13 July 2023

Public Service Chief Executives

Agency name

Tēnā koe Chief Executive

# Delegation for collective agreements, pay equity and fair pay agreements

Under the Public Service Act 2020 and the Fair Pay Agreements Act 2022, I have responsibilities in relation to collective agreements, pay equity claims, and fair pay agreements in the Public Service. I am writing to you to confer delegated authority in respect of collective agreements, pay equity claims, and fair pay agreements relating to employees of your department (including any employees who perform the functions or duties or exercise the powers of a departmental agency that you host), for your term as Chief Executive, Agency name.

The delegation instrument is attached and is in three parts (Part A, B and C) which come into effect immediately. This instrument replaces any existing delegations.

***Part A Collective Agreements***

Part A delegates the Commissioner’s functions and powers to initiate and carry out good faith bargaining for, and to enter into, collective agreements subject to certain conditions. These conditions emphasise contributing to system wide people goals and the fostering of greater consistency in terms and conditions of employment across the Public Service.

You will negotiate in accordance with Government policy and expectations, and within any guidelines and parameters which the Government may set from time to time. It is important to note that you are required to have approval for any bargaining strategy from the Manager, Workforce and Employment Relations before you commence bargaining. You must consult with the Employment Relations Team, Te Kawa Mataaho, during negotiations and ensure any offer for settlement is approved by the Manager, Workforce and Employment Relations before you sign off on it being presented to the union.

The Employment Relations Team is available to provide advice and assistance at employmentrelations@publicservice.govt.nz

The team will continue to work closely with your team to support you to develop your approach to employment relations to support system and agency goals consistent with the Government Expectations. They will advise you should discussion with MOGSSER be required on any matter. I expect you to make yourself available for any such discussion.

***Part B Pay Equity Claims***

Part B delegates the Commissioner’s functions and powers to deal with pay equity claims subject to certain conditions. You will deal with pay equity claims in accordance with Government policy and expectations, and within any guidelines and parameters which the Government may set from time to time. You will consult with the Equal Pay Taskforce (the Taskforce) during the course of any pay equity claim process.

It is important to note that the conditions of the delegation require you to apply the Framework for the Governance and Oversight of State Sector Pay Equity Claims, confirmed by Cabinet [CAB 19 MIN 0678]. The initial bargaining strategy and settlement bargaining strategy require the approval of the Deputy Commissioner, Workforce Employment and Equity Group (Deputy Commissioner) before you commence bargaining. Any proposed pay equity settlement agreement must also be approved by the Deputy Commissioner before you sign it off for presentation to the claimant(s).

The negotiation of pay equity claims in the Public Service is a powerful tool to give effect to Government policies on achieving pay equity and closing the gender pay gap. Pay equity helps to build a diverse and inclusive Public Service that reflects the communities it serves, which will deliver better outcomes and services for all New Zealanders. The Public Service should be an exemplar employer and model the fairness that we would like to see across New Zealand workplaces.

The Public Service Act 2020 also requires you to notify me in writing of pay equity claims that have been raised as soon as practicable. Please send any information to the Taskforce at pay.equity@publicservice.govt.nz and attach a copy of the claim.

The Taskforce will continue to engage with your team to support you to progress claims consistently with the Equal Pay Act 1972, and to support your engagement with the Central Agency Pay Equity Governance Group on pay equity claims.

The Taskforce is available to provide support, advice and tools and education at pay.equity@publicservice.govt.nz

***Part C Fair Pay Agreements***

Part C delegates the Commissioner’s role of employer bargaining party if at least 1 employee of your department (including any employees who perform the functions or duties or exercise the powers of a departmental agency that you host) is covered by a proposed agreement, a proposed variation, or a fair pay agreement, subject to certain conditions. These conditions emphasise contributing to system wide people goals and the fostering of greater consistency in terms and conditions of employment across the Public Service.

You are expected to act in accordance with the conditions of this delegation to the extent possible, noting that your role in any employer bargaining side may depend on whether the proposed agreement covers employees of public service agencies and the education service only, or extends to employees of other organisations in the wider public sector and/or private sector.

