



Te Kawa Mataaho

Public Service Commission

4 November 2020

Public Service chief executives

Dear Chief Executive

Public Service Act 2020: new delegation for collective agreements and pay equity

I am writing to you to confer new delegated authority in respect of collective agreements and pay equity claims. This new delegation is the result of recent legislative changes including the introduction of the Public Service Act 2020 and the Equal Pay Amendment Act 2020, which comes into force on 6 November 2020.

The delegation instrument is attached and is in two parts:

- Part A: delegates the Commissioner's functions and powers to initiate and carry out good faith bargaining for, and to enter into, collective agreements
- Part B: delegates the Commissioner's functions and powers to deal with pay equity claims, on 6 November 2020.

In addition to the new delegated authority contained in the instrument attached, the Public Service Act requires chief executives to notify the Commissioner in writing of pay equity claims that have been raised as soon as practicable, including claims that were raised prior to the commencement of the Act. I would be grateful if you would:

- confirm in writing that the information contained in the summary note attached is correct for the pay equity claims that have been raised with you or your agency
- provide written notification of any other claims that have been raised that are not listed in the summary note and attach a copy of the claim
- provide written notification of any new pay equity claims as soon as practicable after they are raised and attach a copy of the claim.

You can send any information to the Pay Equity team at Pay.Equity@publicservice.govt.nz or alternatively Dale Farrar, Deputy Commissioner Workforce, Employment and Equity, will be very happy to assist you or your team if you have any questions.

Regards,

Peter Hughes (he/him)
Te Tumu Whakarae mō Te Kawa Mataaho
Public Service Commissioner | Head of Service

Overview of changes in the new delegation and new notification requirements

The Public Service Act 2020 gives the Public Service Commissioner (the Commissioner) responsibilities in relation to collective agreements and pay equity claims in the Public Service. The Commissioner has the ability to delegate the functions and powers in respect of these responsibilities.

The Commissioner's functions and powers in respect of pay equity will be amended by the Equal Pay Amendment Act 2020, which comes into force on 6 November 2020. This is why Part B of the delegation instrument comes into effect on 6 November 2020.

Collective Agreements

Part A of the delegation instrument replaces the current delegation to initiate and carry out good faith bargaining for, and to enter into, collective agreements. The conditions of the revised delegation have been updated to align with the Public Service Act. They place greater emphasis on contributing to system wide people goals and the fostering of greater consistency in terms and conditions of employment across the Public Service. Remaining conditions of the current delegation are carried over in Part A.

Pay Equity Claims

Part B delegates the Commissioner's functions and powers in respect of pay equity claims. 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.

New notification requirements in the Public Service Act

The Public Service Act requires chief executives to notify the Commissioner in writing of pay equity claims that have been raised as soon as practicable, including claims that were raised prior to the commencement of the Act.

I acknowledge the following written notifications of claims raised prior to the commencement of the Act, that departments have already provided to the then State Services Commission:

Department	Pay Equity Claim
All public service departments (except New Zealand Security Intelligence Service which did not receive the claim)	PSA claim for members who predominantly perform clerical and administrative work, dated 31 October 2019
Oranga Tamariki Ministry for Children	NUPE claim for Administrative Officers employed by Oranga Tamariki Ministry for Children, dated 14 May 2020
Department of Corrections	NUPE claims for: <ul style="list-style-type: none">• Administrative Officers, dated 17 February 2020• Probation Officers, dated 17 February 2020

To satisfy the notification requirements above, please:

- Confirm in writing that the information above is correct for the pay equity claims that have been raised with you or your agency
- Send written notification of any other claims that have been raised that are not listed above and attach a copy of the claim
- Send written notification of any new pay equity claims as soon as practicable after they are raised and attach a copy of the claim.

Please email Pay.Equity@publicservice.govt.nz.

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

Chief Executive
Public Service agency

Part A

- 1 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.
- 2 In accordance with section 80 of the Public Service Act, under clause 6 of schedule 3 of the Public Service Act, the Commissioner's functions and powers under section 78 of the Public Service Act to initiate and carry out good faith bargaining for, and to enter into, collective agreements applicable to employees of the <DEPARTMENT> are hereby delegated to the <ROLE, DEPARTMENT> (and persons acting in any such positions from time to time).

