

Hon Chris Hipkins
Minister of State Services

Framework for the Governance and Oversight of State Sector Pay Equity
Claims

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Equity Claims

CAB-19-MIN-0678 Report of the Cabinet Government Administration
and Expenditure Review Committee Minute

GOV-19-MIN-0050 Minute

GOV-19-SUB-0050 Summary

Author: State Services Commission

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In Confidence

Office of the Minister of Finance

Office of the Minister of State Services

Chair, Cabinet Government Administration and Expenditure Review Committee

FRAMEWORK FOR THE GOVERNANCE AND OVERSIGHT OF STATE SECTOR PAY EQUITY CLAIMS

Proposal

1. This paper seeks agreement to a new framework for the governance and oversight of State sector pay equity claims.

Background

Government is committed to pay equity and the number of claims is increasing

2. The Court of Appeal ruled in October 2014 that the Equal Pay Act 1972 provides for pay equity in female-dominated industries subject to historical sex-based undervaluation. Since this landmark decision, the Government has committed to the Reconvened Joint Working Group Pay Equity Principles (the Principles) which will be given legislative effect through the Equal Pay Amendment Bill 2018 (the Bill) [CAB Min 18/0453 refers].
3. Achieving pay equity will allow women to better support themselves and their whānau and save for their retirements. It will give families more choices around participating in paid work and balancing family roles. Paying employees what they are worth and fully utilising their skills also increases staff engagement and productivity.
4. Since the development of the Principles, the number and complexity of pay equity claims in the State sector has been increasing. 9(2)(j) Prejudice to negotiations

Because pay equity claims are bargained between parties Ministers have no direct visibility over how a pay equity settlement is reached

5. The pay equity claims process set out in the Principles draws on the existing employment bargaining framework where a settlement is bargained between the employer and the employee or their representative. This allows a more collaborative approach rather than relying solely on the courts to make pay equity decisions.
6. Given the bargained nature of pay equity claims, Ministers do not have direct visibility over the process that is followed to arrive at a settlement. It is important that Ministers have assurance that a quality process has been followed to arrive at an outcome that delivers on pay equity outcomes.

7. To date the State Services Commission (SSC) has been providing visibility to Ministers by working alongside employers/agencies with pay equity claims in the same way that it does for collective bargaining¹. However, with the increasing pace and scale of pay equity claims, there is a need for a more structured, formal approach to increase the governance and oversight of the claims process.

The Framework

8. Without a framework outlining the role Ministers and Central Agencies play as pay equity claims progress through the Principles process, there is uncertainty for employers/agencies who are managing claims. Additionally, it is important that there is adequate visibility of the process so that Ministers can have assurance that a bargaining and settlement process has adequately followed the Principles.

A new framework has been developed for the governance and oversight of State sector pay equity claims

9. On 29 August 2019, the Ministerial Oversight Group for State Sector Employment Relations (MOGSSER) endorsed a new framework for the governance and oversight of State sector pay equity claims (the Framework). The Framework (as outlined in this paper and illustrated at Appendix A) seeks to clarify the role of Ministers and Central Agencies throughout the claim process, to help provide employers/agencies with greater certainty as they engage in that process, and provide Ministers with visibility and assurance regarding the quality of that process.
10. The Framework has been developed to support pay equity claims made by employees in the State sector, including those employed by District Health Boards and in the Education Service. 9(2)(f)(iv) Confidentiality of advice

A Governance Group has been established to provide advice and assurance in relation to pay equity claims

11. A Governance Group including core representatives from the SSC, Department of Prime Minister and Cabinet (DPMC), and the Treasury has been established to provide advice to employers at significant 'milestones' in each pay equity claim. The Governance Group will test with the employer whether the process followed is in line with the Principles, and is supported by sound evidence and analysis.
12. Where discussions are relevant to claims in their sector, the Group will also include representatives from the Ministry of Health (MoH), Ministry of Education (MoE) and Public Service agencies.
13. The Governance Group will not assume the role of the employer in pay equity bargaining. The Governance Group's role is to provide advice and test with employers whether the pay equity process is being conducted in line with the Principles, and any

¹ In early 2017, the SSC and New Zealand Council of Trade Unions (NZCTU) agreed Terms of Reference to guide employers and unions to progress pay equity claims in the State sector in advance of legislation.

outcomes are based on sound evidence and analysis. It will not approve any correction to remuneration or employment terms and conditions.

