



Pay Equity in the State Sector: Tools and Resources
Template | Pay Equity Bargaining Process Agreement
(Terms of Reference)



Te Kawa Mataaho
Public Service Commission



Manatū Wāhine
Ministry for Women

Te Kāwanatanga o Aotearoa
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These tools and resources do not constitute legal advice. Parties must seek their own legal advice in respect of this template and how it applies to the pay equity claim being raised.

Email pay.equity@publicservice.govt.nz if you would like a Word version of this document.

Purpose

The purpose of this Pay Equity Bargaining Process Agreement (Bargaining Process Agreement) template is to support parties to establish the good faith bargaining process they will use to address the pay equity claim. A joint Bargaining Process Agreement is the frame for the parties' working relationship and will facilitate the effective and efficient assessment and resolution of the claimant's pay equity claim.

Introduction to this Bargaining Process Agreement

The Equal Pay Act 1972 [Equal Pay Act 1972](#) (the Act, section 13C) sets out the requirements for good faith in the pay equity bargaining process, requiring the parties, to at least:

- follow the process set out in sections 13C and 13ZC to 13ZZE of the Act to resolve the claim
- use their best endeavours to enter into an arrangement that sets out a process of conducting the bargaining in an effective and efficient manner
- use their best endeavours to settle the claim in an orderly, timely and efficient manner
- recognise the role and authority of each party's representatives
- not undermine or do anything likely to undermine the bargaining or authority of another party in the bargaining.

This Bargaining Process Agreement template is intended for use by parties after the employer has accepted that a pay equity claim is arguable, and would be an arrangement that sets out a process for conducting the pay equity bargaining in an effective and efficient manner, under section 13C(2)(d) of the Act.

Structure of tools and resources

This guide is a part of a suite of tools and resources developed by Te Kawa Mataaho Public Service Commission (the Commission). The structure of the tools and resources is set out in the pay equity arrow diagram below to help users navigate and find the components that they need.

The tools and resources are designed to enable the parties to pay equity claims in the State sector to progress claims consistently with the Act which is informed by the [Pay Equity Principles](#), and ultimately to achieve pay equity. The tools and resources support the parties throughout the process, from raising a claim to pay equity negotiations/settlement.

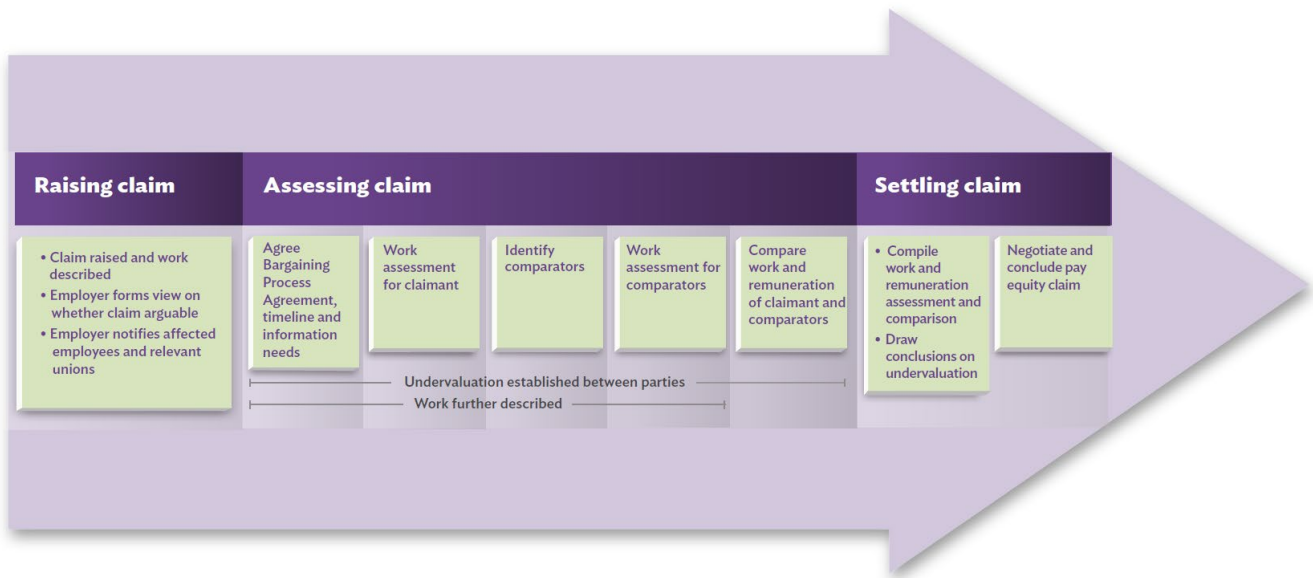
The process that is used to put the tools and resources into practice is just as important as the tools themselves. It is the process used between the parties that will determine the robustness, internal integrity, and validity of the outcomes.

