



Pay Equity in the State Sector: Tools and Resources

# Pay Equity in New Zealand Context and Principles



**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. It is recommended that the parties seek their own legal advice if required.

Email [pay.equity@publicservice.govt.nz](mailto:pay.equity@publicservice.govt.nz) if you would like a Word version of this document.

# Purpose

This guide sets out the history to New Zealand’s approach to pay equity, including the development of the [Pay Equity Principles](#) (the Principles) and the Te Kawa Mataaho Public Service Commission (the Commission) tools and resources. This guide also outlines the relationship of this work to the wider strategy for addressing the Gender Pay Gap (GPG).

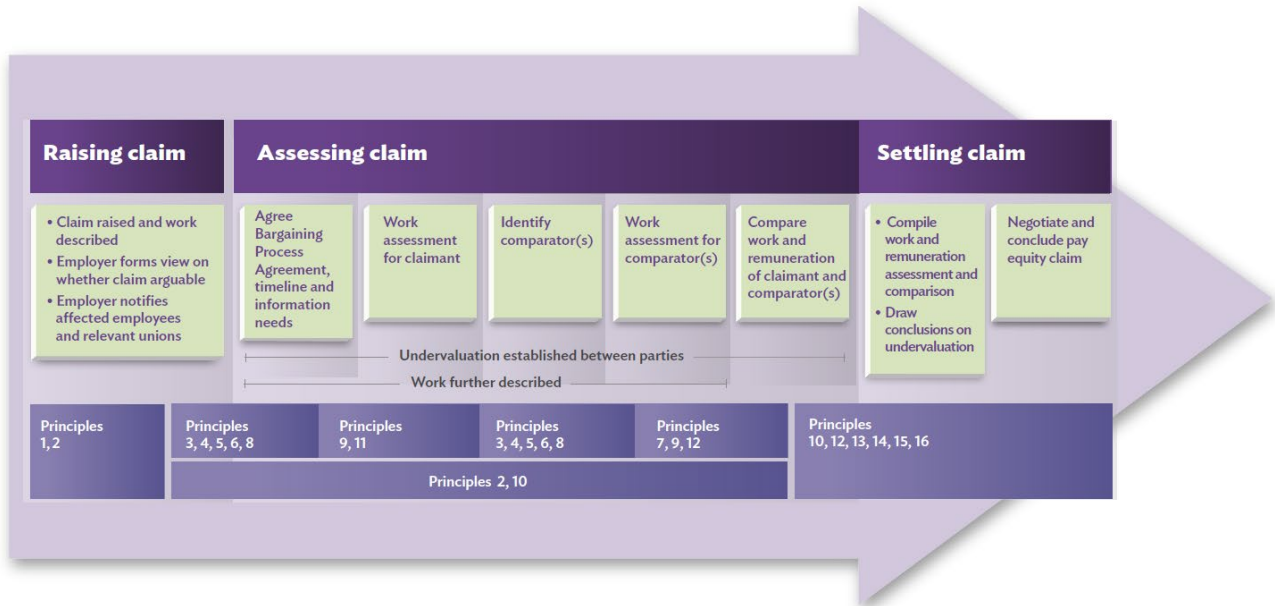
## Structure of tools and resources

This guide is a part of a suite of tools and resources developed by Te Kawa Mataaho Public Service Commission (the Commission) with input from, and in consultation with, State sector agencies and the New Zealand Council of Trade Unions Te Kauae Kaimahi.

The purpose of the tools and resources is to enable the parties to pay equity claims in the State sector to progress claims consistently with the [Equal Pay Act 1972](#) (the Act) which is informed by the 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 below was developed to demonstrate the steps involved when working through the pay equity process and the relevant Principles to each step in the process<sup>1</sup>. This is the version referencing the Principles that were used prior to the Act coming into force and is included in this guide to help outline the history of the Principles. The arrow diagram used in the other Commission tools and resources does not include reference to the Principles.



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.

<sup>1</sup> The table with the full version of the Pay Equity Principles is on page 6.

## Pay equity

Pay equity is about women and men receiving the same pay for doing jobs that are different, but of equal value (that is, jobs that require similar degrees of skills, responsibility and effort).