14. The Governance Group will report to MOGSSER as a claim progresses past each milestone. This will ensure relevant Ministers have assurance of the quality of the process being followed by pay equity claims as employers move through key decision points. 9(2)(f)(iv) Confidentiality of advice

15. 9(2)(j) Prejudice to negotiations

There are six milestones at which the Governance Group would be involved

16. The Governance Group will provide advice to employers and test with them the process followed at six milestones in a pay equity claim process (as highlighted in the attached Framework A3). MOGSSER Ministers will be advised on the progress of claims at each milestone. 9(2)(f)(iv) Confidentiality of advice

The testing the Governance Group will undertake with the agency at each of the six milestones, will be around the following elements of the process:

- 16.1. Milestone 1: Whether there has been appropriate application of the 'light touch' arguable assessment.
- 16.2. Milestone 2: Whether the employer's bargaining strategy is supported by the available evidence and the Terms of Reference (ToR) agreed between parties. The bargaining strategy is the document that sets out how an employer intends to proceed with the claim, the timelines, the chosen gender-neutral work assessment method, how affected employees will be notified and any consolidation/potential consolidation of claims.
- 16.3. Milestone 3: Whether the claimant work assessment is representative and gender-neutral. The employer's rationale for the potential comparator(s) is supported by sound evidence and analysis.
- 16.4. Milestone 4: Whether the conclusions drawn on the existence and extent of sex-based undervaluation are supported by thorough comparison of remuneration information and work assessments of the claimant and comparator(s).
- 16.5. Milestone 5: Whether the employer's revised bargaining strategy will focus on how the employer intends to negotiate for the pay equity settlement, including the bargaining parameters. The revised bargaining strategy is supported by sound evidence and analysis and includes consideration of the extent to which the increased costs associated with implementing the settlement can be met through existing baseline funding.

9(2)(f)(iv) Confidentiality of advice 9(2)(j)

9(2)(f)(iv) Confidentiality of advice

16.6. Milestone 6: Whether the proposed settlement agreement is supported by sound evidence and analysis and reflects agreement between the parties.

17. 9(2)(f)(iv) Confidentiality of advice

9(2)(f)(iv) Confidentiality of advice

18. The SSC will prepare templates and guidance for the Governance Group and agencies who will be required to provide information to the Group at each milestone.

The relationship between the Governance Group and the Ministry for Women (MfW)

19. The MfW will provide advice to the Governance Group, where required, on gender issues. This will allow the Minister for Women to be kept appropriately informed as a leader of pay equity and as a member of MOGSSER. The Governance Group will consult with the MfW before providing advice to employers at each milestone.

The Treasury's role as distinct from its role in the Governance Group

20. Separate to its role on the Governance Group as an adviser, the Treasury will continue to provide fiscal management advice to agencies and Ministers. This will happen at four distinct points:

20.1. once the comparator workforce evaluation is significantly advanced, the Treasury will work with the agency to develop estimates of the financial impact of the settlement on the agency.

20.2. 9(2)(f)(iv) Confidentiality of advice

21. This fiscal management role will be kept entirely separate from the Treasury's role on the Governance Group, as the Governance Group will not be considering fiscal outcomes when providing process advice.
22. The Treasury will prepare guidance outlining the four points at which agencies should seek fiscal management advice and what information will be required at each point.

Enactment of the Bill and the proposed Public Service Legislation may have implications for the Framework

23. The Framework will be revisited once the Bill is enacted to ensure it remains consistent.

24. 9(2)(f)(iv) Confidentiality of advice

The Governance Group's advice and assurance function will relate only to the process that is followed and whether it is in line with the Principles and any outcomes are based on sound evidence and analysis.

