

Hon Jan Tinetti
Minister for Women

Cabinet Legislation Committee – proactive release

**Government Response to the Report of the Education and
Workforce Committee: Briefing into pay transparency**

Date of release: 10 August 2022

Cabinet Paper - details

Date: 23 June 2022

Title: Government Response to the Report of the Education and
Workforce Committee: Briefing into pay transparency

Author: Minister for Women and Minister for Workplace Relations and Safety

In Confidence

Office of the Minister for Women
Office of the Minister for Workplace Relations and Safety
Chair, Cabinet Legislation Committee

Government Response to the Report of the Education and Workforce Committee: Briefing into pay transparency

Proposal

- 1 This paper seeks approval of the Government's response (the Response) to the Report of the Education and Workforce Committee: Briefing into pay transparency (the Report).
- 2 The Government will use the recommendations of the Select Committee to inform the development of a work programme to improve pay transparency in New Zealand.

Relation to Government priorities

- 3 Pay transparency would support the workplace relations and safety manifesto commitment to make it easier for women to gain pay equity within their organisations or across their industries, by ensuring there are better records of pay equity across Aotearoa New Zealand, including by ethnicity and age as well as gender.
- 4 This would build on the work the Government has already done to amend the Equal Pay Act 1972 to include a pay equity process where employees and unions can raise pay equity claims directly with their employer.
- 5 Pay transparency has also been identified as an action in Te Mahere Whai Mahi Wāhine, the Women's Employment Action Plan, which seeks to improve labour market outcomes for women, and the Government intends to progress this action in line with the recommendations in this paper and the Response.

Background

A lack of pay transparency is a significant issue in Aotearoa New Zealand

- 6 Pay transparency generally refers to disclosure of remuneration at a systemic, organisation-wide level, with disclosure generally unable to be linked to a particular employee's pay.
- 7 Pay transparency forms part of a range of potential policy options to combat the gender pay gap and issues of equity in the workplace. The gender pay gap places women at an economic disadvantage and contributes to reduced

lifetime earnings for women.¹ For example, women tend to have less net wealth at retirement than men. This is compounded by additional barriers faced by women in the labour market, such as an increased likelihood of being in part-time or casual work and undertaking a disproportionate share of caring and family responsibilities, which reduce the ability for women to be resilient to labour market shocks. Women, especially wāhine Māori and Pacific women, are historically more affected by economic shocks, and take longer to recover in terms of earnings and rates of employment.

- 8 80 percent of the gender pay gap is driven by factors that cannot be explained by quantitative differences in education, occupation, or employment conditions (e.g. working part-time.) These factors include conscious and unconscious biases, and differences in choices and behaviours between men and women.²
- 9 There are a variety of tools that can help to reduce gender and ethnic pay gaps. One of those tools is having more transparent access to pay information. Having more transparent access to pay information could help:
 - a. people to make better decisions about, for example, whether to ask for a raise, seek an opportunity elsewhere, or remain in their job
 - b. ensure that people are matched to the available jobs that best suit their skills and experience
 - c. tackle information asymmetries that disproportionately disadvantage people who face negative bias in the labour market
 - d. surface existing inequalities that commonly go unnoticed by both employees and employers
 - e. incentivise employers to address current inequities and make the changes to their policies and practices needed to keep inequities from reappearing
 - f. employees to better negotiate their pay with their employers
 - g. employers to better understand pay across the labour market, noting there are tools and methodologies available for employers to assess and set rates.
- 10 A lack of pay transparency can mask pay disparities that may be discriminatory, including gender-based discrimination. It may mean there is a lack of incentive for employers to proactively investigate whether any gender pay issues exist and to address them. It can also mean employers lack information to identify equal pay or pay equity issues, affecting their ability to make a claim – particularly important in New Zealand’s claims-based system.

¹ Manatū Wāhine estimates that, on average, women earn \$888,108 less over their lifetimes than men.

² Pacheco, G; Li, C; and Cochrane, B (2017) Empirical Evidence of the Gender Pay Gap in New Zealand, Ministry for Women.