Where your department is responsible for funding any private sector employer which is covered by a proposed fair pay agreement, the employer bargaining side representing that funded employer must use best endeavours to provide regular updates about bargaining to your department (under section 99(f) of the Fair Pay Agreements Act 2022). I expect your funding arrangements to provide for fair pay agreement bargaining as appropriate to ensure your department is kept properly informed. I also expect that you will keep the Employment Relations Team, Te Kawa Mataaho, informed with any such updates.

The Employment Relations Team here at Te Kawa Mataaho is available to provide advice and assistance at employmentrelations@publicservice.govt.nz

**Government Workforce Policy Statement on the Government’s expectations for employment relations and Public Service Pay Guidance**

During your term as Chief Executive you need to be aware of the Government Workforce Policy Statement (Workforce Policy) on the Government’s expectations for employment relations and the Public Service Pay Guidance (Pay Guidance). Copies of these documents are attached.

The fiscal context and the focus on equity in employment relations outcomes continues. Improving the pay of the lowest paid workers in the public sector is a key focus for employment relations.

The following advice sets out how you are expected to apply the Workforce Policy and Pay Guidance in your agency’s context. I would be grateful if you could apply these and the advice in this letter appropriately in the specific context of your own agency and workforces, and lead this personally with your people.

**Equity priority**

The Government intends to accelerate pay equity and pay parity processes to settlement, positively impacting on gender and ethnic pay gaps.

As guidance to you, I emphasise Priority 1 (Equitable Employment) of the Government Workforce Policy Statement and the importance of accelerating reductions in pay gaps faced by Māori, Pacific and Asian employees.

**Addressing pay claims in bargaining**

Unions may raise cost of living claims in collective bargaining. The Pay Guidance supports agencies to engage in good faith on any claims unions bring to the table and to reflect the prevailing Pay Guidance in consideration of those claims.

Pay guidance provides a consistent framework for the Public Service to manage its approach to remuneration and supports the Government's fiscal strategy while supporting the closing of unjustifiable pay gaps and recognising the specific context of agencies.

To advance the goal of making the Public Service an exemplar of modern, progressive employment practice and a great place to work, you are encouraged to explore areas for bargaining that make for a better job, a better place to work, and to support better service delivery. Wellbeing and workload issues should be addressed as a priority.

**Contextual considerations for collective bargaining**

You should be aware that the Government has indicated a preference for collective bargaining and I have agreed to work with you and relevant unions on finding ways to encourage and maximise the number of employees covered by collective agreements.

You are reminded that the law provides that following initiation of bargaining prior to expiry, collective agreements continue in force for a further 12 months after expiry. Should settlement not be reached in that time, consistent with the Government’s preference for collective bargaining, you should agree to treat the collective agreement as though it is in force for a longer agreed duration while you continue bargaining.

The advice in this letter should inform your approach as you enter into bargaining. As is our practice, bargaining will be in good faith without pre-determined outcomes.

Nāku noa na

Gaye Searancke (she/her)

**Te Pou Turuki mō Te Kawa Mataaho**

**Deputy Public Service Commissioner**

Attachments

1. Delegation of Certain Functions and Powers under the Public Service Act 2020 and the Fair Pay Agreements Act 2022
2. Government Workforce Policy Statement [Statement-Government-Workforce-Policy-Statement-on-Employment-Relations.pdf (publicservice.govt.nz)](https://www.publicservice.govt.nz/assets/DirectoryFile/Statement-Government-Workforce-Policy-Statement-on-Employment-Relations.pdf)
3. Public Service Pay Guidance [Public Service Pay Guidance 2023 - Te Kawa Mataaho Public Service Commission](https://www.publicservice.govt.nz/guidance/public-service-pay-guidance-2023/)

# DELEGATION OF CERTAIN FUNCTIONS AND POWERS UNDER THE PUBLIC SERVICE ACT 2020

Public Service Chief Executive,
Agency name

## Part A Collective bargaining

The Public Service Act 2020, section 78, gives the Public Service Commissioner (the Commissioner) the responsibility to negotiate under the Employment Relations Act 2000 all collective agreements that apply to employees of any department or interdepartmental venture of the Public Service.

