.9 restricting the ability to re-raise a claim so that a claim can only be re-raised 10 years after a settlement (unless there are exceptional circumstances) and only if it meets the new requirements for raising a claim;

4.10 allowing parties to agree to phase in remuneration over a maximum period of three years;

4.11 allowing parties to seek a determination on phasing if they cannot agree on phasing (but have agreed on remuneration);

4.12 requiring the Employment Relations Authority (the Authority), when it fixes the remuneration of a pay equity claim, to phase in remuneration in three equal instalments, a year apart from each other, starting from the date of the determination; and

4.13 removing the ability of the Authority to award backpay when it is fixing remuneration.

5 Cabinet agreed that all existing claims that have not been finally settled or determined before the

6 Amendment Act comes into force will be discontinued. Claimants can raise a new claim under the amended Act, if they meet the new requirements for raising a claim. Existing pay equity settlements, including those that were treated as settled under the 2020 Amendment Act, will only be able to be re-raised after 10 years. This will bring the changes into effect immediately, so that all existing and future claims are considered under the new framework.

7 Cabinet also agreed that all review clauses under existing settlement agreements will become unenforceable.

8 I seek Cabinet's approval of two policy issues that have arisen during the drafting process:

8.1 The Act contains a penalty for an employer who does not comply with an Authority determination that requires an employer to enter into pay equity bargaining (as it determined the claim is arguable). I propose to expand the penalty above to also apply for any non-compliance by an

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employer to a determination that requires them to continue bargaining because:

7.1.1 the Authority determined that the work covered by the claim is the same or substantially similar and therefore, cannot be discontinued; or

7.1.2 the Authority determined that there was an appropriate comparator available and therefore the claim cannot be discontinued.

8.2 I propose to clarify that, when the Authority is fixing remuneration (see paragraph 4.12 above), the remuneration must be phased-in in three equal instalments, a year apart from each other, starting from the date of the determination. The initial Cabinet decision referred to 'over three years from the date of the determination'; this created ambiguity, as the effect of the proposal is that the settlement would be fully implemented on the second anniversary of the determination.

Impact analysis

9 No regulatory impact analysis was prepared for these proposals. I will consider whether a post-implementation assessment is required in due course.

Compliance

10 I consider that the Bill complies with:

10.1 the principles of the Treaty of Waitangi;

10.2 the disclosure statement requirements (a disclosure statement has been prepared and is attached to the paper as an Appendix);

10.3 the principles and guidelines set out in the Privacy Act 2020;

10.4 relevant international standards and obligations, International relations ;

10.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee. Cabinet agreed to transitional provisions that discontinue all current claims and proceedings, and that apply retrospectively to existing settlements with review clauses. This departs from the default approach by preventing a person from relying on an existing right or defence and that legislation will not be applied retrospectively. I consider that this is justified to meet the policy objective of providing a better framework for assessing whether there is sex-based undervaluation and ensuring that all parties operate under the same system.

11 International relations

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International relations [redacted]

12 The proposal is currently being assessed by the Ministry of Justice for consistency with the New Zealand Bill of Rights Act 1990 (NZBORA). [redacted]
Legal professional privilege [redacted]

13 To the extent that there is any limitation on the rights in NZBORA, I consider that this is justified to meet the policy intent of allowing employers to better manage their operations, reducing potential risks to an employer's financial viability which may lead to a reduction in employment or the quality or quantity of services provided.

Consultation

14 The proposals in this paper were developed by the Ministry of Business, Innovation and Employment, the Treasury, and the Public Service Commission. The Ministry of Justice and the Department of Prime Minister and Cabinet were consulted on the paper and draft Bill.

15 Cross-party Ministerial consultation has been undertaken on this paper.

Binding on the Crown

16 This Bill amends the Act which binds the Crown.

Creating new agencies or amending law relating to existing agencies

17 Not applicable.

Allocation of decision-making powers

18 Not applicable.

Associated regulations

19 The Bill includes an empowering provision to enable regulations to be made that prescribe:

19.1 the evidence that 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; and

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19.2 any other feature of the relevant labour market, industry, sector, or occupation that should be considered as part of the assessment of whether the claim has merit (in particular, as part of the assessment of whether there has been continued systemic sex-based undervaluation of the work covered by the claim).

20 Regulations are not required to bring the Bill into operation.

Other instruments

21 Not applicable.

Definition of Minister/department

22 Not applicable.

Commencement of legislation

23 The Bill will come into force on the day after the date of Royal assent.

Parliamentary stages

24 I propose that the Bill is introduced and passed under urgency on 6 May 2025.

Proactive Release

25 This paper will be proactively released (subject to redactions in line with the Official Information Act 1982) within 30 business days of final Cabinet decisions.

Recommendations

I recommend that Cabinet:

1 **note** that the Equal Pay Amendment Bill holds a category 2 priority on the 2025 Legislation Programme – must be passed by the end of 2025;

2 **note** that the Bill will amend the Equal Pay Act 1972 to:

2.1 maintain a process to raise and resolve pay equity claims; and

2.2 provide a better framework for assessing whether there is sex-based undervaluation in work predominantly performed by females;

3 **note** that the Equal Pay Act 1972 contains a penalty for an employer who does not comply with an Employment Relations Authority determination that requires an employer to enter into the pay equity bargaining process (as it determined the claim is arguable, now merit);

4 **agree** to expand the penalty in recommendation 3 to also apply for any non-compliance by an employer to a determination that requires them to continue with the bargaining process (as the Authority determined that the claim cannot

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be discontinued as the work covered by the claim is the same or substantially similar or there is an available appropriate comparator);

5 **agree** to clarify that, 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;

6 **approve** the Equal Pay Amendment Bill for introduction, subject to the final approval of the Government caucus and sufficient support in the House of Representatives;

7 **agree** that the Government proposes that the Bill be introduced and passed under urgency on 6 May 2025.

