

Hon Nicola Willis

Minister for the Public Service

Pay Equity Reset

Date of issue: 25 June 2024

Date: 25 June 2024

Title: Pay Equity Reset

Author: Te Kawa Mataaho Public Service Commission

The Hon Nicola Willis, Minister for the Public Service is releasing the Cabinet paper and Cabinet Minutes.

Included in this release are the following documents:

- Cabinet Paper – Pay Equity Reset
- Cabinet Minute – CBC-24-MIN-0026
- Cabinet Minute – CAB-24-MIN-0136

BUDGET SENSITIVE AND STAFF SENSITIVE

Office of the Minister of Finance and Minister for the Public Service
Cabinet Business Committee

Pay Equity Reset

Proposal

- 1 This paper proposes to reset the oversight arrangements and fiscal management approach for pay equity settlements in the public and funded sectors. I propose a new approach which reinforces employer and employee responsibility for reaching settlements, while maintaining the Crown's commitment to meet its obligations under the Equal Pay Act, and places a greater emphasis on ensuring that costs are appropriately managed. I also propose changes to centralised oversight arrangements.
- 2 The paper also proposes that Treasury and the Public Service Commission 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.

Relation to government priorities

- 3 In 2015 the then National government began work towards a statutory regime for the negotiation and settlement of pay equity claims raised by employees. In 2017 a Bill was introduced into Parliament creating statutory obligations for the Crown, as an employer, to ensure equal pay between men and women. We are continuing that commitment to addressing pay equity issues through negotiated settlements. The Government is committed to upholding legal obligations while also ensuring fiscal discipline and value for money for all government spending decisions.

Executive Summary

- 4 The government is committed to the settlement of pay equity claims through employer/employee negotiation as set out in the Equal Pay Act 1972. However, the current approach that has been taken by the Government as employer and funder is no longer fit for purpose and pay equity costs to the Crown have become significant ^{9(2)(j)} prejudice to negotiations. It is therefore important to have a consistent and managed approach.
- 5 The reset proposed by this 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 that will ensure costs are appropriately managed. The reset reflects that the most important and enduring relationship is between the employer and employee and they are best placed to negotiate settlements

BUDGET SENSITIVE AND STAFF SENSITIVE

consistent with their legal rights and obligations. The current governance settings are no longer fit for purpose. The previous Government's decisions and policies generated liabilities that went beyond the legal obligations of the Crown (e.g. funding back-pay and making interim payments).

- 6 To date, within the public sector, there has been substantial central assistance and facilitation provided to the parties to pay equity bargaining. Central assistance has included the work of the Pay Equity Taskforce located within the Public Service Commission and two governance frameworks designed to ensure compliance with the statutory provisions in the public sector and funded sector. I consider that this period of intensive support for the parties in bargaining can now be brought to an end given the length of time the new legislation has been in effect. Consequently, this paper proposes that the Pay Equity Taskforce cease its work on 30 June when its time-limited funding comes to an end. I also propose that the two governance frameworks for pay equity covering the public sector and funded sector be disestablished immediately, and that we are clear that our Government's policy is to support settlements that meet but do not exceed statutory obligations.
- 7 Changes are required to ensure that there is a greater focus on transparency of costs and better management of claim costs. I propose a new fiscal management approach, which brings the fiscal treatment of current and expected claim costs into two central contingencies, with costs in excess of the contingencies to be met from allowances. This approach will provide greater visibility of the fiscal impacts of pay equity and support Ministerial oversight at key points in the process. ^{9(2)(j) prejudice to negotiations}
- 8 There are risks in this approach if employers do not understand and properly comply with their statutory obligations and if sufficient information is not available for forecasting of financial implications for the Crown. However, these risks can be mitigated through ensuring that the guidance and advice to agencies is fit for purpose, and by ensuring information flows to central agencies and Ministers.
- 9 To give effect to these changes, I propose that the Treasury, MBIE, and the Public Service Commission take responsibility for ensuring guidance on pay equity bargaining and settlements is appropriate and fit-for-purpose to give effect to the pay equity reset, including through the following:
 - 9.1 MBIE will continue to be responsible for providing high level guidance and information on the operation of the pay equity provisions of the Equal Pay Act 1972 to all employers in the economy;
 - 9.2 the Public Service Commissioner will continue to provide high level advice and oversight of risks around pay equity bargaining or settlements in government departments and the education service; and
 - 9.3 Treasury will implement guidance on a new approach to fiscal management of pay equity settlements (discussed further below).

BUDGET SENSITIVE AND STAFF SENSITIVE

- 10 The paper also proposes that sector lead agencies, such as Ministry of Education and Health NZ, and funding agencies like the Ministry of Social Development, be responsible for making available information on relevant pay equity bargaining to central agencies. This is needed by central agencies and Ministers for forecasting, analysis and oversight purposes.