In accordance with section 80 of the Public Service Act 2020, under clause 6 of schedule 3, the Commissioner’s functions and powers under section 78 of the Public Service Act 2020 to initiate and carry out good faith bargaining for, and to enter into, collective agreements applicable to employees of the Agency name (including any employees who perform the functions or duties or exercise the powers of a departmental agency that Agency name hosts) are hereby delegated to the Chief Executive, Agency name (and persons acting in any such positions from time to time).

## Conditions of this delegation

In accordance with subsection 80(2) this delegation is subject to the following conditions:

1. You will negotiate in accordance with Government policy and expectations, and within any guidelines and parameters which the Government may set from time to time or any guidance I may issue, including in relation to pay.

Much of that policy and guidelines is currently set out in the Government Expectations for Employment Relations in the public sector confirmed by Cabinet [Min18 (0067)].

The Workforce and Employment Relations team may, on my behalf, advise you of additional specific and relevant policy and guidance.

1. You will consult with the Employment Relations Team, Te Kawa Mataaho, on the preparation of any bargaining strategy.
2. Your bargaining strategy requires approval from the Manager, Workforce and Employment Relations before you commence bargaining.
3. I expect any bargaining strategy relating to collective agreements to include the following matters:

**1 System goals and priorities**

* 1. How you are contributing to the goals of the Government Workforce Policy Statement on the Government’s expectations for employment relations in the public sector:
		1. establish the Public Service as an exemplar to other employers in the public sector and beyond
		2. make the Public Service an exemplar of modern, progressive employment practice and a great place to work
		3. have a productive, unified Public Service workforce grounded in a spirit of service to the community
		4. ensure these goals are achievable within the Government’s fiscal settings.
	2. How your priorities for bargaining align with the priorities of the Government Workforce Policy Statement.
	3. How your bargaining strategy is consistent with the operational guidance on pay.
	4. How your approach to bargaining contributes to greater consistency in pay and conditions across the Public Service.
	5. How you intend to collaborate with other departments in bargaining to advance the goals and priorities of the Government Workforce Policy Statement and manage risks and issues in bargaining.
1. **Organisational context**
	1. Ensuring a clear line of sight from your business strategy to your workforce and employment relations strategies to your bargaining strategy.
	2. Identifying any specific organisational issues that your bargaining strategy is seeking to address.
2. **Objectives**
	1. Clear objectives and priorities with a rationale for how the objectives link to system and organisational strategies.
	2. How the strategy contributes to exemplary engagement with unions and supports modern, progressive employment relations practice.
3. **Parameters**
	1. Clear cost parameters within which bargaining will be conducted and robust costings of any proposed changes to pay and conditions.
	2. How the parameters have taken account of the cost of all adjustments to pay and conditions including progression costs.
	3. How the parameters have added to consistency of terms and conditions of employment in the Public Service.
4. **Fiscal context**
	1. How your strategy reflects the Government’s fiscal context.
	2. How you will manage costs within baselines and any indicated operating allowances.
5. **Risk management**
	1. Clear identification and management of risks. For example, not achieving bargaining objectives, loss of capability, diminishing employee engagement, likelihood and impact of industrial action, protracted bargaining.
	2. Strategic and tactical plans for achieving objectives and managing industrial risks.
6. You should make every effort to complete preparations for bargaining including obtaining this approval by the earliest date bargaining can commence, usually 60 days before expiry of a current collective agreement.
7. You will consult with the Employment Relations Team, Te Kawa Mataaho, during the course of negotiations and ensure any offer for settlement is approved by the Manager, Workforce and Employment Relations before you approve it being presented to the union.
8. You will provide, as appropriate, data relating to impacts for employees (including employees directly covered by the collective agreement and employees outside coverage but who are likely to be affected), impacts on remuneration systems (including remuneration ranges, and progression systems), and fiscal impacts, of possible outcomes while bargaining is ongoing, and  likely outcomes as bargaining concludes.
9. You will act in good faith in exercising any of these delegated powers.
10. You may not further delegate the power to enter into a collective agreement or without first obtaining my written approval to that delegation.
11. Notwithstanding paragraph (i) above, you may (under clause 6 of schedule 3 of the Public Service Act 2020) further delegate to an appropriate employee the power to negotiate a collective agreement on your behalf. This delegated employee should be present at all formal negotiations and have the authority to agree to a settlement, subject to your final sign off, and any expectations I have set. In order to comply with the good faith obligations under the Employment Relations Act 2000 (and, where relevant, section 32 of that Act), the role and authority of any such employee will need to be made very clear to the union(s).
12. On a ‘no surprises’ basis, I expect early advice of any emerging employment relations issues that may have implications beyond your department.
13. I expect early engagement and consultation on any matters outside of formal bargaining that have a material effect on pay and conditions of employment. This includes your approach to any annual remuneration review you undertake.