Authorised for lodgement

Hon Brooke van Velden

Minister for Workplace Relations and Safety

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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 renumeration 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 installments, 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 2 priority on the 2025 Legislation Programme (must be passed by the end of 2025);

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

Financial implications

37 **noted** that the direct costs of pay equity to the Government are provided for in the Public Sector Pay Equity tagged operating contingency;

38 **noted** that the changes referred to in paragraphs 3-30 above will reduce the direct costs of pay equity to Government and that, as a result, most of the funding set aside in the Public Sector Pay Equity tagged contingency can be reduced;

39 **agreed** to adjust the Public Sector Pay Equity tagged contingency by the following amounts, with a corresponding impact on the operating balance and net core Crown debt:

($ million)	2024/25	2025/26	2026/27	2027/28	2028/29 & outyears	**Total**
Transfer to the Budget 2025 operating allowance	Negotiations					**(3,193.323)**

40 Negotiations

41 **noted** that the decision in paragraph 39 above will result in savings that will improve the operating balance and net core Crown debt by $3.193 billion over the current forecast period;

42 **agreed** that the savings outlined in paragraph 39 above be applied to the Budget 2025 operating allowance and capital allowance as follows, with the outlined impacts on the operating balance and net core Crown debt:

($ million)	2024/25	2025/26	2026/27	2027/28	2028/29 & outyears	**Total**
Negotiations						
Total	Negotiations					**3,193.323**

43 **noted** that the indirect costs of pay equity to the Government through the funded sector is provided for in the Funded Sector Pay Equity tagged operating contingency;

44 **noted** that the changes listed under paragraphs 3-30 above are anticipated to reduce pay equity outcomes in the funded sector to levels that no longer require funding that has been set aside in the Funded Sector Pay Equity tagged operating contingency;

45 **agreed** to reduce the Funded Sector Pay Equity tagged operating contingency by the following amounts, with a corresponding impact on the operating balance and net core Crown debt:

($ million)	2024/25	2025/26	2026/27	2027/28	2028/29 & outyears	**Total**
Funded sector pay equity tagged contingency	Negotiations					**(9,612.164)**

46 **noted** that following the decision in paragraph 45 above, the Funded Sector Pay Equity tagged contingency is exhausted and therefore closed;

47 **agreed** that any future costs from funded sector pay equity settlements be managed within existing baselines or against future Budget operating allowances;

48 **noted** that the decision in paragraph 45 above will result in savings that will improve the operating balance and net core Crown debt by $9.612 billion over the current forecast period;

49 **agreed** that the savings outlined in paragraph 45 above be applied to the Budget 2025 operating allowance and capital allowance as follows, with the outlined impacts on the operating balance and net core Crown debt:

($ million)	2024/25	2025/26	2026/27	2027/28	2028/29 & outyears	**Total**
Negotiations						
Total	Negotiations					**9,612.164**

Rachel Hayward
Secretary of the Cabinet

Document 21 - **Previously released, with additional information unredacted**

BUDGET-SENSITIVE

NEGOTIATIONS-SENSITIVE

Office of the Minister for Workplace Relations and Safety

Cabinet

Reviewing policy settings

Proposal

1 This paper seeks agreement to proposals to ensure the Equal Pay Act 1972 (the Act) provides a pay equity framework that is workable and sustainable. It also seeks agreement to apply the proposals retrospectively.

Relation to government priorities

2 This Government is committed to improving the quality of regulation, reducing complexity and costs. The proposed changes to the Act provide a better regulatory framework for a pay equity process.

Executive Summary

3 Pay equity means women and men are paid the same for work that is different but of equal value. The Act provides a process to raise and resolve claims of systemic sex-based undervaluation in remuneration in female-dominated occupations.

4 This Government is committed to maintaining a process to raise and resolve pay equity claims, but it is imperative that the system is workable and sustainable.

5 I consider that the 2020 amendments to the Act have made it harder for parties to have confidence that a “pay equity” assessment is identifying and correcting for differences in remuneration that are the result of sex-based discrimination. This is particularly as a result of the low entry threshold and insufficient guidance in the Act for comparator choice and comparison methodology.

6 I propose a suite of legislative changes that maintain a process to raise and resolve pay equity claims, while providing a better framework for parties to use to assess whether there is sex-based undervaluation, including by ensuring:

6.1 the process for raising a claim is robust, by requiring claims to have merit, and providing further tools to help ensure they are appropriately scoped;

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6.2 there is further clarity and guidance in the Act on the appropriateness of comparators used in assessments of sex-based undervaluation and comparison methodology;

6.3 employers are able to meet their pay equity obligations in a manner that is sustainable; and

6.4 the parameters for the Employment Relations Authority (the Authority) relating to fixing remuneration provide the right incentives to resolve pay equity claims.