25. Cabinet has noted that it is desirable for the Commissioner to have the ability to monitor and coordinate pay equity negotiations in a similar way to collective bargaining [CAB-19-MIN-0251 refers]. It is also proposed that the Commissioner will have the same powers of delegation for pay equity bargaining as for collective bargaining. The proposed new Public Service Legislation will provide a statutory mandate in future for the role of the State Services Commissioner (the Commissioner) regarding pay equity claims in the Public Service. The Bill will provide a similar mandate for the Commissioner in respect of the Education Service. When this occurs, the SSC will have a specific role in Education and the Public Service for engaging on the employer's bargaining strategy (Milestone 2), revised bargaining strategy (Milestone 5), and the proposed settlement agreement (Milestone 6). The SSC will exercise this function through the Governance Group, allowing one clear point of contact for employers with pay equity claims.

A Crown negotiator will provide additional support to the District Health Board (DHB) pay equity claims

26. 9(2)(j) Prejudice to negotiations

27. Because of the potential significance and complexity of these claims a Crown Negotiator has been appointed to assist the DHBs to meet the statutory requirement to consult with the Director-General of Health before entering into any agreement on the proposed collective terms and conditions of employment of any or all employees of the DHB subject to current claims.

28. The Crown Negotiator has been appointed to bargain in line with the pay equity Principles as reflected in the Bill 9(2)(j) Prejudice to negotiations

[REDACTED]

[REDACTED]

Risks

30. 9(2)(f)(iv) Confidentiality of advice

[REDACTED]

Consultation

31. The DPMC, MfW and Ministry of Business, Innovation and Employment (MBIE, and Crown Law Office have been consulted on the development of this paper and it has been circulated for comment to the Ministries of Health and Education.

Financial Implications

32. 9(2)(f)(iv) Confidentiality of advice

[REDACTED]

33. There are no financial implications as a direct result of this paper. However, the Framework will increase the Ministerial awareness of the fiscal implications associated with pay equity in the State sector, particularly through the increased oversight on the quality of decisions made through the process 9(2)(f)(iv) Confidentiality of advice

[REDACTED]

34. 9(2)(f)(iv) Confidentiality of advice

[REDACTED]

Legislative Implications

35. No legislative implications have been identified in this paper.

Impact Analysis

36. An impact analysis is not required.

Human Rights

37. The Framework outlined in this paper is consistent with Article 7 of the International Covenant on Economic Social and Cultural Rights that recognises the right of everyone to the enjoyment of “just and favourable conditions of work”, including specific reference to a “decent living for themselves and their families”.
38. The pay equity work programme is also consistent with:
 - 38.1. the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) including article 11(1)(d) which covers “...The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work...”; and
 - 38.2. the International Labour Organization Convention 100, Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, as well as other relevant international labour instruments including Conventions and Recommendations.

Gender Implications

39. Achieving pay equity requires not only the substantive efforts of employees and employers to address and settle pay equity claims, but also effective gender-responsive governance. Increased governance and oversight of pay equity claims will facilitate robust claims processes as well as timely, orderly and efficient settlement of claims. The settlement of these claims will contribute to addressing gender-based undervaluation in the remuneration of all women directly employed by central government departments or associated agencies and for those women performing work funded by the Government.
40. As many women-dominated workforces are State employed sector, this Framework has the potential to affect a large number of employees, the majority of whom will be women, including women in low-paid work where Māori and Pacific women, and other women facing intersecting barriers to achieving pay equity.

Disability Perspective

41. Traditionally, it has not been possible to look at the links between disability and gender-based undervaluation in the remuneration of women in the State sector due to a lack of data. This lack of data is improving with the introduction of the internationally recognised Washington Group Short Set questions into Stats NZ’s Household Labour Force Survey (HLFS) Income survey and the 2018 Census. Unfortunately, statistics from the 2018 Census have been delayed and published disability statistics from the HLFS Income survey do not have a strong gender analysis. What has been published from the HLFS Income Survey shows that there is an opportunity to ‘dig deeper’ into the gender and disability intersectionality for the State Service using the HLFS Income or 2018 Census in the future.