Background

- 11 Pay equity refers to equality of remuneration between female and male employees who do work that is different but of equal value, that is, requiring similar degrees of skill, experience, effort, and responsibility. Pay equity bargaining refers to negotiations between employers and employees (or unions) that lead to pay equity settlements that correct for the degree of undervaluation in the work of female dominated workforces.
- 12 In 2015 the Court of Appeal held that the Equal Pay Act 1972 required equal pay for work of equal value (pay equity) not simply that same pay for the same work. Prior to this the ambit of the Equal Pay Act had been, in practice, limited to ensuring equal pay for female and male employees who were performing the same work.
- 13 To minimise litigation over pay equity the government, in 2015, began work on a more orderly way of facilitating pay equity negotiations between employers and employees. This ultimately involved design of a legislative solution by way of amendments to the Equal Pay Act 1972 to provide a framework and process for pay equity bargaining. A Bill providing a framework for pay equity bargaining was initially introduced into Parliament in 2017. A substantially reworked Bill was introduced into Parliament in 2018 and passed into law as the Equal Pay Amendment Act 2020.
- 14 Special provisions for pay equity in the Public Service have been included in both the Equal Pay Act 1972 and the Public Service Act 2020. These provide that the Public Service Commissioner is responsible for all pay equity bargaining in government departments and the education service, as if they were the employer. In all other situations, in either public or private sectors, pay equity bargaining is a matter strictly between the parties to the employment relationship.
- 15 Given the likelihood of major pay equity negotiations in the public sector, and following the passing of the legislation in 2020, government moved to put in place arrangements for the governance and funding of the pay equity bargaining process and the resulting settlements [GOV-19-MIN-0050, GOV-20-MIN-0033, GOV-21-MIN-0032]. The full text of these decisions is included below at **Appendix 1**.
- 16 At a high level these arrangements aimed to ensure that:
- 16.1 Pay equity bargaining would be successful and settlements robust. For the public and funded sectors a key part of this was giving the parties confidence that settlements would be able to be funded. The legal risk to the Crown, that would arise if public employers did not

BUDGET SENSITIVE AND STAFF SENSITIVE

understand or carry out their obligations under the statute, would be mitigated; and

- 16.2 The expected impact of pay equity settlements were appropriately included in fiscal forecasts and targets by maintaining a pay equity forecast drawing from agency report information on known and anticipated claims.
- 17 To support this, three major mechanisms were put in place:
 - 17.1 A Pay Equity Taskforce located within the Public Service Commission, to provide advice and support to public and funded sector employers in bargaining and advice to government on claims; and
 - 17.2 Two governance frameworks: one covering the public sector, and one covering the funded sector which consists of private and community sector employers that operate with government funding (in whole or part). These provided assurance that the requirements of the Act were being met in bargaining and settlements, and information on the state of bargaining and forecast costs of settlement. Funding arrangements for the funded sector also included an opportunity for Ministers to seek an early stage in-principle agreement to fund the outcome of a claim, subject to conditions. In the public sector there was a *de facto* presumption of outside-of-allowances funding.
- 18 The funded sector framework has operated to facilitate the pay equity process in the funded sector. Employers were initially reluctant to engage in the pay equity process due to their anxiety that, if funding was not available to meet the costs of settlement, the ongoing viability of providers could come into question. In-principle agreement to fund was introduced for this reason. Another feature of the Framework has been the ability to 'extend' settlements to employees of providers that are not covered by the original claim. This helps avoid the labour market distortions that would occur if only some parts of an industry are increasing wage rates to address sex-based inequality in remuneration.
- 19 Pay equity claims since the passing of the amendment to the Equal Pay Act have been concentrated in the public sector. More recently there has been an increase in the number of claims in the funded sector.
- 20 Costs to the Crown have become significant. Costs of all settlements to date are \$1.55 billion per year. ^{9(2)(j) prejudice to negotiations}
I consider that going forwards, there is opportunity to improve management of costs while still meeting the Crown's obligations under the Act. A summary of settlement costs to date is provided at **Appendix 2**.
- 21 The proposals for a reset, contained in this paper, involve changes for all of these elements of the current financial, oversight, and governance settings for pay equity. I propose that throughout the claim process, there is a greater emphasis on transparency of costs and fiscal management, underpinned by a

BUDGET SENSITIVE AND STAFF SENSITIVE

new fiscal management approach for pay equity. The proposals also reinforce the legislative intent of employer and employee/union responsibility for conducting bargaining and reaching outcomes.