7 I propose that these changes apply retrospectively to existing claims, and existing settlements with review clauses. While this departs from the presumption that legislation will not be applied retrospectively, it is justified to meet the policy objectives of the new legislation. I propose that the Equal Pay Amendment Bill be introduced and passed under urgency in May 2025.

8 The changes will significantly reduce the direct and indirect costs of pay equity to the Crown. At the request of the Minister of Finance, I propose that the *Funded Sector Pay Equity* tagged contingency is closed and returned to Budget allowances, and that the *Public Sector Pay Equity* tagged contingency is significantly reduced. These decisions will return approximately $12.8 billion over the forecast period to Budget 2025 allowances and leaves Negotiations to meet the Government's residual obligations in the public sector.

Background

9 In 2014, the Court of Appeal held that the Act required equal pay for work of equal value (pay equity), not simply the same pay for the same work (equal pay).

10 To minimise litigation over pay equity, the Government began work on a more orderly way of facilitating pay equity negotiations between employers and employees. A Bill providing a framework for raising and resolving pay equity claims was introduced into Parliament in 2017 (the 2017 Bill). A substantially reworked Bill was passed into law in 2020.

11 New Zealand's pay equity regime is an outlier internationally. The Act allows employees and unions to raise pay equity claims and to bargain a pay equity settlement with multiple employers. In comparable jurisdictions, mostly individuals (or groups of individuals) raise pay equity claims against their employer or there is a positive statutory duty on employers to take steps to achieve pay equity.

12 Pay equity claims have been concentrated in the public sector, with a recent increase in the number of claims in the publicly funded sector. Costs to the Crown have become significant, with the costs of all settlements to date totalling $1.55 billion per year.

13 In April 2024, Cabinet agreed to reset the approach to pay equity (the Pay Equity Reset) to place a greater emphasis on fiscal management, and

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reinforce employer and employee responsibility for reaching settlements, while maintaining the Crown's commitment to meet its obligations under the Act [CAB-24-MIN-0136].

14 Current pay equity claims include Free and frank opinions Current fiscal forecasts include Negotiations for known and reasonably expected pay equity settlements, based on agency data. Following the Pay Equity Reset, these costs have been set aside in centralised tagged contingencies for the public and funded sector.

15 I outlined for the Prime Minister in early 2024 that reviewing the approach to pay equity was one of my five priorities in the Workplace Relations and Safety portfolio. In December 2024, Cabinet Strategy Committee asked for a report back by early 2025 with options for navigating current pay equity claims and a future approach to pay equity [STR-24-MIN-0021].

The pay equity framework under the Equal Pay Act needs to be workable and sustainable

16 The Act establishes a pay equity regime that includes processes for raising a pay equity claim, assessing the claim and bargaining if there is a pay equity issue, and establishing requirements for pay equity settlements. The regime is supported by a dispute resolution process.

17 This Government is committed to maintaining a process to raise and resolve pay equity claims, but it is imperative that the system is workable and sustainable. This is currently not the case.

The Act's settings do not give confidence that pay equity issues have been correctly identified

18 I consider that the permissive settings of the Act have resulted in the pay equity framework not working as intended. The legislative settings that are contributing to the workability issues are a low entry threshold, limited tools for employers to contest broadly scoped claims, and insufficient guidance in the Act for comparator choice and comparison methodology. These settings have resulted in:

18.1 claims progressing through the entry threshold without strong evidence of undervaluation, e.g., the Public Service administration and clerical claim was accepted as arguable but employers considered, after a considerable amount of work was undertaken during the assessment process, that there was limited undervaluation;

18.2 claims being raised that cover a broad scope of work, making it difficult to attribute differences in remuneration to sex-based undervaluation, e.g., the District Health Board Allied/Technical claim covered more than 90 occupations, representing work as diverse as pharmacy assistant, wheelchair technician and psychologist;

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18.3 the same comparators (e.g., fishery officers, corrections officers) being used repeatedly across several claims despite substantial differences in working environment and conditions from the claimant employers' workforces. While working conditions are supposed to be taken into account in the work assessment, the weighting for this factor may not fully recognise the diversity of situations. The more diverse the arrangements, the more judgements that are needed when comparing the work of the claimant and comparator;

18.4 review clauses in some settlements have sought to consider factors that may not have been connected to whether sex-based undervaluation had returned (e.g. the Consumers Price Index);

The system needs to be sustainable, and support employers to manage the implementation of pay equity

19 There have been a number of public sector pay equity claims that have involved large workforces (e.g., around 75,000 people for the teachers claim). Where undervaluation is found, the fiscal cost of settling these claims can be significant. Providing funding for settlements in the public sector means that the Government must make trade-offs in terms of the quality or quantity of service provision in other areas. This means that it is essential that the pay equity process provides the confidence that settlements are based on differences in remuneration due to systemic sex-based discrimination, rather than being due to other non-sex-based factors.

20 Addressing pay equity issues in a timely way is important but there needs to be recognition of the disruption that can happen when costs shift unexpectedly. Whether it is a government or private sector employer, implementing a pay equity settlement means that the employer needs to determine how to factor in the additional cost in both the short and longer term. Some employers may be able to absorb the cost in the short-term through a reduction in profits. Others may need to find efficiencies in the workforce, offer fewer hours or reduce the number of staff in order to accommodate the resulting higher labour costs. These changes could involve trade-offs in service quality or service provision. In addition, pay equity settlements can create differences in remuneration across a sector that can change incentives across employers and employees, and create pressure or expectations for pay parity.