Conditions of this delegation

- 3 In accordance with subsection 80(2) this delegation is subject to the following conditions:
 - a) 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.
 - b) Much of that policy and guidelines is set out in the *Government Expectations for Employment Relations in the State Sector* confirmed by Cabinet [Min 18 (0067)]. If these Expectations are amended, I will advise you of any consequent amendments to my conditions of delegation.
 - c) My Workforce and Employment Relations team may, on my behalf, advise you of additional specific and relevant policy and guidance.
 - d) You will consult with Te Kawa Mataaho Public Service Commission (Te Kawa Mataaho) on the preparation of any bargaining strategy.
 - e) Your bargaining strategy requires approval from my Manager, Workforce and Employment Relations before you commence bargaining.
 - f) You will consult with Te Kawa Mataaho during the course of negotiations and ensure any offer for settlement is approved by my Manager, Workforce and Employment Relations before you sign off on it being presented to the union.
 - g) You will act in good faith in exercising any of these delegated powers.
 - h) <ROLE, DEPARTMENT> may not further delegate the power to enter into a collective agreement or without first obtaining my written approval to that delegation.
 - i) Notwithstanding paragraph (h) above, <ROLE, DEPARTMENT> may (under clause 6 of schedule 3 of the Public Service Act) further delegate to an appropriate employee the power to negotiate a collective agreement on <ROLE> 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).
 - j) On a 'no surprises' basis, I expect early advice of any emerging employment relations issues that may have implications beyond your department.

- k) I expect any bargaining strategy relating to collective agreements to give particular heed to:

System wide people goals

- How you are contributing to building a modern, agile, adaptive and high performing Public Service that is unified and grounded in a spirit of service to the community.
- How you have considered opportunities to promote diversity and inclusion, and equity in employment.
- Opportunities to contribute to greater consistency in pay and conditions and promote workforce mobility across the system.
- Your responsibility to consider flow on implications to the Public Service and wider State Sector in a way that provides the opportunity to build consistency and manage common pressures.
- Opportunities for cooperation and collaboration between departments, to advance the Government's priorities for the Public Service outlined in the *Government Expectations for Employment Relations in the State Sector*.

Organisational context

- Ensuring a clear line of sight from your business strategy to your workforce and employment relations strategies to your bargaining strategy.
- How your approach contributes to wider system goals and results.

Objectives

- Clear objectives and priorities with a rationale for how the objectives link to wider strategies.
- How the strategy builds constructive workplace relations and gives effect to the Government's overarching employment relations goals.

Parameters

- Clear cost parameters within which bargaining will be conducted and robust costings of any proposed changes to pay and conditions.
- How the parameters have taken account of the cost of all adjustments to pay and conditions including progression costs.
- How the parameters have added to consistency of terms and conditions of employment within the Public Service.

Affordability

- How you will manage costs within baselines and any indicated operating allowances.

Risk management

- Clear identification and management of risks. These range from not achieving bargaining objectives, loss of capability, diminishing employee engagement, through to industrial action.

- l) I expect early engagement and consultation on any agreements reached outside of formal bargaining that have a material effect on pay and conditions of employment.

Part B

- 1 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.
- 2 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>, are hereby delegated to the <ROLE, DEPARTMENT> (and persons acting in any such positions from time to time).
- 3 Part B of this delegation instrument comes into effect on 6 November 2020.

Conditions of my delegation to you

- 4 This delegation is subject to the following conditions:
 - a) 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.
 - b) You will apply the:
 - i. Equal Pay Act 1972
 - ii. 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.
 - c) You will have regard to the Reconvened / Joint Working Group Pay Equity Principles (the Principles).
 - d) The Gender Pay Gap and Pay Equity Taskforce may, on my behalf, advise you of additional specific and relevant policy and guidance.
 - e) You will consult with the Gender Pay Gap and Pay Equity Taskforce during the course of the pay equity claim process, including when you are:
 - i. Assessing whether a pay equity claim meets the requirements of Principle 2 as embedded in the Equal Pay Act
 - ii. 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)
 - iii. Completing the gender-neutral work assessment and identifying potential comparators
 - iv. Reaching conclusions on the existence and extent of sex-based undervaluation in the remuneration of the claimant(s)
 - v. Developing your settlement bargaining strategy which sets out how you propose to negotiate for the pay equity settlement, including the bargaining parameters
 - vi. Developing the proposed pay equity settlement agreement.

- f) I expect your conclusions and decisions at each of the points outlined in paragraph 4(e) to be supported by sound evidence and analysis.
 - g) Your initial bargaining strategy and settlement bargaining strategy (at paragraphs 4e)ii and 4e)v), require the approval of the Deputy Commissioner, Workforce, Employment Relations and Equity Group before you commence bargaining.
 - h) The settlement bargaining strategy (at paragraph 4e)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.
 - i) Any proposed pay equity settlement agreement must be approved by the Deputy Commissioner, Workforce, Employment Relations and Equity Group 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.
 - j) 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.
 - k) 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.
 - l) 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.
 - m) You will act in good faith in exercising any of these delegated powers.
 - n) <ROLE, DEPARTMENT> may not further delegate the power to deal with pay equity claims without first obtaining my written approval to that delegation.
- 5 Notwithstanding paragraph 4(n) above, <ROLE, DEPARTMENT> 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 <ROLE> 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 per paragraph 4(i) above and your final sign-off.

Peter Hughes (he/him)
Te Tumu Whakarae mō Te Kawa Mataaho
Public Service Commissioner | Head of Service