

Joint Report: Oversight of pay equity claims in universities

Date: 14 November 2022 **Security Level:** IN CONFIDENCE
Report No: 2022/0243
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Actions Sought

Hon Chris Hipkins, Minister for the Public Service	Due Date
Hon Jan Tinetti, Minister for Women	Due Date

Enclosure: No

Minister's Office Comments

Comments:

Date returned to Te Kawa Mataaho:	
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Executive summary

1. On 29 September 2022, the New Zealand Tertiary Education Union (TEU), the New Zealand Public Service Association (PSA), and the Tertiary Institutes Allied Staff Association Incorporated (TIASA) raised two pay equity claims naming eight universities across the country. These claims were raised on behalf of administration/clerical staff and librarians, and cover approximately 3,446 employees.
2. These claims are the first to be raised in the Tertiary Education Sector.
3. There are currently two frameworks in place to guide oversight of pay equity claims in the Public and Funded Sectors. These are:
 - 3.1 *Framework for the governance and oversight of pay equity claims in the State Sector* (the State Sector Framework) [CAB-19- MIN-0050 refers]
 - 3.2 *Framework for the oversight and support of funded sector pay equity claims* (the Funded Framework) [CAB-20-MIN-0366 refers]
4. To date, it has been clear which oversight mechanism should be used for each claim raised in the Public and Funded Sectors.
5. Universities receive part of their income via government funding and as such could be perceived as best fitting within the Funded Sector and accessing support and oversight through the Funded Framework.
6. However, given that universities are categorised as Tertiary Education Institutes under Section 7.1(e) of the Crown Entities Act 2004 and operate in much closer proximity to Ministers than other entities in the Funded Sector, Te Kawa Mataaho and the Ministry for Women recommend providing oversight for the claims in universities through the Central Agencies Governance Group (CAAG) process as set out in the State Sector Framework.
7. Te Kawa Mataaho and the Ministry for Women have approached the Ministry of Education and the Tertiary Education Commission to ask for one of the two organisations to join CAGG as a member to oversee these claims, in the same way that the Ministry of Health sits on CAGG to support the oversight of health claims.

Recommended Action

We recommend that you:

8. **agree** that the oversight of pay equity claims in universities be overseen by the Central Agencies Governance Group process
Agree/disagree.
9. **agree** that Te Kawa Mataaho release this briefing in full once it has been considered by you
Agree/disagree.

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Purpose of Report

10. Te Kawa Mataaho has recently been notified of two claims raised in universities for librarians and administrative staff.
11. These claims represent the addition of a new employer type to the pay equity process and due to their novel features, warrant a decision regarding the provision of oversight and support for these claims.
12. This report provides you with a recommended approach to the oversight of these claims and seeks your agreement.

Background

Claim for librarians and administrative/clerical staff in universities

13. On 29 September 2022, the New Zealand Tertiary Education Union (TEU), the New Zealand Public Service Association (PSA), and the Tertiary Institutes Allied Staff Association Incorporated (TIASA) raised two claims naming the eight universities across the country. These claims were raised on behalf of administration/clerical staff and librarians and cover approximately 3,446 employees.
14. These claims are the first to be raised in the Tertiary Education Sector.
15. Universities receive income from a variety of sources including from government, domestic student fees, international student fees, research grants, commercialisation opportunities, trading activities and philanthropy. Approximately one third of funding for universities is provided by the government.
16. Universities are categorised as Tertiary Education Institutes under Section 7.1(e) of the Crown Entities Act 2004 and are monitored by the Tertiary Education Commission.

Oversight of claims in the Public and Funded Sectors

17. There are currently two frameworks in place to guide oversight of pay equity claims in the Public and Funded Sectors.
18. In 2019 the Cabinet confirmed the Framework for Governance and Oversight of pay equity claims in the State Sector (State Sector Framework). The State Sector Framework was 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.
19. The State Sector Framework established the role of the Central Agencies Governance Group (CAGG) to provide advice to employers at significant 'milestones' and test whether the process followed is in line with the Equal Pay Act 1972.
20. Following the establishment of the State Sector Framework, it was identified that a mechanism for the oversight of pay equity claims in the Funded Sector was also needed.

21. The 'Funded Sector' refers to any Private Sector or Non-Government Organisation (NGO) that receives Government funding to deliver public services. Many social, health, community and education services are contracted out and delivered through the Funded Sector.
22. To progress the Government's commitment to pay equity and to mitigate risks of Funded Sector employees having un-equal access to the pay equity process compared to employees in Public Sector agencies, Cabinet confirmed the introduction of the Funded Framework in July 2020.
23. The Funded Framework provides a higher level of visibility of claims and clear oversight structures for claims across a sector that is complex, diverse and does not experience the same proximity to Ministers as government departments.
24. The Funded Framework has been successfully utilised for the oversight of the claim for employees undertaking social work in five NGOs and is currently being applied to the early childhood education component of the Teachers' Claim, Kindergarten Support and the Care and Support Workers' Claim.

Issues

25. To date, it has been clear which oversight mechanism should be used for each claim raised across the Public and Funded Sectors.
26. However, universities represent a novel situation where further analysis is required to determine the most appropriate oversight mechanism.
27. Universities are not government departments and are only partially funded by government. As such, it could be reasoned that claims within universities should be governed by the Funded Framework.
28. However, universities' status as Crown entities, means that their fit within the Funded Sector Framework requires further consideration.

Analysis

29. The State Sector Framework and the Funded Framework provide broad definitions of the State Sector and the Funded Sector respectively and as such, universities can be viewed as fitting within either context.
30. Te Kawa Mataaho and the Ministry for Women recommend providing oversight and support for claims within universities through the CAAG process for the following reasons:
31. Universities, as Crown Entities, operate in much closer proximity to government Ministers than employers in the Funded Sector.
32. The government is likely to have a higher level of interest in the settlement of these claims, due to the government's role in leading and monitoring the tertiary education sector.