

Principles of pay equity and how they relate to the pay equity process

Joint Working Group on Pay Equity Principles (2015 – 2016)

In 2015 following the Court of Appeal decision in *Terranova v Service and Food Workers Union and Bartlett*¹, the Government established the Joint Working Group on Pay Equity Principles (JWG). This decision by the Court of Appeal held that the Equal Pay Act 1972 required equal pay for work of equal value (pay equity), not simply the same pay for the same work. The Government tasked the JWG with recommending universally applicable pay equity principles for consideration by Government. The JWG comprised government, employer and union representatives.

The JWG reported to Government in May 2016 and recommended a set of principles for raising and resolving pay equity claims². The JWG also recommended the process for addressing pay equity be through bargaining based on the existing employment relations framework rather than relying solely on the Courts to make pay equity decisions.

In the meantime, a number of unions had filed pay equity claims against State sector employers, and some unions had raised pay equity claims in collective bargaining.

In November 2016, the Government accepted the recommendations of the JWG. The Government also agreed to apply the JWG Pay Equity Principles (the Principles) to current claims in the State sector in advance of any new legislation being enacted.

Pay equity claims in the State sector (2017)

In early 2017, the State Services Commission (SSC) and the New Zealand Council of Trade Unions (CTU) entered into discussions on how best to apply the Principles to identified pay equity claims in the State sector. SSC and the CTU agreed to jointly overview current and any new pay equity claims in the State sector and established a Terms of Reference (ToR)³ to guide agencies and unions to progress identified pay equity claims.

The SSC and CTU acknowledged that the application of the Principles to some State sector claims would enable the opportunity to capture learnings that can help to guide the development of new legislation and practice in the wider economy.

The early application of the Principles to State sector claims has shown that while the Principles provide a useful framework for addressing pay equity claims there are questions as to how the Principles should be interpreted. It was also identified that there is a need for tools to assist the parties to work through a pay equity analysis (e.g. assessing the work of the claimant and comparator groups).

To support the parties applying the Principles, the SSC have developed a set of tools and resources that have been tested with some of the parties to pay equity claims in the State Sector. The aim is to provide practical guidance and tools to assist the parties to apply the Principles and to negotiate pay equity claims

¹ *Terranova Homes & Care Ltd v Service and Food Workers Union Nga Ringa Tota Inc* [2014] NZCA 516 (*Terranova*)

² For the JWG letter and principles refer Component: *Context for Pay Equity in NZ*

³ For SSC / CTU Terms of Reference refer Component: *Context for Pay Equity in NZ*

Reconvened Joint Working Group (2017 – 2018)

Following the change of government in late 2017, the Joint Working Group was reconvened and reconfirmed the Principles recommended by the JWG and proposed changes to Principle 2 to clarify and simplify the process for initiating a pay equity claim⁴. The reconvened JWG also recommended that the Equal Pay Act 1972 be amended as the legislative vehicle to support the Principles.

In March 2018, the Government indicated that the recommendations would be considered by Cabinet and expected to introduce legislation to enact the Principles.

Pay Equity Principles⁵

The Principles developed by the Joint Working Group cover the process from raising a pay equity claim to achieving a pay equity settlement and are set out below.

RAISING A CLAIM	
Principle 1	Any employee or group of employees can make a claim
Principle 2	The process to raise a claim as a pay equity claim should be simple and accessible to all parties.
	A. To determine whether to proceed with the claim as a pay equity claim the work must be predominantly performed by women.
	In addition it should be arguable that: B. The work is currently or has been historically undervalued due to, for example: i. Any relevant origins and history of the work and the wage setting for it; ii. Any social, cultural or historical factors which may have led to undervaluing or devaluing of the work and the remuneration paid for it; iii. There is or has been some characterisation of the work as “women’s work”; iv. Any social, cultural or historical phenomena whereby women are considered to have “natural” or “inherent” qualities not required to be accounted for in wages paid;
	C. Consideration may also be given to whether gender-based systemic undervaluation has affected the remuneration for the work due to: i. Features of the market, industry or sector or occupation which may have resulted in continued undervaluation of the work, including but not limited to: a. a dominant source of funding across the market, industry or sector; b. the lack of effective bargaining; ii. The failure by the parties to properly assess or consider the remuneration that should be paid to properly account for the nature of the work, the levels or responsibility associated with the work, the conditions under which the work is performed, and the degree of effort required to perform the work. iii. Areas where remuneration for this work may have been affected by any occupational segregation and/or any occupational segmentation. iv. Any other relevant features.
	D. Agreeing to proceed with a pay equity claim does not in and of itself predetermine a pay equity outcome.

⁴ For the Reconvened JWG letter and recommendations refer Component: *Context for Pay Equity in NZ*

⁵ The decision was taken to incorporate the changes to Principle 2 proposed by the Reconvened Joint Working Group for the purposes of this set of Pay Equity Tools and Resources.

ASSESSING THE CLAIM	
Principle 3	A thorough assessment of the skills, responsibilities, conditions of work and degrees of effort of the work done by the women must be undertaken.
Principle 4	The assessment must be objective and free of assumptions based on gender
Principle 5	Current views, conclusions or assessments are not to be assumed to be free of assumptions based on gender.
Principle 6	Any assessment must fully recognise the importance of skills, responsibilities, effort and conditions that are commonly overlooked or undervalued in female dominated work such as social and communication skills, responsibility for the wellbeing of others, emotional effort, cultural knowledge and sensitivity.
Principle 7	To establish equal pay, there should be an examination of <ul style="list-style-type: none"> i. the work being performed and the remuneration paid to those performing the work; and ii. the work performed by, and remuneration paid to, appropriate comparators
Principle 8	An examination of the work being performed and that of appropriate comparators requires the identification and examination of <ul style="list-style-type: none"> • The skills required • The responsibilities imposed by the work • The conditions of work • The degree of effort in performing the work • The experience of employees • Any other relevant work features
Principle 9	An examination of the work and remuneration of appropriate comparators may include: <ul style="list-style-type: none"> i. male comparators performing work which is the same as or similar to the work at issue in circumstances in which the male comparators' work is not predominantly performed by females; and/or ii. male comparators who perform different work all of which, or aspects of which, involve skills and/or responsibilities and/or conditions and/or degrees of effort which are the same or substantially similar to the work being examined; and iii. any other useful and relevant comparators
Principle 10	The work may have been historically undervalued because of: <ul style="list-style-type: none"> i. any relevant origins and history of the work and the wage setting for it; ii. any social, cultural or historical factors which may have led to undervaluing or devaluing of the work and the remuneration paid for it; iii. there is or has been some characterisation or labelling of the work as "women's work"; iv. any social, cultural or historical phenomena whereby women are considered to have "natural" or "inherent" qualities not required to be accounted for in wages paid
Principle 11	A male whose remuneration is itself distorted by systemic undervaluation of "women's work" is not an appropriate comparator
SETTLING A CLAIM	
Principle 12	Equal pay is remuneration (including but not limited to time wages, overtime payments and allowances) which has no element of gender-based differentiation
Principle 13	Equal pay must be free from any systemic undervaluation, that is, undervaluation derived from the effects of current, historical or structural gender-based differentiation
Principle 14	In establishing equal pay, other conditions of employment cannot be reduced
Principle 15	The process of establishing equal pay should be orderly, efficient, kept within reasonable bounds and not needlessly prolonged
Principle 16	Any equal pay established must be reviewed and kept current