Analysis

Governance and Oversight of pay equity bargaining

- 22 I consider our ongoing commitment to pay equity will be better supported with a reset of the arrangements that we currently have for governance and oversight of pay equity. This streamlined approach will reinforce the responsibilities of the parties to know and follow the Act's requirements.
- 23 The Act is clear that pay equity bargaining is the responsibility of the parties to the employment relationship: employers and employees. However, it has been important, during the introduction of a new and somewhat complex legal framework, to provide support to employers to ensure the process works in practice, and to mitigate risks to the Crown.
- 24 This has involved a high level of central involvement in pay equity bargaining to ensure that the requirements of the Act are met and to facilitate settlements. I consider that the period of intensive central support for pay equity bargaining may now be brought to an end. The public sector has had extensive experience in operating the new statutory provisions, and over half of current claims are now in the funded sector. I consider the priority now should be to reset arrangements so that we emphasise the primary responsibility of employers to meet the requirements of the Act.
- 25 To this end I propose that intensive central involvement in pay equity negotiations cease with the end of the time-limited funding for the Pay Equity Taskforce. I consider that this reduced central involvement will reinforce the primary employer and employee responsibility for bargaining outcomes.
- 26 I also propose that we remove the two governance frameworks which currently operate to check that bargaining processes and proposed settlements are robust and comply with the Act. As noted above this is a responsibility of the parties to bargaining. I am confident that sufficient guidance material can be provided to support the claims process, and the revised fiscal management approach will also mitigate the reduction in direct oversight. Moreover, I do not believe that agreements in principle to fund settlements should feature in future. Funded sector employers may be concerned about the financial impact on them of pay equity settlements but are bound by law to engage in pay equity processes and should not need additional inducement to do so. Other features of the funded sector framework, such as extension to employees not party to the original claim, can still be considered on a case-by-case basis.
- 27 I am moving to ensure that, following the reset, Ministerial oversight continues to be exercised over pay equity bargaining and settlements with implications for either public sector agencies or public funding of service providers. I am seeking to establish a Ministerial oversight group to ensure that appropriate

BUDGET SENSITIVE AND STAFF SENSITIVE

Ministers meet and consider significant issues across the state sector employment relations space, including pay equity issues. The revised fiscal management approach for pay equity claims (discussed further below) also includes mechanisms for Ministerial oversight.

- 28 The Public Service Commissioner has statutory responsibility for pay equity negotiations for the government departments and the education service, and currently manages this by delegating responsibility to departmental chief executives subject to safeguards. To manage risks the Commissioner will ensure that sufficient resources are committed to this role after the end of the Taskforce at 30 June this year. The Commission will continue to scrutinise and approve bargaining strategies and proposed settlements in the Public Service and education service. I expect the Public Service Commissioner to adjust delegations to chief executives to reflect the reset and reflect our policy expectations.
- 29 There will be a continuing need for reporting on wider public sector and funded sector claims to maintain visibility on the likely costs. The Public Service Commission already, in its employment relations role, maintains information on wider public sector remuneration and other employment negotiations. It does this in conjunction with sector lead agencies like the Ministry of Education and Health NZ. Our expectation should be that the Commission maintains information relating to pay equity bargaining in the public sector.
- 30 For the funded sector, Public Service agencies are expected to continue monitoring the process and implications of their service providers engaged in pay equity bargaining. They should ensure that they are able to provide central agencies with the information needed for forecast the costs of bargaining outcomes, and for Ministers to consider issues around funding and consistency of outcomes.

Risks

- 31 There are some risks to reducing central involvement in and oversight of the pay equity claims process. There is direct risk to the Crown if Public Service employers do not understand and comply with their statutory obligations. There are risks to our fiscal forecasting if central agencies and Ministers do not have access to information on bargaining and emerging settlements.

I am confident that these risks are appropriately mitigated by the approach proposed in this paper.

- 32 9(2)(h) legal privilege

33

9(2)(h) legal privilege

34

- 35 In addition to the risks described above there is some risk that employers in the funded sector may once again be reluctant to engage in the pay equity process as decisions on in-principle funding will no longer be made in advance of actual pay equity settlements.

Guidance to agencies and funded sector employees

- 36 This paper proposes that three agencies take responsibility for implementing the change in approach for public and funded sector employers in respect of pay equity bargaining, including ensuring guidance on pay equity bargaining and settlements is appropriate and fit-for-purpose:
- 36.1 Treasury will issue guidance to agencies on the timing and requirements for accessing funding from either contingency, including when agencies may need to reprioritise or seek additional funding through the Budget process to meet their obligations under the Equal Pay Act;
 - 36.2 The Public Service Commission will make whatever adjustments are needed to the Commissioner's delegations to chief executives to reflect the changes in the reset, including our policy position that settlements should meet but not exceed statutory obligations. The Commission will also continue to provide high level advice and oversight of risks around pay equity bargaining or settlements in government departments and the education service; and
 - 36.3 There will be an ongoing need for information for employers on meeting their legal obligations. The Equal Pay Act is administered by MBIE. The usual position is for the administering department to provide general information on the operation of legislation. I propose that MBIE continue its role of providing general economy-wide guidance and information on the Act.
- 37 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

BUDGET SENSITIVE AND STAFF SENSITIVE

Commission. Agencies will work to determine whether this guidance is required going forward, and if so in what form.