This delegation revokes the previous Part A of the Delegation of Certain Functions and Powers Under the Public Service Act 2020 and comes into effect immediately.

## Part B Pay Equity bargaining

The Public Service Act 2020, section 82, gives the Public Service Commissioner (the Commissioner) the responsibility to deal with all pay equity claims, under the Equal Pay Act 1972, made by an employee or employees of a department or an interdepartmental venture, and raised with the chief executive of the department or the board of an interdepartmental venture.

In accordance with section 84 of the Public Service Act, under clause 6 of schedule 3 of the Public Service Act, the Commissioner’s functions and powers under section 82 of the Public Service Act to deal with pay equity claims applicable to employees of the Agency name (including any employees who perform the functions or duties or exercise the power of a departmental agency that Agency name hosts), are hereby delegated to Chief Executive, Agency name (and persons acting in any such positions from time to time).

## Conditions of my delegation to you

This delegation is subject to the following conditions:

1. You will deal with pay equity claims in accordance with Government policy and expectations, and within any guidelines and parameters which the Government may set from time to time.
2. You will apply the:
3. Equal Pay Act 1972
4. Framework for the Governance and Oversight of State Sector Pay Equity Claims, confirmed by Cabinet [CAB 19 MIN 0678]. If this Framework is amended, I will advise you of any consequent amendments to my delegation.
5. The Equal Pay Taskforce (the Taskforce) may, on my behalf, advise you of additional specific and relevant policy and guidance.
6. You will consult with the Taskforce during the course of the pay equity claim process, including when you are:
7. assessing whether a pay equity claim meets the requirements of Principle 2 as embedded in the Equal Pay Act 1972
8. developing your initial bargaining strategy (which sets out how you propose to manage the claim), and the pay equity bargaining process agreement (which sets out the agreement with the claimant(s) about how the claim is to be conducted)
9. completing the gender-neutral work assessment and identifying potential comparators
10. reaching conclusions on the existence and extent of sex-based undervaluation in the remuneration of the claimant(s)
11. developing your settlement bargaining strategy which sets out how you propose to negotiate for the pay equity settlement, including the bargaining parameters
12. developing the proposed pay equity settlement agreement.
13. I expect your conclusions and decisions at each of the points outlined in paragraph (d) above to be supported by sound evidence and analysis.
14. Your initial bargaining strategy and settlement bargaining strategy in paragraphs (d)(ii) and (d)(v), require the approval of the Deputy Commissioner, Workforce, Employment and Equity before you commence bargaining.
15. The settlement bargaining strategy in paragraph (d)(v) must be approved before you go to Cabinet seeking any contingency to meet the costs of implementing the pay equity settlement. Note you must endeavour to meet the costs of pay equity settlements from existing baseline funding, and that Cabinet may attach conditions to any contingency it approves.
16. Any proposed pay equity settlement agreement must be approved by the Deputy Commissioner, Workforce, Employment and Equity before you sign it off for presentation to the claimant(s), and before you seek Cabinet approval of any requested drawdown of funding from contingency.
17. On a ‘no surprises’ basis, I expect early advice of any emerging employment relations issues that may have implications beyond your department or interdepartmental venture.
18. I expect early engagement and consultation of any of any terms and conditions of employment other than pay being considered as part of a pay equity claim.
19. You will provide, as appropriate, data relating to impacts for affected employees (and any related flow ons), impacts on remuneration systems (including remuneration ranges, and progression systems), and fiscal impacts, of possible outcomes while bargaining is ongoing, and likely outcomes as bargaining concludes.
20. You will deal with a pay equity claim in consultation with any other chief executive of a department or board of an interdepartmental venture, or State sector chief executive, that is also dealing with a pay equity claim for work that is the same or substantially similar.
21. You will act in good faith in exercising any of these delegated powers.
22. You may not further delegate the power to deal with pay equity claims without first obtaining my written approval to that delegation.
23. Notwithstanding paragraph (n) above, you may (under clause 6 of schedule 3 of the Public Service Act) further delegate to an appropriate employee the power to deal with a pay equity claim on your behalf. This delegated employee should be present at all formal negotiations and have the authority to agree to a settlement, subject to the approval as in paragraph (i) above and your final sign-off.