There is gathering momentum behind improving pay transparency

- 11 The Human Rights Commission launched a petition in 2021 calling for a pay transparency regime to be adopted in New Zealand, including legislation and an independent pay transparency agency. The petition garnered over 4,000 signatures and was presented to Parliament on 15 February 2022 by the Equal Employment Opportunities Commissioner. The petition was accepted by us on behalf of the Government.
- 12 Mind the Gap has also launched a voluntary Pay Gap Registry which encourages private sector organisations to report on their pay gaps, including gender and ethnic pay gaps for Māori and Pacific employees. The registry features employers by name, including the name of the Board Chair and the CEO. Mind the Gap is also calling on the Government to introduce pay transparency legislation.
- 13 The National Advisory Council on the Employment of Women (NACEW) has raised pay transparency as an issue with the Minister for Women. NACEW is calling on the Government to progress pay transparency work including mandatory pay gap reporting and is supportive of calls by Mind the Gap to introduce legislation on pay transparency.

The Education and Workforce Committee's findings

- 14 The Education and Workforce Committee (the Committee) set up an inquiry into pay transparency in September 2021, where they considered public submissions and looked at pay transparency regimes in different countries.
- 15 Following the inquiry, the Report was published which recommends “by majority that the Government develop pay transparency measures in line with this report.”
- 16 The Education and Workforce Committee heard submissions from Ministry for Women, Chartered Accountants Australia and New Zealand, Public Service Association (PSA), BusinessNZ, YWCA, New Zealand Council of Trade Unions (NZCTU), the Human Rights Commission, and academic scholars. Some submitters preferred a mandatory approach (e.g. PSA) while others preferred a voluntary approach (e.g. BusinessNZ).
- 17 The Education and Workforce Committee made fourteen recommendations about what the underlying policy work should consider:
 - a. the regime should seek to achieve pay equity by increasing lower wages. Reducing some people’s wages in order to achieve equity should be prohibited
 - b. pay equity is more likely to be achieved with a mandatory regime than an optional regime
 - c. pay equity is more likely to be achieved with a comprehensive pay transparency regime that requires action to address inequity, as opposed to a reporting only model

- d. we have heard strong evidence on the persistent pay gap for Māori and Pasifika, as well as evidence on persistent pay gaps for other ethnicities. We are of the view these pay gaps should form part of any reporting measures. We understand this would require working through the policy details with the relevant communities but should be phased in over time
- e. most overseas pay transparency regimes do not apply to SMEs with fewer than 50 employees. The most useful data is captured from entities with more than 50 employees
- f. the Government should investigate the best way to define which entities have to comply with the regime. Some possibilities include number of employees and revenue
- g. the Government should provide adequate resources to assist and provide enforcement as appropriate in relation to any new pay transparency measures
- h. the Government should consider whether it should be compulsory to publish starting salaries when advertising a job. This would help address the information imbalance between employer and potential employee
- i. the Government should continue with its work in the public sector to ensure that it continues to lead in this area by reducing and publishing pay gaps. It should introduce further transparency measures as appropriate to close the public sector pay gaps
- j. consideration should be given to whether there should be restrictions on pay secrecy in employment contracts
- k. consideration should be given to whether pay transparency reporting could be included in collective agreements or bargaining for collective agreements
- l. the Government should consider whether Fair Pay Agreement legislation could provide for greater pay transparency
- m. the Government should consider whether the Privacy Commission should be involved in the development of the regime. The Commission could address any potential privacy concerns
- n. disabled people must be consulted in order to develop a tailored approach to eliminating pay and employment inequities.

Government response to the report of the Education and Workforce Committee

18 We recommend that the Government:

- a. agree to investigate whether a full pay transparency regime in New Zealand would be beneficial, as part of a range of other initiatives, to reducing the gender pay gap

- b. accept in principle to consider the recommendation of the Select Committee to incorporate the policy considerations a to n outlined above at paragraph 17 into the work programme on pay transparency.

19 In the Government's response to the report of the Select Committee, we have outlined that Manatū Wāhine Ministry for Women and the Ministry of Business, Innovation and Employment (MBIE) have begun planning a work programme to improve pay transparency in New Zealand. The Government is likely to consider a range of mechanisms when deciding how to progress work on pay transparency which could include:

- a. information and education initiatives, which could raise awareness of existing tools to support good practice on pay transparency and potentially (subject to funding) include the development of new resources, co-designed with relevant stakeholders;
- b. employing the Integrated Data Infrastructure to enable data insights at an aggregate level to assist workplaces in understanding pay gaps in their sector; and
- c. the formation of an Advisory Group, potentially involving representatives from the private sector and unions, to test ideas and proposals for both an information and education campaign and the potential for a legislative response. In developing the advisory group, the Government would consider models such as the Modern Slavery Leadership Advisory Group, which has proven effective in building broad-based consensus.