Changes to the Fiscal Management Approach for Pay Equity

- 38 Pay Equity claims are a significant fiscal cost to the Crown. 9(2)(j) prejudice to negotiations
[REDACTED]
[REDACTED] Currently, claim costs are managed outside Budget allowances, and are charged directly against the operating balance before gains and losses (OBEGAL).
- 39 I consider the current fiscal management approach has weakened the negotiating incentives on agencies. By managing costs fully outside of allowances, agencies are not required to trade off claim costs against other Government priorities through Budget process, which differs to how the Government manages costs associated with collective agreement negotiations.
- 40 I propose a new fiscal management approach for Pay Equity, which brings the fiscal treatment of current and expected claim costs into two central contingencies. These are:
- 40.1 A Public Sector Pay Equity contingency to manage all claims in the public sector for which the Government has a legal obligation to fund as an employer.
 - 40.2 A Funded Sector Pay Equity contingency to manage the Government's support for claims made in the funded sector.
- 41 This approach will provide greater visibility of the fiscal impacts of Pay Equity, and support Ministerial oversight at key points in the process.
- 41.1 In the public sector, Ministers will be required to seek Cabinet approval to establish a bargaining contingency. The size of these agency-specific contingencies will be informed by an assessment of its obligations including an appropriate Pay Equity comparator assessment. This assessment is for the purpose of determining the bargaining contingency and is not intended to be pre-determinative of the pay equity outcome. Bargaining can then proceed or resume following the establishment of the bargaining contingency. The bargaining contingency will be drawn from the Public Sector Pay Equity contingency.
 - 41.2 In the Funded sector, Ministers may seek to draw down from the Funded Sector Pay Equity Contingency to support funded sector employers to manage the costs of their pay equity obligations. Funding agencies should take appropriate steps to monitor the progress of claims against its service providers and set clear expectations that no funding above the level sufficient to meet the provider's obligations under the Equal Pay Act will be provided.

BUDGET SENSITIVE AND STAFF SENSITIVE

- 42 This approach reinforces the Government's fiscal objectives and will strengthen the incentive on agencies to bargain effectively. I expect that all requests for pay equity funding will be accompanied by robust analysis and, where appropriate, legal advice.
- 43 While the Government can take these steps to impose greater fiscal discipline, it is still subject to the requirements of the Act. Therefore, if settlements are reached at amounts higher than has been provided in the bargaining contingency, additional Crown funding will be required. If it becomes apparent during bargaining that the contingency is not sufficient to meet the Government's obligations, the responsible Minister may seek Cabinet approval to increase the bargaining contingency. I expect that in most instances further funding would be provided through reprioritisation from the agency's baseline or Budget allowances. In limited circumstances, it may be appropriate to provide further funding from the central contingency, so long as it would not unduly undermine the sufficiency of the contingency to meet the Government's remaining pay equity obligation. While the proposed fiscal management approach is likely to ensure that the financial implications are more strongly considered in the pay equity bargaining and settlement process, I recognise that funding needs to be available for the Crown to meet its obligations under the Equal Pay Act.
- 44 In removing the central oversight arrangements and establishing clear expectations with regard to the Government's fiscal objectives, agencies will be more incentivised to manage costs while meeting their obligations under the Act. The new fiscal management approach also provides Ministers with clearer oversight of expenditure in aggregate, as well as line of sight to allocations and costs at agency level. I expect these changes to current pay equity settings will improve pay equity outcomes, including supporting better management of costs. ^{9(2)(j)} prejudice to negotiations


The public and funded sector contingencies

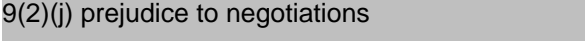
- 45 Should Cabinet agree to the Pay Equity reset, Treasury will develop guidelines and communicate instructions to agencies for establishing a pay equity bargaining contingency or drawing down funding to support the funded sector under the new Fiscal Management Approach. Treasury will have an ongoing role in managing the central contingencies, and as necessary, provide advice to the Minister of Finance, and any future Ministerial groups tasked with overseeing pay equity, on the fiscal implications of claims.
- 46 The proposed size of the contingencies reflects Treasury's best estimates for settling current and anticipated costs to settle the Crown Pay Equity obligations, its support for the funded sector, and excludes current Pay Equity tagged contingencies. Should further unanticipated claims be identified, their treatment under this new Pay Equity Fiscal Management Approach will depend on whether they relate to agency employer obligations or funded sector support; whether they can be reliably measured to include in forecasts;


BUDGET SENSITIVE AND STAFF SENSITIVE

and the size of the estimated fiscal impact. Cabinet will be advised separately on the budgeting treatment of any unanticipated claims if they arise.

