

27 February 2018

Hon Iain Lees-Galloway
Minister for Workplace Relations and Safety
Parliament Buildings
Wellington

Hon Julie Anne Genter
Minister for Women
Parliament Buildings
Wellington

Dear Ministers

Recommendations of the Reconvened Joint Working Group on Pay Equity Principles

The Reconvened Joint Working Group on Pay Equity Principles (RJWG) has completed its work and is now pleased to provide you with its recommendations.

Ministers decided to reconvene the Joint Working Group on Pay Equity Principles in November 2017 to advise on a number of issues to inform the legislation supporting pay equity. This decision reflected the Government's intention not to proceed with the Employment (Pay Equity and Equal Pay) Bill, introduced by the previous government.

The RJWG, facilitated by Traci Houpapa and including employer, union and government representatives¹, was asked to:

- Reconfirm the Pay Equity Principles (the Principles) recommended by the JWG.
- Provide further practical and specific guidance on key areas of the Principles:
 - Determining the merit of a pay equity claim (including considering the role of an employer in this process) from employee and employer perspectives; and
 - Determining how appropriate comparators should be selected when assessing the work subject to a pay equity claim.
- Advise on the legislative vehicle to implement the JWG Principles and recommendations.

The RJWG met on three occasions and also heard from State sector employers and unions about their respective learnings and observations based on their practical experiences of applying the Principles to current pay equity claims under negotiation.

We have unanimously agreed to recommend that the Government:

1. **Note** that the Reconvened Joint Working Group has reconfirmed the Pay Equity Principles recommended by the Joint Working Group in May 2016.
2. **Accept** the proposed changes to Principle 2 to clarify and simplify the process for initiating a pay equity claim.

¹ State Services Commission, Ministry for Business, Innovation and Employment, and the Ministry for Women

3. **Note** that the Reconvened Joint Working Group has agreed that the Joint Working Group Principles on comparators are appropriate and sufficient (Principles 7, 8, 9 and 11).
4. **Retain and amend** the Equal Pay Act 1972 as the legislative vehicle to support implementation of the Principles with consequential changes to the Employment Relations Act 2000.

Determining the merit of a pay equity claim

The RJWG recommends changes to Principle 2 to deal with the initial identification of pay equity claims and how they are progressed. These changes are founded in large part on the experiences of the parties in the education, social services and health sectors that have been negotiating pay equity claims using the original Principles. The parties involved in these early claims found that the concept of 'merit' created an unintended barrier to progressing claims. We have therefore removed the term.

The original intention of the JWG was that identifying and initiating a claim would be a simple and accessible process to all parties. The RJWG learned that this has not been the case and has accordingly recommended changes to Principle 2. These changes are attached in Annex One.

Some parties had misinterpreted Principle 2 as a higher evidential hurdle than intended so we have clarified how the categories of information should be considered. There is: A) a requirement for the workforce to be female dominated, B) a light touch assessment of historical undervaluation, and C) consideration of ongoing system issues. It is not necessary for all of the examples in parts B and C in Principle 2 to be present for a claim to proceed.

Based on the experience of early claims, the RJWG also recommends an addition to Principle 2 to clarify that entering into the Principles process does not predetermine an outcome.

Any reference to 'merit' in the flow chart, appended to the original JWG Principles, will be read as 'proceeding with a pay equity claim'.

Selection of comparators

No recommendations have been made for the inclusion of a process and criteria for the selection of comparators.

The recommended approach is therefore based upon the notion of the parties to a pay equity claim working together to resolve these issues at the earliest time at the most appropriate level, using the existing good faith bargaining arrangements of the Employment Relations Act 2000 as the platform. The benefit of this approach is that it uses the existing good faith provisions in the law, and where necessary, the Employment Relations Authority and the Court to assist parties in settling pay equity claims.

Legislative amendments

The RJWG recommends that the Equal Pay Act 1972 be updated to accommodate the Principles. The RJWG recognises that it will be necessary to amend the Employment Relations Act 2000 to recognise the special characteristics of pay equity claims. This includes setting appropriate processes and criteria for access to the various levels of jurisdiction should recourse to the authorities become necessary, including a lower threshold than currently exists to access facilitation.

Summary - key elements of the reconfirmed JWG Pay Equity Principles

For the sake of a complete record, a summary of the reconfirmed JWG Principles is attached in Annex Two.

Other matters

Resources

Pay equity is a complex matter and parties bargaining on pay equity matters need to have ready access to adequate information and resources to assist them in their deliberations. The experience of parties in applying the agreed Principles to pay equity claims since the Care and Support Workers (Pay Equity) settlement has highlighted the shortage of comprehensive and widely applicable information and resources.

The RJWG believe there is a need for additional support to provide readily accessible information and resources, for example historic information, case studies, workforce data and research, and tools (including work assessment), and information on the possible cost and benefit implications of successful claims to assist the parties. We suggest that government give further consideration to its role in supporting pay equity information and in how to encourage transparency across employers, for example with comparator information.

It will be also necessary for the regulatory and support agencies to have the necessary skills, training, knowledge and resources to effectively support the resolution of pay equity issues. This may require some specific investment on the part of government, for example in areas such as the mediation service, at the Authority and court level, and specialists available to provide information and support.

Other gender pay disparity matters

The RJWG recommendations focus on the matters set out in the Terms of Reference for the group. However, we note that implementation of pay equity principles and process will not of themselves solve wider issues of disparity. During our discussions, it was recognised that there are other associated matters that need also to be progressed. The gender pay gap and equal employment opportunity are two deserving of mention, although there are likely to be others that deserve attention over time,

In the wider context of gender equality, issues such as equal opportunity in employment, including advancement, transparency of remuneration processes used to set and maintain remuneration levels and the effect of caring responsibilities contribute to the gender pay gap.

