Pay Equity in the State Sector: Tools and Resources

Pay Equity Principles | Applying the Principles

These tools and resources are based on the Bill as reported back and will need to be updated if any changes are made to the Bill in future.

These tools and resources do not constitute legal advice and it is recommended that parties seek their own legal advice if required.

Structure of tools and resources

The structure of the tools and resources is set out in the pay equity arrow diagram below to help users to navigate and find the components they need.

The Pay Equity Principles (the Principles) are the foundation for the process of pay equity bargaining. The diagram below shows a process flow from raising a claim to pay equity negotiations/settlement. This diagram is used in the set of pay equity tools and resources to indicate what part of the process is covered by each component.

Pay equity principles process

![Pay equity principles diagram]
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### Pay Equity Principles

#### Background

For background on the Pay Equity Principles recommended by the (Reconvened) Joint Working Group (RJWG) on Pay Equity Principles (2015 – 2016) and pay equity claims raised in the State sector since 2017 refer to the Pay Equity in New Zealand Context component of the tools and resources.

#### Pay Equity Principles

The Principles developed by the RJWG cover the process from raising a claim to concluding pay equity negotiations. The Principles are set out in the table below.

| 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
### 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:  
  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:  
  • 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:  
  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:  
  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 |
State Services Commission/Council of Trade Unions

Terms of Reference

Pay equity in New Zealand is based within the existing employment relations framework. The SSC/CTU Terms of Reference set out key commitments. The primary commitment is that parties involved in pay equity bargaining will commit to addressing pay equity claims in good faith in accordance with the spirit and intent of the Employment Relations Act 2000.

The aim is for a constructive, efficient and effective process. The SSC/CTU Terms of Reference contain a collective commitment to the following general guidelines to underpin the negotiation process for pay equity claims, as listed below:

- Parties agree to use the methodology and work through the process set out in the Principles to address pay equity claims.
- Parties support the spirit and intent of the objectives of the Employment Relations Act 2000 (ERA) and commit to addressing pay equity claims in good faith.
- Parties commit to working through the Principles using a problem solving approach and may agree to undertake training as a group to facilitate this.
- Parties commit to a constructive, efficient and effective process and will meet as agreed for this purpose and seek a timely resolution.
- Should the parties agree, any Bargaining Process Agreement relating to a pay equity claim should reflect and be consistent with this Terms of Reference.
- Parties agree that settlement of a collective agreement does not settle or extinguish an unresolved pay equity claim and failure to settle a pay equity claim is not justification for not concluding collective bargaining.
- Parties will work together constructively to demonstrate the usefulness of the Principles and establish a robust set of practices for other State Sector parties to use.

The SSC tools and resources are vehicles to apply the Principles in a gender-neutral manner and have been developed under the auspices of the SSC/CTU Terms of Reference. The 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.

Setting up the joint process

Key Point
As part of setting up the framework that is needed, it is recommended that the parties develop and sign their own Terms of Reference at the start of the pay equity process. This should include defining the scope of work, project plan and method of work, commitments to engagement / problem-solving and communication/information-sharing processes. A template Terms of Reference has been provided that was developed from existing practice by parties involved in pay equity processes.

The Terms of Reference provide the framework to facilitate the dialogue needed between the parties to jointly work through the pay equity tools and resources and envisage a consistent framework for engagement between the parties to deliver on the Principles.

The following principles process diagram was developed to provide a guide to the parties showing the steps involved and the Principles that are at play when working through the process.

The intention was not to provide a mandatory order for the process where one step must be completed before another is started. It is, in the experience of the parties, possible to be flexible in terms of the process and carry out steps in parallel or in a different order. The main underpinning is for the parties to be working together through a process of engagement.

The principles process diagram will be used in the components of the set of pay equity tools and resources to show what part of the process each component addresses.

1 Extract From SSC/CTU Terms of Reference.
2 The Ministry of Business, Innovation and Employment will be responsible for providing support for pay equity processes in the wider economy as part of their role in relation to the new pay equity legislation.