21 Over the longer term, employers have more choices about how to adapt to higher input costs: they can raise prices or renegotiate service contracts (therefore the ability to phase settlements is important, which is one of the proposals in this paper).

There are problems across each part of the regime that need to be addressed

22 I have identified several problems across each part of the regime which need to be addressed.

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Raising and progressing a pay equity claim: The threshold is too low and claims can have wide scope

23 The threshold for raising a pay equity claim under the Act is low, with claims only needing to be 'arguable' and for there to be either historical or current sex-based undervaluation (not both). Claims can be wide in scope covering multiple occupations across one or more employers. There is a high threshold for employers to opt out of a multi-employer claim (and continue with a single employer claim).

24 The low entry threshold enables claims to go through to the assessment process even when there is no strong evidence of undervaluation. This can result in parties incurring significant administrative costs, much of which could have been avoided by a more robust entry threshold.

25 The wide scope of some claims has meant that claims have captured work that was not intended to be covered by the Act (for example, in practice female employees could bring a pay equity claim for workforces that have been male-dominated), making it difficult to assess sex-based undervaluation.

Assessment and bargaining: The legislation provides insufficient guidance to choose comparators

26 If the claim is arguable, the parties then assess whether the work is undervalued, including by considering whether the work of the claimant(s) is undervalued compared to appropriate comparator work. If there is undervaluation, parties bargain for remuneration that does not differentiate on the basis of sex.

27 The Act provides insufficient guidance to choose comparators. This can lead to comparators being chosen even where the context of the comparators' work is very different to the claimant. The more similar the context (i.e., the closer the comparator is to the claimant's employer), the fewer judgements are needed to undertake the assessment.

28 The Act is also not clear on how to take into account relevant factors (i.e., market factors) that have contributed to differences in remuneration for reasons other than sex-based discrimination.

Pay equity settlements: Current review requirement provides too much scope for non-sex-based factors to be considered

29 Pay equity settlements are required to include a review process to ensure pay equity is maintained, either aligned with collective bargaining rounds, or at least every three years. The short timeframe of the review cycle makes it difficult to determine whether any remuneration differences are due to pay equity issues having re-emerged, or to short-term labour market dynamics. There is insufficient guidance in the Act on what factors to consider in reviews which can make it difficult to understand if differences are due to sex-based discrimination. Regular reviews are also resulting in unnecessary administrative costs. Aligning the timing of reviews with collective bargaining

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rounds can risk conflation of pay equity and collective bargaining issues – they are distinct and address different issues.

Dispute resolution: The parameters for the Authority relating to fixing remuneration do not provide the right incentives

30 If parties cannot come to an agreement, disputes may be brought in the employment jurisdiction (mediation, the Authority, and the Employment Court (the Court)). The current legislative parameters the Authority must apply relating to fixing remuneration do not provide the right incentives to resolve pay equity claims.

31 While backpay is not required in settlements, the Authority has the discretion to order up to six years' worth of backpay when fixing remuneration.[1] However, unlike an equal pay claim, which arises from active discrimination by an individual employer, pay equity relates to systemic social issues and takes account of historical discrimination against an occupation. It may not be considered appropriate for an employer to be held liable for backpay and therefore be held responsible for an issue that is a result of historical societal inequality.

32 Bargaining may be unnecessarily prolonged if employers are reluctant to seek Authority assistance because of uncertainty about the potential impact on their wage costs due to the Authority fixing a rate of remuneration that it would need to pay straight away, rather than being able to phase in settlements over time.

33 In addition, the Act allows the Authority to fix remuneration (i.e., set the pay rates) in a pay equity settlement, provided all reasonable alternatives have been exhausted, or a reasonable period of time has elapsed (as well as requiring mediation or another process recommended by the Authority). Allowing for a reasonable period of time to have elapsed as a factor relating to an application to fix determinations can result in an incentive to prolong bargaining in order to lodge a claim with the Authority (however, good faith obligations still apply).

I propose a suite of legislative changes to maintain a process to raise and resolve pay equity claims, while providing a better framework for assessing whether there is sex-based undervaluation

34 I propose a suite of legislative changes to address the current problems with the Act. The proposed changes to the Act will:

34.1 maintain a process to raise and resolve pay equity claims; and

34.2 provide a better framework for assessing whether there is sex-based undervaluation.

[1] The Act provides for specific rules depending on when a claim was raised.

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

35 I propose increasing the threshold for raising a pay equity claim by:

35.1 requiring claims to have 'merit', meaning the claim relates to work that is predominantly performed by female employees, and there are reasonable grounds to believe that the work has been historically undervalued and that the work continues to be subject to systemic sex-based undervaluation; and

35.2 raising the threshold of "predominantly performed by female employees" from 60 percent to 70 percent and require that this has been the case for at least 10 years.

36 I propose to amend the purpose of Part 4: Pay Equity Claims to reflect the renewed emphasis on addressing pay inequities where there is evidence of sex-based undervaluation.

37 To reflect that the 'merit' test requires a more considered decision, I propose to increase the time employers have for considering whether a claim has merit from 45 to 60 working days (consistent with the 2017 Bill).