- 47 Prior to each Economic and Fiscal Update, Treasury will review the adequacy of each overarching contingency and provide advice on whether it is still sufficient to meet the Government's employer obligations and policies for supporting the Funded Sector. For example, changes in workforce size and pay rates, as well as precedent setting decisions could increase or decrease the expected cost of settling claims for the Public Sector. Similarly, changes in funding policy (whether case-by-case or across the Board) for support of the Funded Sector, as well as workforce data updates and Pay Equity precedents, could affect the size of that contingency. Where there is a material change in forecasts, Treasury will advise on options for funding any cost increases (including from baselines/reprioritisation or allowances) or recognising a savings reduction.

- 48 9(2)(f)(iv) confidentiality of advice
- 

- 9(2)(j) prejudice to negotiations
- 

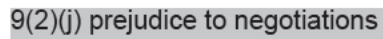
- 49 9(2)(j) prejudice to negotiations
- 

BUDGET SENSITIVE AND STAFF SENSITIVE


9(2)(j) prejudice to negotiations



9(2)(j) prejudice to negotiations



50 9(2)(j) prejudice to negotiations




Cost-of-living Implications

51 This paper has no cost of living implications.

Financial Implications

52 9(2)(j) prejudice to negotiations



53

54 The Equal Pay Act also applies ongoing commitments to remuneration reviews on the parties to a pay equity settlement. I would expect that these

¹ 9(2)(j) prejudice to negotiations



BUDGET SENSITIVE AND STAFF SENSITIVE

ongoing Pay Equity obligations are managed through the usual funding and Budget processes.

Legislative Implications

55 The proposals in this paper have no legislative implications.

Impact Analysis

56 The proposals in this paper do not require a regulatory impact statement or a climate change implications assessment.

Population Implications

57 This paper reflects the government's ongoing commitment to addressing pay equity issues in accordance with the provisions of the Equal Pay Act 1972 and Public Service Act 2020.

Consultation

58 This paper was prepared by the Public Service Commission, with input from the Treasury and MBIE. DPMC has been informed.

Communications

59 The Minister for the Public Service will be responsible for communicating the decisions in relation to the pay equity reset.

Proactive Release

60 There are employment implications involved in some of the proposals in this paper. Therefore release of this paper will follow completion of employer good faith responsibilities under the Employment Relations Act 2000. Sections of the paper will need to be withheld to protect the Crown's bargaining position.

Recommendations

The Minister of Finance and Minister for the Public Service recommends that Cabinet:

- 1 **note** that the government is committed to the settlement of pay equity claims through employer/employee negotiation as set out in the Equal Pay Act 1972
- 2 **note** that existing arrangements for governance, oversight and funding are not fit for purpose now
- 3 **note** the previous government approved frameworks for the governance, oversight and funding of pay equity claims in the state and funded sectors [GOV-19-MIN-0050, GOV-20-MIN-0033, GOV-21-MIN-0032]
- 4 **agree** to rescind the decisions referred to in recommendation 3 above


BUDGET SENSITIVE AND STAFF SENSITIVE

- 5 **note** this paper proposes a new approach which places a greater emphasis on fiscal management, and reinforces employer and employee responsibility for reaching settlements, while maintaining the Crown's commitment to meet its obligations under the Equal Pay Act
- 6 **note** that, for the public sector, there has been to date substantial central assistance and facilitation provided to the parties to pay equity bargaining
- 7 **note** that central assistance has included the work of the Pay Equity Taskforce located within the Public Service Commission and two governance frameworks designed to ensure robust settlements which comply with the statutory provisions in the public sector and funded sector
- 8 **note** that this period of intensive support for the parties in bargaining can now be brought to an end given the length of time the new legislation has been in effect
- 9 **agree** that the Pay Equity Taskforce will cease its work on 30 June when its time-limited funded comes to an end
- 10 **agree** that the two governance frameworks for pay equity covering the public sector and funded sector be disestablished immediately
- 11 **note** that there are risks in this approach if employers do not understand and properly comply with their statutory obligations and if sufficient information is not available for forecasting of financial implications for the Crown.
- 12 **note** that these risks can be mitigated through actions by the Ministry of Business Innovation and Employment (MBIE), the Public Service Commissioner, Treasury and funding agencies.
- 13 **direct** Treasury, MBIE, and the Public Service Commissioner to implement necessary arrangements to give effect to the new approach to pay equity bargaining and the legislative requirements
- 14 **note** that MBIE is responsible for providing guidance and information to all employers on the operation of the provisions of the Equal Pay Act 1972
- 15 **note** that the Public Service Commissioner will continue to provide advice and oversight of risks around pay equity bargaining or settlements in government departments and the education service
- 16 **agree** that sector lead agencies will be responsible to ensure that information on pay equity bargaining in the wider public sector is available for forecasting, analysis and oversight purposes
- 17 **agree** that funding agencies will be responsible to ensure that information on funded sector pay equity bargaining is available for forecasting, analysis and assurance purposes.