## History of pay equity in New Zealand

### Kristine Bartlett (2012 – 2015)

Kristine Bartlett and her union, the Service and Food Workers Union (now E tū), filed a claim against the TerraNova rest home company in the Employment Relations Authority in 2012. The case was appealed by TerraNova, which culminated in the Court of Appeal's judgment in 2015 which 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.<sup>2</sup>

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

Following the Court of Appeal decision above, the Government established the Joint Working Group on Pay Equity Principles (JWG) and tasked the JWG with recommending principles that provide practical guidance to employees, unions and employers in implementing pay equity. The JWG comprised government, employer and union representatives from the private and public sectors.

The JWG reported to Government in May 2016 and recommended a set of principles for raising and resolving pay equity claims. 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 and agreed to update the Equal Pay Act 1972 to implement the Principles.

### Pay equity claims in the State sector (2017)

In early 2017, the then State Services Commission (now Te Kawa Mataaho Public Service Commission (the Commission)) and the New Zealand Council of Trade Unions Te Kauae Kaimahi (NZCTU) agreed, through a Terms of Reference, to apply the Principles to claims in the State sector in advance of legislation to implement the Principles.

The Commission and the NZCTU acknowledged that the early application of the Principles to State sector claims would enable the opportunity to capture lessons learned to inform the development of the legislation. The early application of the Principles to State sector claims highlighted the need for tools and guidance to assist the parties to work through a pay equity claim process (e.g. assessing the work of the claimant and comparator groups).

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<sup>2</sup> TerraNova Homes & Care Ltd v Service and Food Workers Union Nga Ringa Tota Inc [2014] NZCA 516 (TerraNova).

## Reconvened Joint Working Group (2017 – 2018)

Following the change of government in late 2017, the Joint Working Group was reconvened and reconfirmed the Principles they had recommended and proposed changes to Principle 2 to clarify and simplify the process for initiating a pay equity claim. The Reconvened JWG (RJWG) also recommended that the Equal Pay Act 1972 be amended as the legislative vehicle to support the Principles. Cabinet agreed the recommendations in late 2017. The Principles are provided in full on page six.

## Equal Pay Act 1972 (as amended 2020)

The Employment (Pay Equity and Equal Pay) Bill was introduced and withdrawn in 2017. The Equal Pay Amendment Bill was introduced in September 2018 on Suffrage Day, passed in late July 2020, Royal Assent was 6 August, and came into force on 6 November 2020. The purpose of the Act is to improve the process for employees and unions to raise, progress and resolve pay equity claims, aligned with New Zealand's existing bargaining framework. This Act seeks to make it easier to raise pay equity claims, and encourages collaboration and evidence-based decision making to address pay inequity, rather than relying on the courts.

To support parties to apply the Act, the Commission has 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 progress claims efficiently and effectively and to negotiate settlements that will achieve and maintain pay equity.

# Pay Equity Principles

<b>Raising a claim</b>	
<b>Principle 1</b>	Any employee or group of employees can make a claim
<b>Principle 2</b>	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: <ul style="list-style-type: none"> <li>i Any relevant origins and history of the work and the wage setting for it</li> <li>ii Any social, cultural or historical factors which may have led to undervaluing or devaluing of the work and the remuneration paid for it</li> <li>iii There is or has been some characterisation of the work as “women’s work”</li> <li>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</li> </ul>
	C. Consideration may also be given to whether gender-based systemic undervaluation has affected the remuneration for the work due to: <ul style="list-style-type: none"> <li>i Features of the market, industry or sector or occupation which may have resulted in continued under-valuation of the work, including but not limited to:               <ul style="list-style-type: none"> <li>a. a dominant source of funding across the market, industry or sector</li> <li>b. the lack of effective bargaining</li> </ul> </li> <li>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</li> <li>iii Areas where remuneration for this work may have been affected by any occupational segregation and/or any occupational segmentation</li> <li>iv Any other relevant features</li> </ul>
	D. Agreeing to proceed with a pay equity claim does not in and of itself predetermine a pay equity outcome
<b>Assessing the claim</b>	
<b>Principle 3</b>	A thorough assessment of the skills, responsibilities, conditions of work and degrees of effort of the work done by the women must be undertaken
<b>Principle 4</b>	The assessment must be objective and free of assumptions based on gender
<b>Principle 5</b>	Current views, conclusions or assessments are not to be assumed to be free of assumptions based on gender
<b>Principle 6</b>	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
<b>Principle 7</b>	To establish equal pay, there should be an examination of <ul style="list-style-type: none"> <li>i the work being performed, and the remuneration paid to those performing the work; and</li> <li>ii the work performed by, and remuneration paid to, appropriate comparators</li> </ul>