Pay equity process

The arrow diagram was developed to demonstrate the steps involved when working through the pay equity process.

The pay equity arrow diagram does not describe a linear process where one step must be completed before another is started.

Based on the experience of parties to date, the process is flexible enough for some steps to be done in parallel or slightly overlapping as appropriate. The main underpinning is for the parties to work together through a process of engagement.



Supporting notes for the Pay Equity Bargaining Process Agreement

Note 1: Parties

If new parties join the claim through consolidation, the Bargaining Process Agreement may be varied to include a new employer and new union as parties to the Bargaining Process Agreement. The names of the new employer/s and union/s should be inserted in the sentence below as a variation. From here on throughout this Bargaining Process Agreement the term parties is used to describe those employer/s and employees/union/s listed in the sentence below. If there is a need to agree new terms for the multi-employer situation a new Bargaining Process Agreement to replace the first one and covering the new parties joining the claim could be agreed.

Note 2: Claim is arguable

The Bargaining Process Agreement may refer to any earlier documents that support the statement that the pay equity claim is arguable. For example, any dated correspondence from the employer or between the parties that confirms that they have accepted that the claim is arguable. This Bargaining Process Agreement specifies a pay equity bargaining process, in accordance with sections 13ZC – 13ZZE of the Act that the parties will use.

Note 3: Background

Include a short history of how the parties reached this point and relevant contextual information. (For example see the background section in the [2019-03-18-ToR-Midwives-pay-equity-claim-for-MERAS-and-NZNO-final.pdf](#))

Note 4: Scope

The Act requires the claimants to include a brief description of the work performed by the employees to be covered by the claim. The Act refers to the “work performed”. This means that the scope of a claim may be wider or narrower than, for example, the coverage of the relevant collective agreement or union membership.

The Act provides that multiple union-raised pay equity claims in respect of the same work performed within the same employer, must be consolidated as a single joint claim (section 13M of the Act). Additionally, if one or more unions raise a claim with one or more employers in respect of the same work that is covered by an existing claim, then unions must consolidate the claims (section 13N(3)).

Employers may agree to consolidate union-raised claims made in respect of the same work performed across multiple employers. Section 13K sets out the process required to consolidate claims across multiple employers and section 13L prescribes the process for opting out of a multi-employer pay equity claim.

There are different information requirements for claims raised by union/s and claims raised by an individual employee. When an individual employee raises a claim they must state their occupation, position and a brief description of work, while a union or unions must state a brief description of the work. For this reason, when describing the claim coverage this template provides the options [occupation/position/description of work]. Please select the options that best suit the Pay Equity Claim to which this Bargaining Process Agreement relates.

Note 5: How we will work together

The Act seeks to improve the process for raising and progressing pay equity claims, building on the good faith requirements in section 4 of the Employment Relations Act 2000. This section of the Bargaining Process Agreement, therefore outlines principles and expectations to underpin the good faith pay equity bargaining process that the parties mutually commit to and complies with section 13C(2) of the Act.

Note 6: Pay Equity Bargaining Process (assessment and settling the pay equity claim)

The Act prescribes:

- that the assessment of the work and remuneration of the claimants and comparators must be objective and without assumptions based on sex; and recognise the importance of skills, responsibilities, effort, and conditions of work that are, or have been, commonly overlooked or undervalued in female-dominated work (section 13ZD)
- that the parties may also consider whether the claimant(s)' work is currently undervalued using the factors listed at section 13F(3)
- criteria for selecting appropriate comparators (section 13ZE)
- in the event that this Bargaining Process Agreement covers consolidation of a claim then this Bargaining Process Agreement can be varied to include the additional party/parties (see Note 2).

Note 7: Outcomes

This section is optional but may be useful.