BUDGET SENSITIVE AND STAFF SENSITIVE

- 18 **agree** to manage the Government's Pay Equity obligations and support for the funded sector to meet its Pay Equity obligations from two centrally held contingencies:
- 18.1 Public Sector Pay Equity contingency - for claims for which the Government has a legal obligation to fund as an employer
 - 18.2 Funded Sector Pay Equity contingency - to manage the Government's support for Pay Equity claims in the funded sector
- 19 **agree** that as claims progress, two arrangements will be applied at the agency level, funded by transfers from these centrally held contingencies:
- 19.1 Employer bargaining contingency – a Cabinet approved envelope from the Public Sector Pay Equity contingency to enable the agency to engage in settlement negotiations
 - 19.2 Baseline funding – a Cabinet approved increase in baselines from the Funded Sector Pay Equity contingency to support the funded sector Pay Equity cost pressures

20 9(2)(j) prejudice to negotiations

A large rectangular area of the document is redacted with a solid grey fill, obscuring the text for item 20.

21 9(2)(j) prejudice to negotiations

A large rectangular area of the document is redacted with a solid grey fill, obscuring the text for item 21.

BUDGET SENSITIVE AND STAFF SENSITIVE


22 9(2)(j) prejudice to negotiations



23 **agree** that Ministers may seek Cabinet approval to establish bargaining contingencies to support agencies in meeting their Pay Equity obligations as employer, which will be funded by transfers from the Public Sector Pay Equity contingency

24 **agree** that Ministers may seek Cabinet approval to draw down from the Funded Sector Pay Equity contingency to increase baselines in support of pay equity cost pressures on the funded sector

25 9(2)(j) prejudice to negotiations




26

27

28 **agree** that any changes in these contingencies, whether centrally held or agency specific, will be met from agencies' baselines or Budget allowances

29 **note** that once a pay equity settlement is concluded, any subsequent settlements for that sector are expected to be managed by agencies through the usual funding and Budget processes

30 9(2)(f)(iv) confidentiality of advice



Approved for lodgement

Hon Nicola Willis

Minister of Finance and Minister for the Public Service

BUDGET SENSITIVE AND STAFF SENSITIVE

Appendix 1 – Previous Cabinet minutes to be rescinded

On 12 December 2019, the Cabinet Government Administration and Expenditure Review Committee [GOV-19-MIN-0050]:

- 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 **noted** that the Minister of Finance has agreed that where a State sector employer is seeking additional funding to meet the cost pressure of implementing a pay equity settlement, Cabinet approval can be sought outside of the annual Budget process.

On 30 July 2020, the Cabinet Government Administration and Expenditure Review Committee [GOV-20-MIN-0033]:

BUDGET SENSITIVE AND STAFF SENSITIVE

- 1 **noted** that in December 2019, GOV approved a draft framework for the governance and oversight of pay equity claims in the State sector and authorised the Minister of Finance and Minister of State Services to finalise the framework [GOV-19-MIN-0050];
- 2 **agreed** that a framework for the oversight and support of pay equity claims in private sector organisations that receive government funding to deliver public services (the Funded sector) establishes an oversight role for the primary Funding Agency or agencies which will provide:
 - 2.1 advice to employers at six significant 'milestones' in each pay equity claim process, testing the process that the employer has followed and whether it is in line with the Act and that any outcomes are based on sound evidence and analysis;
 - 2.2 Ministers (and Cabinet, if additional funding is sought) with assurance about the process the employer has followed;
 - 2.3 a mandate for the State Services Commission to provide technical advice and subject matter expertise to State sector agencies providing oversight;
 - 2.4 a mandate for Treasury to provide fiscal oversight and advice;
- 3 **agreed** that the State Service Commission provide education to Funding agencies providing oversight and support to a pay equity claim;
- 4 **noted** that there are some issues regarding the management, funding and implementation of pay equity settlements in the Funded sector;
- 5 **agreed** to commission the Social Wellbeing Agency to identify the challenges of current funding models across the Funded sector and identify potential sustainable solutions for funding and implementing potential pay equity settlements in the Funded sector.