Publicity

42. Once Cabinet has made decisions, the Framework and associated guidance will be communicated to all chief executives. The NZCTU will be informed of the Framework.

Proactive Release

43. We intend to proactively release this paper once it has been considered by Cabinet, subject to the redaction of bargaining sensitive material.

Recommendations

44. The Minister of Finance and Minister of State Services recommend that the Committee:

- 44.1. **agree** that a framework for the governance and oversight of pay equity claims in the State sector will include establishment of a Governance Group which will:

44.1.1 consist of representatives from the State Services Commission, Treasury and Department of Prime Minister and Cabinet and relevant agencies;

44.1.2 provide advice to employers at six significant 'milestones' in each pay equity claim testing the process that the employer has followed and whether the process is in line with the pay equity Principles and any outcomes are based on sound evidence and analysis;

44.1.3 provide Ministers (and Cabinet, if additional funding is sought) with assurance as to the process that the employer has followed;

- 44.2. **note** that a Crown Negotiator has been appointed to assist District Health Boards meet the statutory requirement to consult with the Director-General of Health before entering into a settlement agreement;

- 44.3. 9(2)(f)(iv) Confidentiality of advice

- 44.4. **note** that the Minister of State Services and the Minister of Finance intend to proactively release, subject to the redaction of bargaining sensitive material, this paper once it has been considered by Cabinet.