38 These changes will better target the system by requiring a more considered assessment of whether a pay equity issue exists, although elements of the 'merit' test will still be judgement-based.

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

39 To support employers to determine whether the scope of a claim is appropriate when raised, I propose to require that unions must provide evidence to demonstrate how the work covered by a pay equity claim is the same or substantially similar. I propose that this be supported with a power to make regulations that prescribe the evidence claimants are required to provide.

Assessment and bargaining: Ensure an appropriate scope of claims

40 I propose to ensure an appropriate scope of claims (i.e., where the claim only covers work that is the same or substantially similar) by making it clear that:

40.1 employers can provide notice to claimants that they consider that the work that is the subject of the claim is not the same or substantially similar (employers could only do this once); and

40.2 this can be done after the merit threshold and up until the end of the assessment phase[2]; and

40.3 the claim would be discontinued and a new rescoped claim(s) (where each claim is grouped so it covers work that is the same or

[2] The assessment phase refers to the process under section 13ZD of the Act.

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substantially similar) would need to be raised. Employers would then need to redetermine if the rescoped claim(s) have merit.

41 These changes will make clear the tools available to employers if they receive a claim with a wide scope and wish to require claimants to rescope so that the work that is the subject of the claim is the same or substantially similar. There is a risk of gaming by employers, but I consider this risk is low due to the associated administrative costs. Good faith obligations will still apply.

42 I also propose to allow employers to opt out of a multi-employer claim raised by a union(s) without needing to provide a reason, and that this choice could not be challenged in the Authority.

Assessment and bargaining: Introduce a hierarchy of comparators

43 I propose to introduce a hierarchy of comparators (similar to that proposed in the 2017 Bill):

43.1 if one or more appropriate comparators are employed by the same employer, one or more of those comparators must be selected for the assessment;

43.2 if no appropriate comparator is employed by the same employer, one or more comparators from similar employers must be selected for the assessment;

43.3 if neither of the above applies, appropriate comparators from within the same industry or sector must be selected for the assessment.

44 Parties will be able to agree, where they both consider it is appropriate, to include a claim that has been settled under the amended Act (i.e., following the passing of this Bill) as a comparator.

45 I also propose that the factors used to exclude a comparator from being appropriate include the size of the workforce.

46 If an appropriate comparator is not available within the hierarchy of comparators, the pay equity claim will not be able to proceed.

47 Choosing comparators in close proximity to the employer reduces the level of judgement that needs to be applied to compare claimant and comparator work and remuneration. For this reason, I do not propose that comparators from a different industry or sector be included in the hierarchy. I consider that using comparators from a different industry or sector would make it too difficult to determine whether differences in remuneration are due to sex-based discrimination or due to non-sex-based factors. Although such comparators could be used in the 2017 Bill, in other jurisdictions, such as the United Kingdom and Ireland, only comparators that work for the same or an associated employer are allowed.

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Assessment and bargaining: Add more prescription to comparison methodology

48 When assessing whether the claimants' work is undervalued, I propose to:

48.1 make it clearer that parties must assess market factors which affect remuneration but are not related to sex-based undervaluation; and

48.2 require parties to only assess whether that workforce has experienced sex-based undervaluation since the work became predominantly performed by females.

49 These changes will signal that factors that do not contribute to sex-based differences should be appropriately accounted for.

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

50 I propose to remove the ability (and requirement) for settlements to include a review clause; and restrict the ability to re-raise a claim so that a claim can only be re-raised 10 years after a settlement (unless there are exceptional circumstances) and only if it meets the entry threshold again. This will mitigate the risk of regular reviews ratcheting settlement amounts (without the confidence that they are addressing sex-based discrimination), while providing a safeguard if new sex-based discrimination develops over time. Applying a 10-year limit before a new claim can be raised is intended to enable parties to determine whether any concerns regarding remuneration reflect a re-emergence of sex-based undervaluation rather than being due to other market factors.

51 Legal professional privilege

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

52 I propose to allow employers and employees to agree on phasing in pay equity settlements, in any circumstances. If phasing is agreed, the new remuneration must be fully phased in within a maximum of three years from the date of settlement.

53 If the parties have agreed on the new remuneration but not on phasing, I propose that disputes related to phasing may be heard by the Authority. The Authority may determine if phasing will apply and, if so, how the remuneration can be phased within a maximum three-year period. In making its determination, the Authority must consider:

53.1 the conduct of the parties; and

53.2 the ability of the employer to pay (which will bring an element of affordability into consideration); and

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53.3 the size of the increase in remuneration; and

53.4 any other factors the Authority considers appropriate.

54 The ability to phase pay equity settlements will enable employers to meet their obligations with less disruption to their operations which should benefit all parties. Employers will be able to better manage significant increases in their wage costs, and any trade-offs with the delivery of services or improving productivity (e.g., investing in training or technology). This could be seen as delaying access to a right. Restricting the phasing to a maximum of three years may help mitigate this risk.

Dispute resolution: Changes to when and how the Authority can fix remuneration

55 I propose to remove the factor for applying to the Authority to fix remuneration, relating to a reasonable period of time having elapsed, and return to the 2017 Bill criteria which does not include this factor. This will make the threshold slightly higher.

