



Care and Support Workers pay equity Claim extension advice

Date:	11 th August 2023		
To:	Hon Jan Tinetti, Minister for Women		
	Hon Andrew Little, Minister for the Public Service		
Action Sought:	Forward to Minister of Health	Due Date	18 th August 2023
Report No:	2023-0230		
Contact:	Amy Ross, Manager, Pay Equity Taskforce, ^{9(2)(a) privacy}		
Encl:	No	Priority:	High
Security Level:	IN CONFIDENCE		

Purpose of report

1. This report provides information and options to support decisions for progressing work on pay equity for the Care and Support Workforce (the Claim).
2. Now that the Claim parties have received endorsement of Milestone 3 (work assessment) under the *Framework for Oversight and Support of Pay Equity Claims in the Funded Sector* (Funded Framework), work to inform Cabinet's decision whether or not to extend the Claim settlement to the rest of the care and support workforce once settled, needs to be progressed.
3. To inform next steps with this work, we are seeking Ministers' direction on the following
 - 3.1. which option for validation of the Claim work assessment is preferred. Validation of the Claim work assessment with the wider workforce needs to take place under the Funded Framework criteria before Cabinet can consider an extension.
4. There are three options proposed for your consideration to meet the validation criterion, together with the implications of those options for any potential time lag between settlement and extension implementation.
5. This report does not provide advice on options for implementation of any agreed extension. That advice will be developed jointly with all relevant agencies and parties once a decision on extension has been made.
6. This report provides advice to you as Pay Equity Ministers. Officials recommend this report be forwarded to the Minister of Health, followed by a joint discussion to agree the preferred way forward and ensure a coherent system response.
7. Officials are available to discuss any of the details in this briefing further as required.

Recommended Action

We recommend that you:

a **agree** to forward this report to the Minister of Health:

Agreed disagree.

b **agree** to one of the following validation options:

- 1. deem validation criterion met *Mon Tinetti option.*
- 2. complete validation process *XR*
- 3. undertake targeted validation for those roles that may have been found to come in scope of care and support workforce and not already covered by the legislation.

Agreed disagree.

c **discuss** if an extension were to be agreed, Ministers views on the timing of any implementation of this.

d **agree** that this briefing is proactively released subject to redactions required for any areas that are under active consideration, subject to legal privilege or are bargaining sensitive.

Agreed disagree.

Hon Jan Tinetti
Minster for Women

Andrew Little

Hon Andrew Little
Minister for the Public Service

20/8/23

Happy to go with option b(1)
AR
23/8/23

Care and support worker pay equity extension options

Executive Summary

1. The care and support workforce were the recipients of the first ever pay equity settlement. This was implemented via the Care and Support Workers (Pay Equity) Settlement Act 2017 (the Care and Support Workers Act). The legislation covered a five-year period which expired in 2022. As the original care and support worker settlement was time bound, a pay equity Claim under the Equal Pay Act 1972 (as amended in 2020) was raised once the original legislation expired on 1 July 2022. This Claim covers care and support workers in 15 employers (representing 29 percent of the workforce).
2. The Claim has progressed in line with the parties' intention to resolve the Claim by 31 December 2023 when the current legislated remuneration for the support workforce expires.
3. The Milestone 5 Report (employers bargaining strategy) is currently in the final stages following the Milestones 3 (work assessment) and 4 (extent of sex-based undervaluation) reports being endorsed in mid-June 2023. Some concerns have been raised by some funder representatives on the Oversight Group about the outcome of the Claim work to date. These have been worked through and there is nothing at present in the view of Te Kawa Mataaho that would prevent endorsement of Milestone 5.
4. Cabinet will need to decide whether the settlement of the Claim is extended to the wider care and support sector. To help inform Cabinet's decision, work to validate the Claim's work assessment with the wider workforce needs to take place. Te Kawa Mataaho must undertake this work, in collaboration with funding agencies and the parties to the Claim. Te Kawa Mataaho and Te Whatu Ora have already started working together to engage with parties to plan data collection and cost modelling for any agreed extension process.
5. Ministers recently received a letter from the Collective Peak bodies involved with the Claim outlining their thinking on the next steps for the workforce. The Peak bodies consider it critical that the settlement for the Claim and the extension are implemented at the same time to avoid sector instability. The Minister of Health responded to this letter indicating the intention to discuss extension of the Claim settlement at Cabinet.
6. The Funded Framework provides that certain criteria be met in order for Cabinet to make a decision regarding whether a settlement in the Funded Sector is extended to all workers undertaking the same or substantially similar work in the wider sector.
7. One of these criteria is 'validation'; the process to test whether the work of the Claimants is the same as that of workers across the wider sector. A validation process would normally have begun and Te Kawa Mataaho has been planning for this. However, given the existence of the clear definition of this workforce and its nature in section 5 of the Care and Support Workers (Pay Equity) Settlement Act 2017, Ministers have the option to take an alternative approach to validation if the intention is to implement any extension concurrently with the Claim settlement, or as close to the Claim settlement as possible.