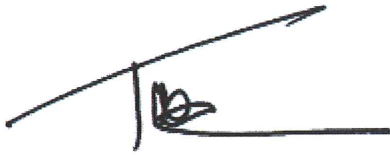
The government as New Zealand's largest employer can take a lead role in responding more broadly to this issue. The government has committed to eliminate the gender pay gap within the core public sector with substantial progress within this Parliamentary term and work to ensure the wider public sector and private sector is on a similar pathway, as part of the Confidence and Supply Agreement between the New Zealand Labour Party and the Green Party of Aotearoa New Zealand.

The work done by the separate bipartite joint working group on gender pay principles within the State sector is developing a framework to eliminate the multiple factors contributing to systemic gender pay discrimination. This framework used alongside pay equity processes and settlements could also usefully support efforts to eliminate the gender pay gap outside the state sector.

Conclusion

Overall, this work has been a good example of a cooperative approach to problem solving. The RJWG's work has been completed quickly and without dissent. All the participants have worked constructively and positively together to reach the consensus reflected in the recommendations. We believe that, with the adjustments recommended to the Principles developed in the earlier work of the JWG, we have identified a sustainable and workable approach that will serve well into the foreseeable future and we commend it to you.

Yours sincerely



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Crown Facilitator



Richard Wagstaff
New Zealand Council of Trade Unions
Lead Union Representative



Paul Stocks
Ministry of Business, Innovation and
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Proposed amendment to Principle 2 of the Pay Equity Principles

At its meeting on 19 February 2018, the Reconvened Joint Working Group on Pay Equity Principles agreed to make the following recommended changes to Principle 2 of the original Pay Equity Principles (as recommended by the Joint Working Group in May 2016).

Amended Principle 2

The process to raise a claim as a pay equity claim should be simple and accessible to all parties.

- A. To determine whether to proceed with the claim as a pay equity claim the work must be predominantly performed by women.

In addition it should be arguable that:

- B The work is currently or has been historically undervalued due to, for example:
- i. Any relevant origins and history of the work and the wage setting for it;
 - ii. Any social, cultural or historical factors which may have led to undervaluing or devaluing of the work and the remuneration paid for it;
 - iii. There is or has been some characterisation of the work as “women’s work”;
 - iv. Any social, cultural or historical phenomena whereby women are considered to have “natural” or “inherent” qualities not required to be accounted for in wages paid;
- C. Consideration may also be given to whether gender-based systemic undervaluation has affected the remuneration for the work due to:
- i. Features of the market, industry or sector or occupation which may have resulting in continued undervaluation of the work, including but not limited to:
 - 2.i.1. a dominant source of funding across the market, industry or sector;
 - 2.i.2. the lack of effective bargaining.
 - ii. The failure by the parties to properly assess or consider the remuneration that should be paid to properly account for the nature of the work, the levels or responsibility associated with the work, the conditions under which the work is performed, and the degree of effort required to perform the work.
 - iii. Areas where remuneration for this work may have been affected by any occupational segregation and/or any occupational segmentation.
 - iv. Any other relevant features.
- D. Agreeing to proceed with a pay equity claim does not in and of itself predetermine a pay equity outcome.

Summary key elements of reconfirmed Principles

For the sake of a complete record, a summary of the key elements of the reconfirmed JWG principles is provided below:

Pay equity claims may be made by any employee(s) to their employer at any time. To determine whether to proceed with a pay equity claim the work must be predominantly performed by women, and it is arguable that the work is currently or has been historically undervalued. Consideration may also be given to whether gender-based systemic undervaluation has affected the remuneration for the work.

Employers receiving pay equity claims will be required to immediately notify those of their employees that might also be affected by (or benefit from) the claim.

Once accepted as a pay equity claim the parties will bargain to resolve the claim, with guidance from the pay equity Principles, including:

- A thorough assessment of the skills, responsibilities, conditions and degrees of effort must be undertaken.
- The assessment must be objective, free of assumptions based on gender and fully recognise the importance of skills, responsibilities, effort and conditions that are commonly overlooked or undervalued in female dominated work.
- Comparators may be used so long as the comparator is not distorted by also being undervalued due to systemic undervaluation due to being “women’s work”.

If the employer does not accept it is a pay equity claim within an established timeframe of receiving the claim, the employee(s) raising the claim may contest the decision to not accept the claim with the Employment Relations Authority, or revise their claim.

Settlement of a collective agreement does not settle or extinguish an unresolved pay equity claim and failure to settle a pay equity claim is not a justification for not concluding collective bargaining.

If parties reach an impasse on an aspect of bargaining over pay equity (or a dispute over whether a claim should proceed as a pay equity claim, recourse is available through existing dispute processes, including mediation, facilitation and determinations from the Employment Relations Authority.

Our recommended process includes enhancements to these mechanisms to ensure they are appropriate to address important and complex pay equity issues. This includes:

- Providing improved access to facilitation for employees with pay equity claims.
- Improving access to facilitation for bargaining over collective and individual employment agreements on pay equity by applying less restrictive grounds for applications for facilitation.
- Providing the Authority with clear jurisdiction to make determinations on pay equity points of dispute.

The Authority will be able to make determinations to fix provisions in employment agreements, including pay, when all other reasonable alternatives for reaching agreement on pay equity claims have been exhausted within a reasonable period.