56 Where there is prolonged bargaining on remuneration, and parties are unable to agree on remuneration, an Authority determination may be needed to break this impasse. I propose that, when the Authority fixes remuneration, the new remuneration must be phased-in in equal yearly instalments across the three years from the date of the determination (i.e., a third each year). This will allow employers to better manage increases in their wage costs. This may increase the incentives for employers to seek a determination but would be balanced by the uncertainty regarding determined rates.

57 Legal professional privilege

58 I consider that staging increases in employers' wage costs allows them to better manage their operations, reducing the potential risks to an employer's financial viability which may lead to a reduction in employment or in the quality or quantity of services provided.

Dispute resolution: Remove provision for the Authority to award backpay

59 I propose to remove the current ability for the Authority to award backpay when it is fixing remuneration. Parties would still be able to reach an agreement on backpay on their own but could no longer rely on the Authority if they are unable to agree.

60 There is a risk that employers prolong bargaining if there is no ability for the Authority to determine backpay (if asked to fix remuneration) but good faith obligations will still apply.

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Transitional provisions

61 I propose the following transitional provisions to address how different types of claims should be dealt with under the new pay equity regime:

61.1 *Existing pay equity claims*: All claims that have been raised with an employer, or lodged with the Authority or the Court, and have not been finally settled or determined, will be discontinued. Claimants can raise a new claim under the amended Act, if they meet the new entry requirements.

61.2 *Settled pay equity claims with review clauses*: All review clauses under existing settlement agreements will become unenforceable. All settled claims (including those that were treated as a pay equity settlement under the Act when it was amended in 2020) will be able to raise a new pay equity claim 10 years post settlement if the claim meets the new entry requirements under the amended Act.

62 The transitional provisions depart from the default approach in the Legislation Design and Advisory Committee Guidelines by applying new legislation to matters that are the subject of ongoing or potential litigation and preventing a person from relying on a right or defence that existed at the time they undertook the conduct that those rights or defences related to. They are also inconsistent with the general principle against retrospective application of legislation.

63 The transitional provisions are necessary and justified to meet the policy objective of maintaining a process to raise and resolve pay equity claims, while providing a better framework for assessing whether there is sex-based undervaluation. Without such transitional provisions, it is likely that there could be a large number of claims filed and potentially determined under the existing Act. However, as the transitional provisions engage important legal principles, they are likely to be contentious and receive public comment from stakeholders.

Risks

64 The proposals in this paper have been developed in a short timeframe with limited time to assess implications and unintended consequences, with narrow and targeted consultation (with the Ministry of Education and Health New Zealand). There is a risk that the amendments to the Act have unintended consequences, and further legislative change is required to rectify any issues. I seek Cabinet's delegation to make further policy decisions if any issues arise before introduction of the Bill.

65 The precise legal effect and outcome of bargaining as a result of the proposals will be impacted by the degree to which decision-makers change their behaviour following the legislative changes.

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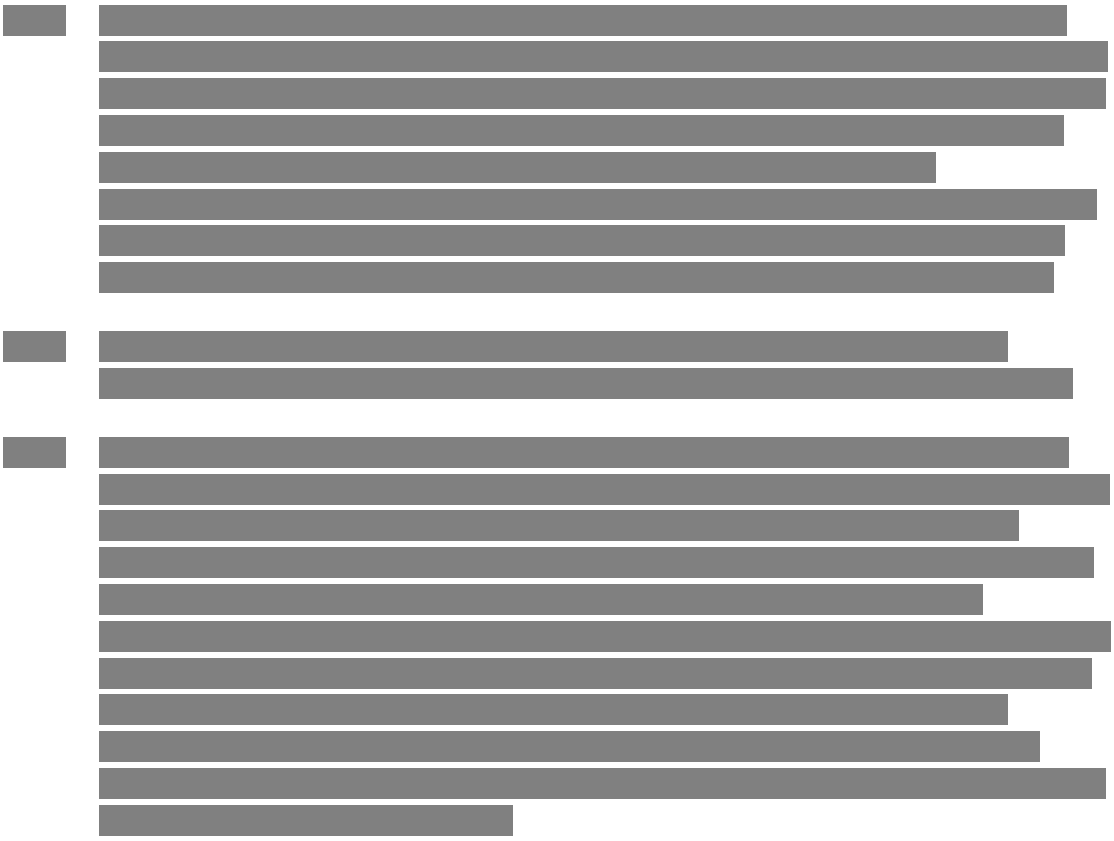
Legal Risk