This delegation revokes the previous Part B of the Delegation of Certain Functions and Powers Under the Public Service Act 2020 and comes into effect immediately.

**Part C Fair Pay Agreements**

The Fair Pay Agreements Act 2022 (the Act), section 58(1), gives the Public Service Commissioner (the Commissioner) the role of employer bargaining party if –

1. the coverage of a proposed agreement, proposed variation, or a fair pay agreement includes at least 1 covered employee who is an employee of a public service agency or the Education Service; and
2. in the case of a proposed agreement, the chief executive of the Ministry of Business, Innovation and Employment has publicly notified, in accordance with section 37 or 207 of the Act that the chief executive has approved an application to initiate bargaining for the proposed agreement.

Section 58(2) of the Act, provides that the Commissioner may, under clause 6 of Schedule 3 of the Public Service Act 2020, delegate the role of employer bargaining party to –

1. a public service chief executive of a department if at least 1 employee of the department is a covered employee in relation to the proposed agreement, the proposed variation, or the fair pay agreement; and
2. the Secretary for Education if at least 1 employee of the education service is a covered employee in relation to the proposed agreement, the proposed variation, or the fair pay agreement.

In accordance with section 58(2) of the Act, under clause 6 of schedule 3 of the Public Service Act 2020, where at least 1 employee of Agency name (including any employees who perform the functions or duties or exercise the powers of a departmental agency that Agency name hosts) is a covered employee in relation to a proposed agreement, proposed variation, or a fair pay agreement, the Commissioner’s role of employer bargaining party is hereby delegated to the Chief Executive, Agency name (and persons acting in any such positions from time to time).

*Fair Pay Agreements covering the Public Service[[1]](#footnote-2) and Education Service[[2]](#footnote-3) only*

Where coverage of the proposed agreement is limited to employees of Public Service agencies and the Education Service, you will represent your department (and any departmental agency that you host) as part of an employer bargaining side that may include other Public Service chief executives with delegated authority from the Commissioner.

You will undertake your delegated role subject to the conditions of this delegation, and in accordance with Government policy and expectations, and within any guidelines and parameters which the Government may set from time to time.

It is recognised that not all Public Service chief executives in the employer bargaining side can be present at all formal bargaining but the bargaining will be led for the employer bargaining side by a Lead Advocate, appointed under section 54(2)(b) of the Act.

*Fair Pay Agreements with coverage extending beyond the Public Service and Education Service*

Where coverage of the proposed agreement includes employees of Public Service agencies and the Education Service, and other employees outside these sectors, you will represent your department (and any departmental agency that you host) as part of an employer bargaining side that may include a range of other employer parties.

You will undertake your delegated role subject to the conditions of this delegation to the extent possible, and in accordance with Government policy and expectations and within any guidelines and parameters which the Government may set from time to time, to the extent possible (noting that your ability to influence bargaining and terms of settlement for fair pay agreements may be more limited and you may not be able to be present at all formal negotiations).

## Conditions of this delegation

This delegation is subject to the following conditions.

1. You will negotiate in accordance with Government policy and expectations, and within any guidelines and parameters which the Government may set from time to time or any guidance I may issue, including in relation to pay.

Much of that policy and guidelines is currently set out in the Government Expectations for Employment Relations in the public sector.

The Workforce and Employment Relations team may, on my behalf, advise you of additional specific and relevant policy and guidance.