Authorised for lodgement

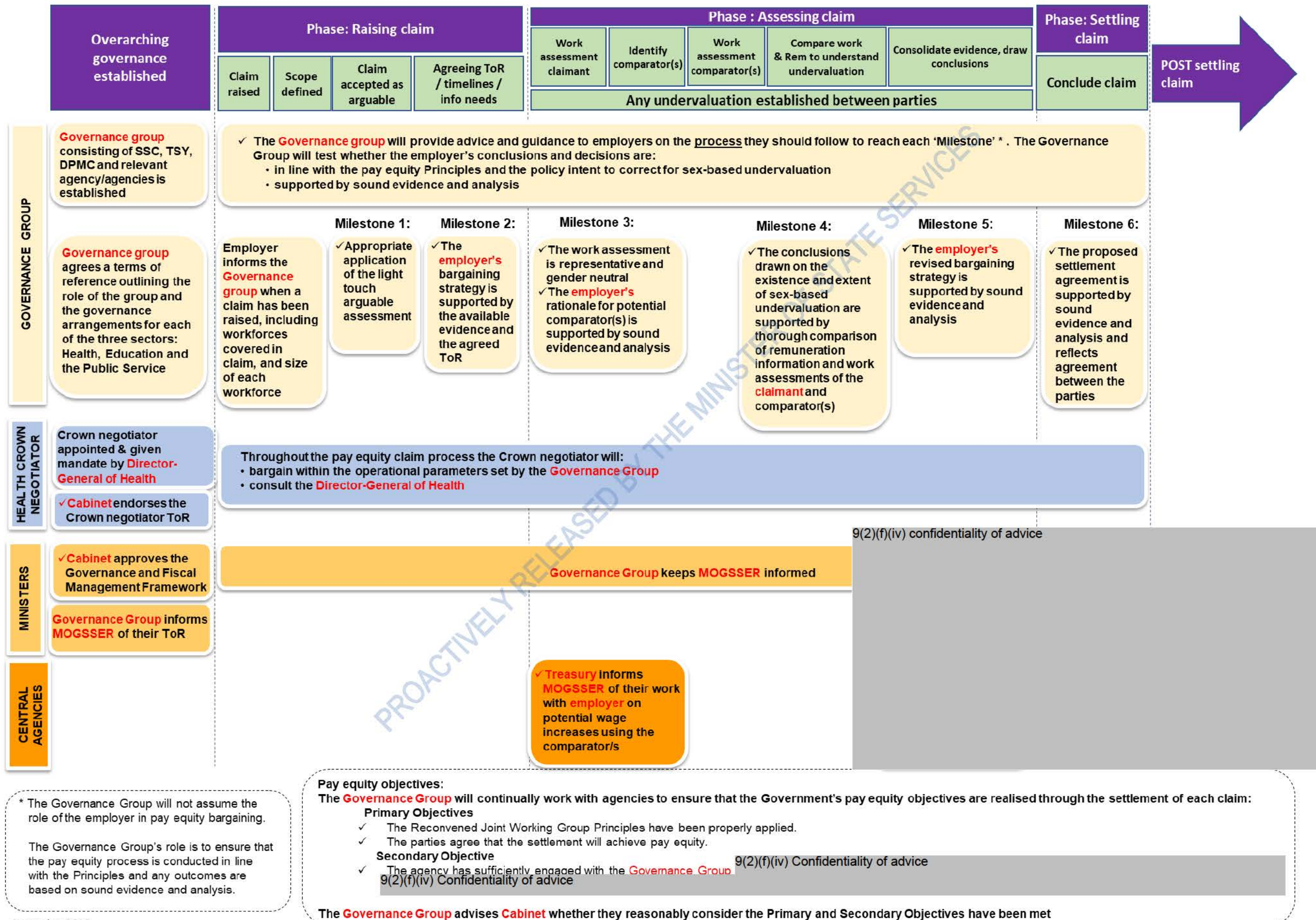
Hon Grant Robertson

Minister of Finance

Hon Chris Hipkins

Minister of State Services

Appendix A: Draft Framework for the Governance and Oversight of Pay Equity Claims in the State Sector





Cabinet Government Administration and Expenditure Review 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.


Framework for the Governance and Oversight of State Sector Pay Equity Claims

Portfolios **Finance / State Services**

On 12 December 2019, the Cabinet Government Administration and Expenditure Review Committee:

- 1 **noted** that in June 2019, Cabinet agreed that the Public Service Commissioner have the same powers of delegation for pay equity negotiations as for collective employment agreements in the new Public Service Act [CAB-19-MIN-0251];
- 2 **noted** that:
 - 2.1 the number and complexity of pay equity claims in the State sector has been increasing;
 - 2.2 Ministers do not currently have direct visibility over the pay equity bargaining process;
- 3 **approved** the draft framework for the governance and oversight of pay equity claims in the State sector (the Framework), attached to the paper under GOV-19-SUB-0050;
- 4 **noted** that the Framework includes establishment of a Governance Group which will:
 - 4.1 consist of representatives from the State Services Commission, Treasury and Department of Prime Minister and Cabinet, and other relevant agencies;
 - 4.2 provide advice to employers at six significant 'milestones' in each pay equity claim testing the process that the employer has followed, and whether it is in line with the pay equity Principles and any outcomes are based on sound evidence and analysis;
 - 4.3 provide Ministers with assurance as to the process that the employer has followed;
- 5 **authorised** the Minister of Finance and Minister of State Services to make any minor amendments in order to finalise the Framework;
- 6 **noted** that a Crown Negotiator has been appointed to assist District Health Boards meet the statutory requirement to consult with the Director-General of Health before entering into a settlement agreement;

7

9(2)(f)(iv) Confidentiality of advice


Jenny Vickers
Committee Secretary

Present:

Hon Kelvin Davis
Hon Grant Robertson (Chair)
Hon Phil Twyford
Hon Chris Hipkins
Hon Carmel Sepuloni
Hon David Parker
Hon Iain Lees-Galloway
Hon Ron Mark
Hon Peeni Henare
Hon Eugenie Sage

Officials present from:

Officials Committee for GOV
Office of the Chair

Hard-copy distribution:

Minister of Finance
Minister of State Services

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Cabinet Government Administration and Expenditure Review Committee

Summary

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Framework for the Governance and Oversight of State Sector Pay Equity Claims