8. There are three options for Ministers to consider
 - 8.1. **Option One:** Validation criterion deemed to be met for extension eligibility
 - 8.2. **Option Two:** Validation process is undertaken or
 - 8.3. **Option Three:** Targeted validation to account for roles not covered by the legislation and previous validation work
9. It is important to note that none of these options pre-determine a decision on whether the settlement in the current Claim will be extended. This paper seeks your decision regarding the work required to meet the criteria for Cabinet to consider an extension. Each option will influence the timing of any Cabinet decision regarding an extension and will have a downstream effect on the timeliness of an extension should this be agreed by Cabinet.

Care and Support Worker Pay Equity Claim – Overview of status

10. On 28 June 2022, the Support Workers (Pay Equity) Settlements Amendment Act 2022 came into force. The amendment to the existing Care and Support Workers (Pay Equity) Settlement Act 2017 delivered an interim pay adjustment for the care and support workforce through to December 2023.
11. As the original care and support worker settlement was time bound, a pay equity Claim under the Equal Pay Act 1972 (as amended in 2020) was raised once the original legislation expired on 1 July 2022. This Claim covers care and support workers in 15 employers (representing 29% of the workforce).
12. The Claim has progressed in line with the parties' intention to resolve the Claim by 31 December 2023 when the current legislated remuneration for the support workforce expires.
13. In line with the Funded Framework, oversight for this Claim is provided via an oversight group comprised of representatives from main government funders of care and support services in the agencies party to the current Claim.
14. The oversight group provides endorsement at key milestones throughout the Claim process and provides assurance to Ministers that the Claim is progressing in line with the Equal Pay Act 1972 and any settlement that is reached meets the requirements of the Equal Pay Act 1972.
15. So far, the Claim has reached
 - 15.1. Milestone 1 endorsement by the Oversight Group in September 2022
 - 15.2. Milestone 2 endorsement by the Oversight Group in February 2023
 - 15.3. Milestone 3 and 4 endorsed by the Oversight Group in June 2023.
16. The parties are currently awaiting endorsement of Milestone 5, which is the final milestone before parties enter into bargaining on the settlement agreement.