Note 8: Information

The sharing of information is important to assess pay equity claims. The Bargaining Process Agreement template suggests text about the proactive sharing of information is therefore suggested, consistent with the good faith bargaining approach in the Act.

The Act provides for a duty to provide information on request, including the possible use of an independent reviewer to protect the confidentiality of information (section 13ZC of the Act).

Note 9: Other logistical arrangements

This section is optional. Parties may wish to agree and record responsibility for arrangements and costs associated with travel, accommodation, and meals.

NB: If parties would like to see previous examples of Bargaining Process Agreement for claims these may be published on employer and union websites or parties could contact the Taskforce for examples by emailing pay.equity@publicservice.govt.nz

Pay Equity Bargaining Process Agreement template

Parties

The parties to this Pay Equity Bargaining Process Agreement are the [insert union or employee] and the [insert employer(s)].

The [parties] agree the pay equity claim is arguable.

Background

[insert short history of how the parties reached this point and relevant contextual information]

Purpose

The purpose of this Bargaining Process Agreement is to facilitate the effective and efficient assessment and resolution of the claimant's pay equity claim in respect of [insert occupation /position/description of work]. This Bargaining Process Agreement establishes the good faith bargaining process by which the parties will address the pay equity claim.

Scope

The parties agree the pay equity claim is arguable for [insert occupation/position/description of work] and those doing the same or substantially similar work.

The work performed is [briefly describe the work being performed]. The [insert employer(s)] confirms that it has notified affected employees of the employer, that is, employees who perform work that is the same as, or substantially similar to, the work performed by the claimants.

Parties agree that the scope of the claim may be affected by the outcome of the pay equity investigations, that is the scope may shift to either include or exclude some roles.

Every employee who performs work that is the same or substantially similar to the work to which the claim relates is covered by the claim, unless they opt out under section 13Y of the Act.

Other employees who perform the same or substantially similar work to which the claim relates, and who are not covered by the union raised claim, must be offered the benefit of any pay equity settlement.

How we will work together

The principles and expectations underpinning our engagement are:

- bargaining in good faith to settle the pay equity claim, and
- committing to an effective and efficient process, as soon as possible after the start of bargaining, as set out in the Act, and
- attending the necessary meetings and will meet as agreed to review progress; and
- respecting the independence of each organisation including recognition of each other's specific roles and authority, and
- committing to keeping our respective executive groups and other key stakeholders informed, and
- participating in timely and effective decision-making processes.

Process

The parties commit to undertake this work as effectively and efficiently as possible. The following process is to ensure that pay equity bargaining is conducted effectively and efficiently.

The pay equity process is not a linear process where one step must be completed before another is started. The process is flexible enough so that some steps can be carried out in parallel or slightly overlapping as appropriate.

Pay Equity Bargaining Process

Assessment

1. Parties to a pay equity claim must determine whether the employee's work is undervalued by assessing:
 - a) The nature of the work to which the claim relates, and the nature of comparators, including, in each case, the following:
 - skills required
 - responsibilities imposed
 - conditions of work
 - degree of effort required to perform the work
 - level of experience required to perform the work
 - any other relevant work features [briefly describe the methodology to be used for assessment as well as for identifying potential comparators]; and
 - b) Terms and conditions of employment (other than remuneration) of the persons who perform the work to which the claim relates [briefly describe the methodology to be used]; and
 - c) Terms and conditions of employment (other than remuneration) of persons who perform comparable work [the methodology to be used is the same as that described in clause (b) above]; and
 - d) The remuneration that is paid to the persons who perform the work to which the claim relates [briefly describe the methodology to be used]; and
 - e) The remuneration that is paid to persons who perform comparable work [the methodology to be used is the same as that described in clause (d) above]; and
 - f) Any other matters prescribed by regulations made under section 19 of the Act for the purposes of section 13ZD Matters to be Assessed.
2. In making the assessment required above, the parties:
 - a) Must consider matters objectively and without assumptions based on sex (and prevailing views as to the value of work must not be assumed to be free of assumptions based on sex); and
 - b) Must recognise the importance of skills, responsibilities, effort and conditions that are or have been commonly overlooked or undervalued in female-dominated work (for example, social and communication skills, taking responsibility for the well-being of others, cultural knowledge, and sensitivity); and
 - c) Must consider the list of factors in section 13F(3) of the Act.