Portfolio	Finance / State Services
Purpose	This paper seeks agreement to a new framework for the governance and oversight of State sector pay equity claims.
Previous Consideration	In June 2019, Cabinet agreed that the Public Service Commissioner have the same powers of delegation for pay equity negotiations as for collective employment agreements in the new Public Service Act [CAB-19-MIN-0251].
Summary	<p>With the increasing pace and scale of pay equity claims, a more structured, formal approach to increase governance and oversight of the negotiation process is required to ensure Ministers have assurance that quality process is followed.</p> <p>On 29 August 2019, the Ministerial Oversight Group for State Sector Employment Relations (MOGSSER) endorsed a draft framework, attached as Appendix A. The Framework aims to clarify the role of Ministers and Central Agencies throughout the pay equity claim process, help provide employers/agencies with greater certainty on the process, and provide Ministers with visibility and assurance over the quality of the process.</p> <p>A Central Agency Governance Group (the Group) has been established to provide advice to employers at significant milestones in each pay equity claim (listed in paragraph 16), and provide oversight that the process followed is in line with agreed principles. The Ministry for Women will provide advice to the Group as required on gender issues. The Group will report to MOGSSER as claims progress past each milestone.</p> <p>9(2)(j) Prejudice to negotiations</p>
Regulatory Impact Analysis	Not required.

Baseline Implications	<p>9(2)(f)(iv) Confidentiality of advice [REDACTED] The Framework will increase Ministerial awareness of fiscal implications as they arise.</p> <p>9(2)(f)(iv) Confidentiality of advice [REDACTED]</p>
Legislative Implications	None from this paper.
Timing Issues	9(2)(f)(iv) Confidentiality of advice [REDACTED]
Announcement	The Framework and associated guidance will be issued to all Chief Executives.
Proactive Release	The Minister of Finance and Minister of State Services intend to proactively release the paper under GOV-19-SUB-0050, subject to redaction of bargaining sensitive material.
Consultation	<p>Paper prepared by SSC and the Treasury, DPMC (Prime Minister), Crown Law, MBIE (Economic Development), MoE, MoH, and MfW were consulted.</p> <p>The Ministers indicates that the Minister for Workplace Relations and Safety, Minister of Health and Minister for Women, New Zealand First and the Green Party were consulted.</p>

The Minister of Finance and Minister of State Services recommends that the Committee:

- 1 note that in June 2019, Cabinet agreed that the Public Service Commissioner have the same powers of delegation for pay equity negotiations as for collective employment agreements in the new Public Service Act [CAB-19-MIN-0251];
- 2 note that:
 - 2.1 the number and complexity of pay equity claims in the State sector has been increasing;
 - 2.2 Ministers do not currently have direct visibility over the pay equity bargaining process;
- 3 approve the draft framework for the governance and oversight of pay equity claims in the State sector (the Framework), attached to the paper under GOV-19-SUB-0050;
- 4 note that the Framework includes establishment of a Governance Group which will:
 - 4.1 consist of representatives from the State Services Commission, Treasury and Department of Prime Minister and Cabinet, and relevant agencies;

- 4.2 provide advice to employers at six significant 'milestones' in each pay equity claim testing the process that the employer has followed and whether the process is in line with the pay equity Principles and any outcomes are based on sound evidence and analysis;
- 4.3 provide Ministers with assurance as to the process that the employer has followed;
- 5 authorise the Minister of Finance and Minister of State Services to make any minor amendments in order to finalise the Framework;
- 6 note that a Crown Negotiator has been appointed to assist District Health Boards meet the statutory requirement to consult with the Director-General of Health before entering into a settlement agreement;
- 7 9(2)(f)(iv) Confidentiality of advice
- 

Rachel Clarke
Committee Secretary

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Cabinet Government Administration and Expenditure Review Committee
Minister for Workplace Relations and Safety



Cabinet

Minute of Decision

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Report of the Cabinet Government Administration and Expenditure Review Committee: Period Ended 13 December 2019


On 16 December 2019, Cabinet made the following decisions on the work of the Cabinet Government Administration and Expenditure Review Committee for the period ended 13 December 2019:

Out of Scope

GOV-19-MIN-0050 **Framework for the Governance and Oversight of State Sector Pay Equity Claims** CONFIRMED
Portfolios: Finance / State Services

Out of Scope

Out of Scope



Michael Webster
Secretary of the Cabinet

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Minister for Social Development
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