Extending the benefits of any settlement to the wider workforce

The Funded Sector Framework

17. In recent years, there has been a growth in the number of pay equity Claims in the Funded Sector. The Funded Sector refers to any community or private sector organisations that receive government funding to deliver public services.
18. The Equal Pay Act 1972 requires employers, regardless of what sector they are in, to respond to any pay equity Claim raised by employees in their organisation. Employers are obligated to investigate the Claim and to correct any sex-based undervaluation found through the Claim process. The parties to a pay equity Claim are the employers named in the Claim and the union/s representing the Claimant group.
19. There is currently no legal obligation under the Equal Pay Act 1972 for employers in the funded sector to engage with government funding agencies through the pay equity process. However, in July 2020, Cabinet agreed to the introduction of the Framework for the Oversight and Support of Pay Equity Claims in the Funded sector (the Funded Framework). This framework introduces a voluntary pathway for employers in the Funded Sector to engage with funding agencies for oversight of the Claim process.
20. The Funded Framework was introduced to mitigate the following risks
 - 20.1. pay equity processes being undertaken that are inconsistent with the Equal Pay Act 1972
 - 20.2. lack of visibility of Claims for Funding agencies, Central Agencies and Ministers
 - 20.3. pay equity outcomes being reached that do not fully correct for sex-based undervaluation
 - 20.4. Public Sector agencies acting inconsistently in the nature or level of support and oversight provided, creating a risk of judicial review for the government failing to “treat like cases alike” and/or
 - 20.5. State sector agencies (through their action/s or inaction), being seen as a party to the Claim or inappropriately seeking to influence the outcome of a Claim.
21. Seven out of the eight current pay equity Claims in the Funded Sector are engaged in the Funded Framework and are actively receiving oversight from government funding agencies. In November 2022, the first pay equity Claim under Funded Framework was settled for social work in five Non-Government Organisations.
22. In September 2021, Cabinet agreed to amend the Funded Framework [CAB MIN 21-0391 refers] to address two key issues. These issues were
 - 22.1. employer concerns about the potential cost of a pay equity settlement affecting employer engagement in the pay equity process and
 - 22.2. the Equal Pay Act 1972 (the Act) requirements make it unlikely that an entire sector would be covered by a pay equity settlement, potentially resulting in multiple Claims and inconsistent outcomes for the same, or substantially similar, work across a workforce.
23. The agreed amendments to the Funded Framework provide a clear process by which Ministers can consider extending the benefits of a settled pay equity Claim in the Funded Sector to other employees doing the same or substantially similar work across the sector if certain criteria are met [CAB MIN 29-031 refers].

24. This process is most often referred to as a ‘pay equity extension’. In November 2022, Cabinet agreed to the first pay equity extension, extending the benefits of the settled Claim for social work in five NGOs to all employees in the Funded Sector undertaking social work or work that is the same or substantially similar [CAB-22-MIN-049 refers] Work is currently underway to implement this extension.
25. An extension is a proactive process that aims to mitigate system risks associated with workers in one part of a sector having their pay corrected for sex-based undervaluation while workers undertaking the same or substantially similar work in the rest of the sector remain on current pay rates. The extension process also aims to avoid unnecessary system burden created through a proliferation of claims across a sector for work that is the same or substantially similar.

Parties have highlighted the need for an extension

26. Upon commencement of the current Care and Support Worker Claim, the parties highlighted the importance of extending any settlement of the Claim to the rest of the care and support workforce as soon as possible.
27. They noted risks to sector stability and the likelihood of multiple similar pay equity Claims for care and support workers being brought across the wider sector if an extension did not occur in close proximity to the settlement of the Claim.
28. This risk could be exacerbated by the expiration of the Care and Support Workers (Pay Equity) Settlement Act 2017 (the Act). On expiry each care and support employer will need to negotiate separately with their workforce via individual employment agreements and/or collective employment agreements. 9(2)(g)(i) 11e
29. The recent letter Ministers received from the Collective Peak bodies has re-stated the importance of urgently progressing decisions on this work for the sector.

Meeting the criteria for Cabinet to consider a decision on extension

30. The Funded Framework states that for Cabinet to consider extending the benefits of a settlement, certain criteria must be met.
31. The criteria for Cabinet to consider an extension are that
 - a) the work is clearly defined
 - b) the Claim covers ten percent or 1,000 employees from the broader funded sector workforce
 - c) the work assessment is validated with employees and employers from a minimum of a further 20 percent of the sector who are not covered by the pay equity Claim and
 - d) workforce data is obtained to allow costs to be understood.
32. Work to meet criteria ‘c’ above is often referred to as ‘the validation process’. The Funded Framework states that work to complete the validation process should be undertaken when the Claim reaches Milestone 3.1
33. Milestone 3 for the current Claim for Care and Support Workers was endorsed by the Oversight Group in June 2023.

¹ At Milestone 3 the parties have investigated the work of the claimant group and have developed a clear and evidence-based understanding of the skills, responsibility, effort and working conditions inherent in the claimant work.