66 Legal professional privilege



Implementation

67 The Public Service Commission and Treasury are working with the key agencies with claims (the Ministry of Education and Health New Zealand) to ensure they are ready to implement the new regime in relation to any new claims that are submitted once the Bill is passed. Most notably, officials are working on the approach to the revised entry threshold, the scope of claims, and consideration of the choice of comparators.

68 To give effect to the decisions in this paper, the Public Service Commission will make whatever adjustments are needed to the Commissioner's delegations to chief executives.

69 The Ministry of Business, Innovation and Employment will update its guidance and website content to reflect the changes to the Act.

Cost-of-living Implications

70 The proposals in this paper are intended to ensure a pay equity regime which provides a better framework for assessing whether there is sex-based undervaluation. This will benefit people who work in female-dominated

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occupations and face systemic sex-based undervaluation of their remuneration.

Financial Implications

71 Pay equity has both direct and indirect fiscal implications:

71.1 The Government has a legal obligation to fund the outcome of pay equity claims in the public sector.

71.2 Service providers subject to a pay equity settlement will face higher pay equity costs, potentially requiring the Government to trade off providing additional funding or accepting reduced service provision.

72 The proposals in this paper are expected to reduce claim outcomes in both the public and funded sectors. The Minister of Finance has requested that I propose the following changes to the public and funded sector pay equity contingency established by Cabinet in April 2024 [CAB-24-MIN-0136]:

Funded Sector Pay Equity tagged contingency

72.1 close the Funded Sector Pay Equity tagged contingency (returning $9,612 million over the forecast period, with future cost pressures to be managed within budget allowances);

72.2

72.3 Negotiations

Public Sector Pay Equity tagged contingency

72.4 reduce the Public Sector Pay Equity tagged contingency by $3,193 million over the forecast period;

72.5 Negotiations

72.6 Negotiations

73 This returns a total of $12.8 billion to the Budget 2025 operating and 2025 capital allowances, leaving Negotiations to meet the costs of public sector claims.

Negotiations

74 Negotiations

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75 Negotiations [redacted]

Management of funded sector pay cost pressures

76 Closing the funded sector contingency reflects this Government's expectation that service providers manage their own claims and that any cost pressures they create can be managed like any other cost pressure through the annual budget process. The risk of immediate service impacts prior to funding reviews will be mitigated by the phasing proposals.

Legislative Implications

77 An amendment Bill amending the Act will be required to give effect to these changes, which I propose to introduce and pass under urgency in early May 2025. I am seeking a priority category 2 in the 2025 Legislation Programme for this Bill.

78 Legal professional privilege [redacted]

Impact Analysis

Regulatory Impact Statement

79 Cabinet's impact analysis requirements apply to this proposal, but there is no accompanying Regulatory Impact Statement and the Ministry for Regulation has not exempted the proposal from the impact analysis requirements. Therefore, it does not meet Cabinet's requirements for regulatory proposals.

80 I will consider if a post-implementation review is appropriate at a later date.

Population Implications

81 The proposals in this paper are intended to ensure a pay equity regime which provides a better framework for assessing whether there is sex-based undervaluation. This will benefit people who work in female-dominated occupations who face systemic sex-based undervaluation of their remuneration.

Human Rights [*Legally privileged*]

82 Legal professional privilege [redacted]

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Legal professional privilege

Legal professional privilege

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Legal professional privilege

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International obligations

91 New Zealand has pay equity obligations under the International Labour Organization (ILO) Equal Remuneration Convention, 1951 (No. 100), and the United Nations Convention on the Elimination of All Forms of Discrimination against Women and International Covenant on Economic, Social and Cultural Rights. The proposed pay equity model will continue to ensure employees receive equal pay for work of equal value. The ILO Supervisory Committee (the Committee) has noted that the Equal Remuneration Convention allows flexibility in the measures to be taken, but "allows no compromise regarding the objective to be pursued." It would be for the Committee to determine whether the changes are in line with the Equal Remuneration Convention.

International relations

92 Legal professional privilege

Treaty of Waitangi analysis

93 I consider that the proposals in this paper are consistent with the Government's Treaty of Waitangi obligations.

Consultation

94 This paper was developed by the Ministry of Business, Innovation and Employment, the Treasury, and the Public Service Commission. The Department of the Prime Minister and Cabinet, Ministry of Foreign Affairs and Trade, and Crown Law Office were consulted on the paper. The Ministry of Education and Health New Zealand were consulted on the proposals in the paper.

Communications

95 I do not intend to make any announcement on the changes to the Act until the Bill is introduced. I am cognisant of the risk that announcing the changes before introducing the Bill could prompt pay equity claims being filed and potentially determined by the Authority under the existing Act.