3. It is acknowledged that the individual parties may choose to select comparators, and agree the proposed comparators, and use the information gathered regarding these comparators from other current or completed pay equity processes where the parties consider this useful and relevant¹.
4. Where comparators have been chosen from other completed or current pay equity work, a decision will be made as to whether additional interviews for these comparators is necessary or not.
5. The assessment phase requires the parties to work collaboratively. In this phase there is a need to balance the requirements to effectively and efficiently progress resolution of the claims with requirements to ensure the necessary evidence is gathered to make robust, enduring, fair and equitable assessments and decisions.
6. Parts of the work involved in the assessment phase may occur in parallel or overlap.

Settling the pay equity claim

7. Confirm the pay equity rate/s and which roles they apply to.
8. Negotiate an agreement to address the sex-based undervaluation and to deliver pay equity.
9. Negotiate and settle the process for reviewing and maintaining pay equity.
10. Any settlement should be recorded in writing and will need to be ratified (agreed to) by affected employees.
11. A copy of the pay equity claim settlement is to be delivered to the Chief Executive of the Ministry of Business, Innovation and Employment as soon as practicable after settlement is reached. The information in the settlement may not be used by the Chief Executive for purposes other than statistical or analytical purposes (section 13ZK of the Act).

Outcomes

We will know we have been successful when:

- the value and recognition of work by [insert occupation/position/description of work] is free from sex-based undervaluation
- a negotiated agreement is reached that achieves pay equity for [insert occupation /position/description of work] which has no element of sex-based undervaluation
- there is a clear and agreed review mechanism for maintaining the value of the agreed pay equity.

¹ This is what's required under 13ZE(1)(c) if parties choose a comparator that is not a male comparator.

Communication

The parties recognise the importance of preserving the integrity of the process and agree to manage communications while bargaining on a pay equity claim accordingly, and specifically as listed below:

- during negotiation of the pay equity claim each party's communications will comply with the principles of good faith in the Act (section 13C) and the provisions of section 4 of the Employment Relations Act 2000. Each party recognises the right of the other to communicate with members or employees via normal channels of communication
- at the end of each pay equity meeting, the parties may agree key messages for any internal and external communications
- approaches from the media regarding a pay equity claim may require either party to respond within short timeframes. In this situation the parties will use best endeavours to maintain a 'no surprises' approach.

Information

The parties will supply each other with any relevant information to assess the pay equity claim or to substantiate a position relevant to the bargaining. Parties will maintain the confidentiality of that information and of the negotiations, unless otherwise agreed.

Parties confirm their commitment to contribute claims data and information to the central pay equity claims data and information repository for use by parties to other claims processes for the purposes of expediting future claims processes. Claims data and information may be contributed to the repository during the claims process or at the end of the process.

Dispute resolution

Issues will be resolved, wherever possible, at the lowest possible level to where they arise. Either party can notify the other and bring in senior staff if it considers this will assist the group's progress.

In the event of a disagreement, the parties acknowledge that dispute resolution processes are available, including mediation through the Employment Mediation Services of the Ministry of Business, Innovation and Employment, or a mediator agreed by the parties. If mediation is unsuccessful, either party may access dispute resolution through the Employment Relations Authority.

Authority

The [name of employer] team has the authority to enter a proposed settlement agreement subject to approval by the Chief Executive.

The union/representative team has the authority to enter into a proposed settlement agreement, subject to endorsement by [insert relevant union/occupational group/description of work] according to their endorsement/ratification process in accordance with section 13ZF of the Act.

Union process for proposed settlement employees to vote

The process used by the [insert union name] to obtain a mandate from proposed settlement employees (union and non-union employees covered by the union claim) will be in accordance with section 13ZF of the Act.

Bargaining teams

Name	Position

Parties commit to maintaining the consistency of membership of their bargaining teams as much as is practicable, to support an effective and efficient bargaining process. Where a team must change their membership, they will notify the other bargaining team as soon as reasonably possible.

Other logistical arrangements

[This section is optional so please delete if not required. Parties may wish to agree and record responsibility for arrangements and costs associated with travel, accommodation, and meals]

Signatories

Claimant/union name

Employer name

Claimant/union signature

Employer signature

Date

Date