On 23 September 2021, the Cabinet Government Administration and Expenditure Review Committee [GOV-21-MIN-0032]:

- 1 **noted** that in July 2020, GOV agreed to the Framework for Oversight and Support of Pay Equity Claims in the Funded Sector (the Funded Framework) [GOV-20-MIN-0033];
- 2 **noted** that:
 - 2.1 there are barriers to the progress of pay equity in the Funded sector;
 - 2.2 the Funded sector contains a high proportion of Māori/Pacific and low paid employees;
- 3 **agreed** to amend the Funded Framework to allow for an in-principle agreement to fund a pay equity settlement at milestone 1, subject to set conditions set out in the paper under GOV-21-SUB-0033;

BUDGET SENSITIVE AND STAFF SENSITIVE

- 4 **agreed** to amend the Funded Framework so that prior to settlement bargaining, a contingency would be sought by the Funding agency at milestone 5;
- 5 **agreed** to amend the Funded Framework to include a new milestone 7 (post-settlement review) to ensure the benefits, impacts, and consequences of a settlement are reviewed and tracked centrally over time;
- 6 **noted** that the consolidation provision of the Equal Pay Act 1972 (the Act) means that consolidation across a Funded sector workforce is unlikely;
- 7 **agreed** that the following four criteria must be met for a pay equity claim to be considered for wider application:
 - 7.1 the work covered by the claim is clearly defined;
 - 7.2 a pay equity claim must cover 10 percent of those undertaking the same or substantially similar work (as defined in the claim) across the Funded sector or 1,000 employees (whichever is lower);
 - 7.3 the work assessment of the claimant group/s must be validated with employees and employers from a minimum of a further 20 percent of the sector who are not covered by the original claim;
 - 7.4 workforce data from the sector is obtained to allow costs to be understood;
- 8 **noted** that the pay equity work assessment process outlined in the Act is integral to establishing an evidence-based pay equity rate;
- 9 **agreed** to amend the Funded Framework to enable the Public Service Commission to undertake the validation process for claims seeking to meet the criteria for wider application at milestone 3;
- 10 **noted** that there are various levers available to extend the benefits of a pay equity settlement which can be considered by Ministers on a case-by case basis;
- 11 **noted** that the amendments to the Funded Framework outlined above would provide more Ministers more visibility of costs and when they might fall;
- 12 **noted** that the Commission has received funding towards the new “centre of excellence” for pay equity which can be drawn on to implement the amendments to the Funded Framework;
- 13 **noted** that the Commission will work with the Ministry of Business, Innovation and Employment to coordinate communications, where necessary, on the criteria for wider application of a pay equity settlement where they overlap with the criteria for fair pay agreements.

BUDGET SENSITIVE AND STAFF SENSITIVE

Appendix 2 – List of settlements to date and costs

The table below summarises total funding provided from centre, excluding small claims with the costs met from agency baselines. Forecast period total includes back pay, one-off payments etc. Out year per annum costs reflect the ongoing cost of the settlement.

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

Settlement (\$m)	Year	Forecast period at draw down cost	Outyears per annum cost
Care and Support workers	2017	2195.423	562.787
Oranga Tamariki Social workers	2018	114.648	27.406
Teacher Aides	2020	355.253	92.061
Health NZ Administration and Clerical workers	2022	515.429	105.619
Administration and Clerical workers in schools and	2022	397.526	88.495
Kaiārahi i te reo	2022	6.972	1.445
Community (NGO) Social Workers (claim)	2022	80.623	18.465
Community (NGO) Social Workers (extension)	2022	459.742	130.541
Science Technicians in schools	2023	16.113	3.811
Librarian/Library Assistants in schools	2023	38.078	8.986
Health NZ Nurses/Health Care Assistants	2023	3,428.020	507.078
Health NZ Midwives (interim payment – 9(2)(f)(iv) confidentiality of	2023	58.790	6.11
Total		7,666.617	1,552.804



Cabinet Business 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 Reset

Portfolios **Finance / Public Service**

On 22 April 2024, the Cabinet Business Committee, having been authorised by Cabinet to have Power to Act [CAB-24-MIN-0134]:

Background

- 1 **noted** that the Government is committed to the settlement of pay equity claims through employer/employee negotiation as set out in the Equal Pay Act 1972;
- 2 **noted** that existing arrangements for governance, oversight, and funding are no longer fit for purpose;
- 3 **noted** that the previous government approved frameworks for the governance, oversight and funding of pay equity claims in the State and funded sectors [GOV-19-MIN-0050, GOV-20-MIN-0033, GOV-21-MIN-0032];
- 4 **agreed** to rescind the decisions referred to in paragraph 3 above;
- 5 **noted** that the paper under CBC-24-SUB-0026 proposes a new approach, which places a greater emphasis on fiscal management, and reinforces employer and employee responsibility for reaching settlements, while maintaining the Crown's commitment to meet its obligations under the Equal Pay Act 1972;