1. You must prepare a joint employer bargaining strategy with any other Public Service chief executives in the employer bargaining side. You must obtain the approval of the Manager, Workforce and Employment Relations on the joint bargaining strategy before bargaining commences.
2. I expect any bargaining strategy relating to fair pay agreements to include the following matters (to the extent possible):
3. **System goals and priorities**
	1. How you are contributing to the goals of the Government Workforce Policy Statement on the Government’s expectations for employment relations in the public sector:
		1. establish the Public Service as an exemplar to other employers in the public sector and beyond
		2. make the Public Service an exemplar of modern, progressive employment practice and a great place to work
		3. have a productive, unified Public Service workforce grounded in a spirit of service to the community
		4. ensure these goals are achievable within the Government’s fiscal settings.
	2. How your priorities for bargaining align with the priorities of the Government Workforce Policy Statement.
	3. How your bargaining strategy is consistent with the operational guidance on pay.
	4. How your approach to bargaining contributes to greater consistency in pay and conditions across the Public Service.
	5. How you intend to collaborate with other departments in bargaining to advance the goals and priorities of the Government Workforce Policy Statement and manage risks and issues in bargaining.
4. **Organisational context**
	1. Ensuring a clear line of sight from your business strategy to your workforce and employment relations strategies to your bargaining strategy.
	2. Identifying any specific organisational issues that your bargaining strategy is seeking to address.
5. **Objectives**
	1. Clear objectives and priorities with a rationale for how the objectives link to system and organisational strategies.
	2. How the strategy contributes to exemplary engagement with unions and supports modern, progressive employment relations practice.
6. **Parameters**
	1. Clear cost parameters within which bargaining will be conducted and robust costings of any proposed changes to pay and conditions.
	2. How the parameters have taken account of the cost of all adjustments to pay and conditions including progression costs.
	3. How the parameters have added to consistency of terms and conditions of employment in the Public Service.
7. **Fiscal context**
	1. How your strategy reflects the Government’s fiscal context.
	2. How you will manage costs within baselines and any indicated operating allowances.
8. **Risk management**
	1. Clear identification and management of risks. For example, not achieving bargaining objectives, loss of capability, diminishing employee engagement, likelihood and impact of industrial action, protracted bargaining.
	2. Strategic and tactical plans for achieving objectives and managing industrial risks.
9. For proposed agreements covering the Public Service and Education Service only, you must obtain the approval of the Manager, Workforce and Employment Relations on the appointment of a Lead Advocate (under section 54(2)(b) of the Act). For proposed agreements with coverage extending beyond the Public Service and Education Service, you must consult the Manager, Workforce and Employment Relations on the Lead Advocate appointment.
10. You should make every effort to complete preparations for bargaining including obtaining any approvals by the earliest date bargaining can commence.
11. You will consult with the Employment Relations Team, Te Kawa Mataaho, during the course of negotiations.
12. You will provide, as appropriate, data relating to impacts for employees (including employees under coverage of the fair pay agreement and employees outside coverage but who are likely to be affected), impacts on remuneration systems (including remuneration ranges, and progression systems), and fiscal impacts, of possible outcomes while bargaining is ongoing, and  likely outcomes as bargaining concludes.
13. You must obtain the approval of the Manager, Workforce and Employment Relations before any proposed agreement is agreed with the employee bargaining side and jointly presented to the Employment Relations Authority for compliance assessment (under section 143 of the Act).
14. You will act in good faith in undertaking the delegated role.
15. You may not further delegate the role of employer bargaining party without first obtaining my written approval to that delegation.
16. Notwithstanding paragraph (j) above, you may (under clause 6 of schedule 3 of the Public Service Act) further delegate to an appropriate employee the power to negotiate as part of the employer bargaining side on your behalf. This delegated employee should be present at all formal negotiations and have the authority to agree, as part of the employer bargaining side (and subject to your final sign off and any expectations I may set) to any proposed agreement with the employee bargaining side. In order to comply with the good faith obligations under section 17 of the Act, the role and authority of any such delegate will need to be made very clear to the employee bargaining party.
17. On a ‘no surprises’ basis, I expect early advice of any emerging employment relations issues that may have implications beyond your department.
18. I expect early engagement and consultation on any matters outside of formal bargaining that have a material effect on pay and conditions of employment. This includes your approach to any annual remuneration review you undertake.

This delegation is new and is in accordance with the Fair Pay Agreements Act 2022 and comes into effect immediately.

1. ‘Public Service agency’ in this instrument has the definition in section 57 of the Act. [↑](#footnote-ref-2)
2. ‘Education Service’ in this instrument has the definition in section 57 of the Act. [↑](#footnote-ref-3)