34. Te Kawa Mataaho considers that criteria ‘a’, ‘b’ and ‘d’ above have already been met as per below: the work has been clearly defined through the work assessment process and mirrors the description of the work in the care and support workers legislation
 - 34.1. the Claim covers approximately 29% of the broader workforce
 - 34.2. existing workforce data can be used to support cost modelling.
35. Existing workforce data is strong given the sector is still covered by legislative rates, and reporting on workforce numbers and details is well established via the original 2017 settlement process.

Validation of work assessment across a sector

36. The remaining criterion to be considered is the validation of the work assessment across the wider sector.
37. The purpose of validation is to test whether the work of Claimants in the current Claim is the same or substantially similar to the work of care and support workers in the rest of the workforce. The validation step provides assurance that the work of the Claimant group is not unique when compared to the wider workforce and preserves a critical cornerstone of the Equal Pay Act 1972 which requires work to be assessed and understood to deliver an accurate pay equity correction.
38. Validation processes under the Funded Framework are led by Te Kawa Mataaho as a neutral agency who is not a funder of services. The validation process requires the following
 - 38.1. the collaborative design of the validation process including unions, peak bodies and funders to ensure consistent and effective communication and engagement channels
 - 38.2. work to summarise the work assessment material developed through the Claim process. Providing this evidence in a digestible format supports engagement from employers and employees in the validation process
 - 38.3. extensive sector engagement to ensure a sufficient proportion of the wider sector can engage with the summary work assessment material and determine whether it accurately reflects their work or the work of their employees and
 - 38.4. collation and analysis of employer and employee responses to the summary material.
39. This process has recently been undertaken to support the extension of the pay equity settlement for social work in NGOs.

Validation for the Care and Support Workforce

40. The Care and Support Workforce is in a unique position with respect to the validation criterion. “Care and support services” and “care and support worker” are already defined in section 5 of the Support Workers (Pay Equity) Settlement Act 2017. This definition covers workers currently undertaking care and support work and has provided the basis for previous uplifts in pay for this workforce.
41. Because of this statutory definition, Ministers have additional options regarding how to approach meeting the validation criteria. These options are detailed in Table 1 with analysis of the risks and benefits of each option.

42. In addition, there are several features of the Care and Support workforce that should be considered when assessing how to proceed to meet the validation criterion

42.1 Care and Support workers are the largest workforce so far to be covered by a pay equity process with an estimated 60,000 workers across the Funded Sector

42.2 there is significant geographical spread that would also need to be factored into sector engagement and likely require travel time by those leading the validation process and potentially for workers in more rural locations to support engagement and

42.3 Care and Support workers do not have ready access to technology to support remote engagement or engagement with materials via online fora or email. This lack of access to technology and geographical spread pose significant resourcing considerations and if a validation and sector engagement is selected, will incur additional agency-wide costs.

43. 9(2)(g)(i) free and frank
[Redacted]

44. Please note that all these options preserve Cabinet’s right to agree or disagree with an extension and make decisions on the methodology of funding any extension.

Table 1 - Validation options

Option One – validation deemed complete Minimises gap between implementation of settlement and possible extension	
Opportunities	Risks
<ul style="list-style-type: none"> • This workforce has already been clearly defined in section 5 of the Support Workers (Pay Equity) Settlement Act 2017. • Significant amount of time and resource saved – approximately four months with travel. • Ensures option to align timing of any extension with a settlement remains available. • There has already been strong engagement via the peak bodies with the rest of the sector throughout the work assessment process, in addition to the definition of the work in legislation. • Enables a timely Cabinet decision on any extension. • A timely decision will help the sector to plan for any workforce stability risks. • Cost modelling will be able to progress with the current data available and the workforce visibility the legislation provides. 	<ul style="list-style-type: none"> • Engagement and visibility for the workforce of the work assessment not as high as with a validation process • 9(2)(g)(i) free and frank <div style="background-color: #cccccc; height: 1em; width: 100%;"></div> <div style="background-color: #cccccc; height: 1em; width: 100%;"></div> <div style="background-color: #cccccc; height: 1em; width: 100%;"></div>
Option Two – validation process undertaken Creates gap between implementation of settlement and possible extension	
Opportunities	Risks
<ul style="list-style-type: none"> • Will ensure a high level of engagement and visibility for the workforce of the work assessment process in addition to the work already done. • Will assist with informing cost modelling for consideration of an extension. 	<ul style="list-style-type: none"> • The validation process will likely take 4 months to complete. The preparation of a Cabinet paper seeking agreement to the extension would only be able to be prepared at the conclusion of validation. In total this means a 6–8-month delay to any extension which is likely to have significant operational and workforce risks. • Very resource intensive and will incur additional agency-wide costs. Further detailed costing advice would need to be provided should Ministers choose this option. • The value a validation process will bring has already been adequately realised via strong peak body and union engagement with the wider workforce through the work assessment phase. The value add on top of what funders have for legislated workforce purposes, or what will be gathered at the cost modelling stage is unclear. • Recent correspondence indicates this option is not supported by Peak bodies or parties to the claim which may make the process more challenging to undertake well.