Governance and oversight

- 6 **noted** that, for the public sector, there has been to date substantial central assistance and facilitation provided to the parties to pay equity bargaining;
- 7 **noted** that central assistance has included the work of the Pay Equity Taskforce located within the Public Service Commission and two governance frameworks designed to ensure robust settlements that comply with the statutory provisions in the public sector and funded sector;
- 8 **noted** that this period of intensive support for the parties in bargaining can now be brought to an end, given the length of time the new legislation has been in effect;

- 9 **agreed** that the Pay Equity Taskforce will cease its work on 30 June 2024, when its time-limited funded comes to an end;
- 10 **agreed** that the Minister of Finance and Minister for the Public Service will keep her colleagues informed of the timing of the communication of the decisions under CBC-24-MIN-0026;
- 11 **agreed** that the two governance frameworks for pay equity covering the public sector and funded sector be disestablished immediately;
- 12 **noted** that there are risks in this approach if employers do not understand and properly comply with their statutory obligations and if sufficient information is not available for forecasting of financial implications for the Crown;
- 13 **noted** that these risks can be mitigated through actions by the Ministry of Business Innovation and Employment (MBIE), the Public Service Commissioner, Treasury and funding agencies;
- 14 **directed** Treasury, MBIE, and the Public Service Commissioner to implement any necessary arrangements to give effect to the new approach to pay equity bargaining and the legislative requirements;
- 15 **noted** that MBIE is responsible for providing guidance and information to all employers on the operation of the provisions of the Equal Pay Act 1972;
- 16 **noted** that the Public Service Commissioner will continue to provide advice and oversight of risks around pay equity bargaining or settlements in government departments and the education service;
- 17 **agreed** that sector lead agencies will be responsible to ensure that information on pay equity bargaining in the wider public sector is available for forecasting, analysis and oversight purposes;
- 18 **agreed** that funding agencies will be responsible for ensuring that information on funded sector pay equity bargaining is available for forecasting, analysis and assurance purposes;

Financial implications

- 19 **agreed** to manage the Government's pay equity obligations and support for the funded sector to meet its pay equity obligations from two centrally held contingencies:
- 19.1 Public Sector Pay Equity contingency: for claims for which the Government has a legal obligation to fund as an employer;
- 19.2 Funded Sector Pay Equity contingency: to manage the Government's support for pay equity claims in the funded sector;

20 **agreed** that as claims progress, two arrangements will be applied at the agency level, funded by transfers from the following centrally held contingencies:

20.1 employer bargaining contingency: a Cabinet-approved envelope from the Public Sector Pay Equity contingency to enable the agency to engage in settlement negotiations;

20.2 baseline funding: a Cabinet-approved increase in baselines from the Funded Sector Pay Equity contingency to support the funded sector pay equity cost pressures;


21 9(2)(j) prejudice to negotiations



22 9(2)(j) prejudice to negotiations



23 9(2)(j) prejudice to negotiations



24 **agreed** that Ministers may seek Cabinet approval to establish bargaining contingencies to support agencies in meeting their pay equity obligations as employer, which will be funded by transfers from the Public Sector Pay Equity contingency;

- 25 **agreed** that Ministers may seek Cabinet approval to draw down from the Funded Sector Pay Equity contingency to increase baselines in support of pay equity cost pressures on the funded sector;
- 26 9(2)(j) prejudice to negotiations
- 27 9(2)(j) prejudice to negotiations
- 28 9(2)(j) prejudice to negotiations
- 29 **agreed** that any changes in these contingencies, whether centrally held or agency specific, will be met from agencies' baselines or Budget allowances;
- 30 **noted** that once a pay equity settlement is concluded, any subsequent settlements for that sector are expected to be managed by agencies through the usual funding and Budget processes;
- 31 9(2)(j) prejudice to negotiations

Jenny Vickers
Committee Secretary

Present:

Rt Hon Christopher Luxon (Chair)
Rt Hon Winston Peters
Hon David Seymour
Hon Nicola Willis
Hon Chris Bishop
Hon Brooke van Velden
Hon Dr Shane Reti
Hon Simeon Brown
Hon Paul Goldsmith
Hon Mark Mitchell

Officials present from:

Department of the Prime Minister and Cabinet



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.

Report of the Cabinet Business Committee: Period Ended 26 April 2024

On 29 April 2024, Cabinet made the following decisions on the work of the Cabinet Business Committee for the period ended 26 April 2024:

out of scope

CBC-24-MIN-0026

Pay Equity Reset

Portfolios: Finance / Public Service

CONFIRMED

out of scope

Rachel Hayward
Secretary of the Cabinet