Legal professional privilege

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Proactive Release

96 This paper will be proactively released (subject to redactions in line with the Official Information Act 1982) within 30 business days of the Bill being introduced to Parliament.

Recommendations

The Minister for Workplace Relations and Safety recommends that Cabinet:

1 **note** that, in December 2024, the Cabinet Strategy Committee asked for a report back by early 2025 with options for navigating current pay equity claims and a future approach to pay equity [STR-24-MIN-0021];

2 **agree** that the policy intent of the proposals in this paper 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 **agree** to amend the Equal Pay Act 1972 (the Act) so that 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, and to align the requirements that apply when an employer considers a new claim with the revised purpose;

4 **agree** 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; and

4.2 there are reasonable grounds to believe that the work has been historically undervalued; and

4.3 there are reasonable grounds to believe that the work continues to be subject to systemic sex-based undervaluation;

5 **agree** 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 **agree** to increase the timeframe that employers have to consider whether a claim has merit from 45 working days to 60 working days;

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

7 **agree** that unions must provide evidence to demonstrate how the work covered by a pay equity claim is the same or substantially similar;

8 **agree** 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 **agree** 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 **agree** 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 **note** 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 **agree** to provide employers with the choice of being able to opt out of multi-employer pay equity claims without providing a reason;

13 **agree** 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 **agree** 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 **agree** that if an appropriate comparator is not available within the hierarchy of comparators, that the pay equity claim cannot proceed;

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16 **agree** 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 **agree** 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 **agree** 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 **agree** 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 **agree** 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 **agree** 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; and

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 **agree** that the parties may agree to phasing in the new remuneration in the pay equity settlement across a maximum period of three years;

23 **agree** 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 **agree** 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; and

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24.2 the ability of the employer to pay; and

24.3 the size of the increase in remuneration; and

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

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

28 **agree** 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 **agree** 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; and

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 **agree** 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 **note** that, if recommendation 30 above is agreed to, this would also apply to the care and support worker claim, meaning a new claim could be raised in 2027;

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

* 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 installments, a year apart from each other, starting from the date of the determination"

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Approval for drafting

33 Legal professional privilege

34 **authorise** the Minister for Workplace Relations and Safety to make decisions, consistent with the policy in this paper, on any issues that may arise during the drafting;

35 **agree** to a priority category 2 for this Bill in the 2025 Legislative Programme (must be passed by the end of 2025);

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

Financial recommendations

37 **note** that the direct costs of pay equity to the Government is provided for in the *Public Sector Pay Equity* tagged operating contingency;

38 **note** that the changes listed under *Policy Proposals* (recommendations 3 -30) will reduce the direct costs of pay equity to Government and as a result Free and frank opinions the funding set aside in the *Public Sector Pay Equity* tagged contingency can be reduced;

39 **agree** to adjust the *Public Sector Pay Equity* tagged contingency by following amounts with a corresponding impact on the operating balance and net core Crown debt:

($ million)	2024/25	2025/26	2026/27	2027/28	2028/29 & outyears	**Total**
Transfer to the Budget 2025 operating allowance	Negotiations	Negotiations	Negotiations	Negotiations	Negotiations	(3,193.323)

40 Confidential advice to Government

Confidential advice to Government, Negotiations

41 **note** that the decision sought in recommendation 39 will result in savings that will improve in the operating balance and net core Crown debt by $3.193 billion over the current forecast period;

42 **agree** that the savings outlined in recommendation 39 are applied to the Budget 2025 operating allowance the capital allowance as follows, with the outlined impacts on the operating balance and net core Crown debt:

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($ million)	2024/25	2025/26	2026/27	2027/28	2028/29 & outyears	**Total**
Negotiations						
Total	Negotiations					3,193.323

43 **note** that the indirect costs of pay equity to the Government through the funded sector is provided for in the *Funded Sector Pay Equity* tagged operating contingency;

44 **note** that the changes listed under *Policy Proposals* (recommendations 3 -30) are anticipated to reduce pay equity outcomes in the funded sector to levels that no longer requires funding that has been set aside in the *Funded Sector Pay Equity* tagged operating contingency;

45 **agree** to reduce the *Funded Sector Pay Equity* tagged operating contingency by the following amounts with a corresponding impact on the operating balance and net core Crown debt:

($ million)	2024/25	2025/26	2026/27	2027/28	2028/29 & outyears	**Total**
Funded sector pay equity tagged contingency	Negotiations					(9,612.164)

46 **note** that following the decision sought in recommendation 45 the *Funded Sector Pay Equity* tagged contingency is exhausted and therefore closed;

47 **agree** that any future costs from funded sector pay equity settlements are managed within existing baselines or against future Budget operating allowances;

48 **note** that the decision sought in recommendation 45 will result in savings that will improve in the operating balance and net core Crown debt by $9.612 billion over the current forecast period;

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49 **agree** that the savings outlined in recommendation 45 are applied to the Budget 2025 operating allowance the capital allowance as follows, with the outlined impacts on the operating balance and net core Crown debt:

($ million)	2024/25	2025/26	2026/27	2027/28	2028/29 & outyears	**Total**
Negotiations						
Total	Negotiations					**9,612.164**

Hon Brooke van Velden

Minister for Workplace Relations and Safety

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