Option Three – targeted validation

Validation is undertaken only for any identified roles that are covered by this Claim that were not covered under the care and support worker legislation

Opportunities	Risks
<ul style="list-style-type: none">Ensures any roles not previously in scope of the care and support workforce (as defined in legislation) are validated with the wider workforce. This is more targeted and less resource intensive than a validation process.If agreed to and engaged with quickly it should not delay concurrent implementation processes.	<ul style="list-style-type: none">Engaging with only some of the workforce on a technical basis that is not well understood could create confusion and be disruptive to good progress so far.Would still require organisation and planning to undertake targeted validation which would add time to the overall process.

Next Steps

Next steps for the Claim – Manatū Hauora and Te Whatu Ora delegation

- The Claim will continue to progress through each milestone until settlement phase.
- Manatū Hauora will develop the Cabinet paper to establish a tagged contingency to settle the Claim.

Next steps for the extension process – Te Kawa Mataaho delegation

- If Option 1 is agreed, Te Kawa Mataaho will proceed with preparing a Cabinet paper in collaboration with funders, Manatū Hauora and Treasury to seek agreement to extend the care and support worker pay equity settlement. This will include collating data for cost modelling.
- If Option 2 or 3 is agreed Te Kawa Mataaho will continue to work with the employer and union parties to the Claim to design and undertake the validation process; then
 - work with Funding Agencies, Treasury, employers, and peak bodies to better understand workforce data to enable robust modelling for an extension decision and
 - prepare advice in partnership with other agencies for relevant Ministers to take to Cabinet on options for any extension.

Next steps for Ministerial oversight/responsibility

- Ministers for Public Service, Women and Health indicate their preferred option for meeting the validation requirement that must be met for Cabinet to consider a decision on extension.
- Minister of Health seeks agreement to Cabinet paper to establish a tagged contingency to settle the Claim.
- Minister for the Public Service and Minister for Women in consultation with Ministers of Health and Finance outline the best options to progress to Cabinet to seek agreement to extend the settlement to the rest of the care and support workforce.
- Further information regarding roles and responsibilities as the work progresses is provided in Appendix 1.

Appendix 1 – Pay Equity system roles and responsibilities

The table below clarifies the distinct roles and responsibilities of departments as this work progresses. Officials across agencies have already engaged and have begun to co-ordinate planning for this work.

Department	Role
Pay Equity Taskforce located in Te Kawa Mataaho Public Service Commission	Cabinet mandate to lead the validation process and prepare advice (including cost modelling), in partnership with funding agencies and Treasury, for Cabinet to consider an extension
Manatū Hauora – Ministry of Health	Vote Administrator to the Lead Funding Agency and strategic advisor to the Minister of Health
Te Whatu Ora	Lead Funding Agency to the Claim with role on the Oversight Group. Responsible for working with Te Kawa Mataaho and other funding agencies to validate the work assessment and collate the workforce data required to prepare extension advice.
The Treasury	Quality assurance of cost modelling and will liaise with Lead Funding Agency and Pay Equity Taskforce to advise on fiscal implications and risk. Cabinet mandate to provide fiscal oversight and advice under the Funded Framework
Whaikaha – Ministry of Disabled People	Funding agency with role on the Claim Oversight Group
Accident Compensation Corporation	Funding agency with role on the Claim Oversight Group
Oranga Tamariki	Funding agency with role on the Claim Oversight Group