<b>Principle 8</b>	An examination of the work being performed and that of appropriate comparators requires the identification and examination of: <ul style="list-style-type: none"> <li>• The skills required</li> <li>• The responsibilities imposed by the work</li> <li>• The conditions of work</li> <li>• The degree of effort in performing the work</li> <li>• The experience of employees</li> <li>• Any other relevant work features</li> </ul>
<b>Principle 9</b>	An examination of the work and remuneration of appropriate comparators may include: <ol style="list-style-type: none"> <li>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</li> <li>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</li> <li>any other useful and relevant comparators</li> </ol>
<b>Principle 10</b>	The work may have been historically undervalued because of: <ol style="list-style-type: none"> <li>any relevant origins and history of the work and the wage setting for it</li> <li>any social, cultural or historical factors which may have led to undervaluing or devaluing of the work and the remuneration paid for it</li> <li>there is or has been some characterisation or labelling of the work as "women's work"</li> <li>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</li> </ol>
<b>Principle 11</b>	A male whose remuneration is itself distorted by systemic undervaluation of "women's work" is not an appropriate comparator
<b>Settling a claim</b>	
<b>Principle 12</b>	Equal pay is remuneration (including but not limited to time wages, overtime payments and allowances) which has no element of gender-based differentiation
<b>Principle 13</b>	Equal pay must be free from any systemic undervaluation, that is, undervaluation derived from the effects of current, historical or structural gender-based differentiation
<b>Principle 14</b>	In establishing equal pay, other conditions of employment cannot be reduced
<b>Principle 15</b>	The process of establishing equal pay should be orderly, efficient, kept within reasonable bounds and not needlessly prolonged
<b>Principle 16</b>	Any equal pay established must be reviewed and kept current



# Gender Pay Gap

In October 2015, the Public Service Association (PSA) raised a claim under the Employment Relations Act 2000 against the then State Services Commissioner in the Employment Court. The claim sought a statement of general principles for inclusion in collective agreements in the Public Service, in order to implement the equal pay and pay equity provisions of the Act. The claim was put on hold while the JWG on Pay Equity developed principles for dealing with pay equity claims under the Act.

Following the success of the tripartite process to agree the Pay Equity Principles the Commission, the NZCTU and the PSA agreed to establish a working group of union and State sector agency representatives to address the part of the PSA claim that dealt with broader gender pay and inequality issues, in preference to addressing this issue through the courts.

The Gender Pay Principles (GPP) Working Group began meeting in 2017 with the purpose of establishing a set of principles to be used by State sector agencies to end workplace inequalities and address issues that contribute to gender pay gaps in the State sector.

The GPP Working Group's recommended Principles were adopted in mid-2018, they are:

1. freedom from bias and discrimination
2. transparency and accessibility
3. relationship between paid and unpaid work
4. sustainability
5. participation and engagement.

In late 2017, the Government commissioned advice from the Ministry for Women and the Commission on how to substantially decrease the Public Service gender pay gap within the 2017-20 Parliamentary term. This advice resulted in the 2018 launch of the [Public Service Gender Pay Gap Action Plan](#) (GPG Action Plan), endorsed by Government, Public Service Chief Executives and the PSA.

The Commission/NZCTU Terms of Reference (for identified pay equity claims in the State sector) distinguish pay equity claims-based processes from initiatives to address the gender pay gap, such as the GPPs and the GPG Action Plan.

Although handled through separate processes and governed by different principles, pay equity and the gender pay gap both sit within the wider context of equal pay.

In the longer term, addressing all the sources of inequality is important for ensuring that achievements in pay equity are sustainable and are not eroded over time.