20 Any pay transparency measures will need to be well-designed to avoid any potential unintended consequences, such as employers attempting to game the system by outsourcing typically female junior roles or excluding low-earning women from pay gap calculations.

21 An intersectional approach should also be considered when developing pay transparency measures to account for the specific experiences of, for example, Māori, Pacific, and ethnically diverse communities, and disabled people in the workforce.

22 The Government intends to look to overseas pay transparency regimes to inform any information and education approach or policy development. However, as most overseas regimes are relatively new and there is therefore little data on their effectiveness, further research and analysis of existing models and approaches will be required to ensure that the Government improves pay transparency in a way that works for New Zealand.

There are some initiatives already in place or in development that improve pay transparency

23 Pay transparency forms part of a wider range of measures that the Government is already working on to close the gender pay gap, and increase pay equity in New Zealand. There was a change to the Employment Relations Act 2000 in 2018 to require pay to be included in employment agreements.

- 24 Fair Pay Agreements, and the pay rates agreed in them, will be published. The Fair Pay Agreements Bill was introduced into Parliament on 29 March 2022. It has passed its first reading and was referred to the Education and Workforce Select Committee for consideration and public consultation. The Committee will report back to the House in early October 2022 with enactment intended by the end of this year. The Fair Pay Agreement system will create a new bargaining mechanism to set binding minimum terms at the industry or occupation level.
- 25 Te Kawa Mataaho Public Service Commission (PSC) is continuing its work on gender and ethnic pay gaps. PSC publishes and analyses gender and ethnic pay gaps across public sector agencies and gender pay gaps for individual agencies annually; this data is available back to 2001. As well as centralised reporting, guidance is available for the public service on measuring and analysing their own gender and ethnic pay gaps.

There is further work underway to address pay gaps

- 26 Under Kia Toipoto (the new Public Service Pay Gaps Action Plan 2021-24), agencies will begin to publish ethnic pay gaps (beginning in 2022 and developing over the next few years) in addition to gender pay gaps, and Crown entities will begin to publish gender and ethnic pay gaps. Agencies and Crown Entities are also being required to publish the action they will be taking to close the pay gap on an annual basis.
- 27 Te Mahere Whai Mahi Wāhine, the Women's Employment Action Plan, sets out a range of actions designed to target the gender (and ethnic-gender) pay gap, including supporting pay equity in the public, private, and funded sectors, implementing fair pay agreements, working with PSC to eliminate gender and ethnic pay gaps in the public sector, and improving pay transparency.
- 28 Broader initiatives to improve labour market outcomes include increases to the minimum wage, reforms to vocation education and training, investment through the Provincial Growth Fund, and deepening early-stage capital markets.

Timing of the Government response

- 29 The Government response will be presented to the House on 28 June 2022.

Consultation

- 30 The following agencies were consulted during the development of the response: the Public Service Commission, the Treasury, the Department of the Prime Minister and Cabinet, the Ministry of Justice, Ministry for Pacific Peoples, Ministry for Ethnic Communities, Te Puni Kōkiri, Statistics New Zealand, and the Inland Revenue Department.

Financial implications

- 31 There will be no financial implications in relation to the Government's proposed response. There may be financial implications in the future,

depending on the proposals contained in the Government's work programme once it has been confirmed.

Te Tiriti o Waitangi

- 32 The Government recognises our obligations to wāhine Māori under Te Tiriti o Waitangi and our commitment to Te Tiriti o Waitangi principles of active protection, rangatiratanga (self-determination), partnership, and equity (addressing disparities in outcomes for wāhine Māori). The Government will consider an approach that acknowledges the specific experiences of wāhine Māori in the labour market when developing measures to address pay transparency.

Publicity

- 33 I expect that the response will receive some positive feedback. During the Committee's briefing on pay transparency, a number of groups and individuals supported pay transparency. There were also groups and individuals who were in favour of pay transparency only if the approach was voluntary.

Proactive Release

- 34 This paper will be proactively released (subject to redactions in line with the Official Information Act 1982) within 30 business days of decisions being confirmed by Cabinet.

Recommendations

The Minister for Women and the Minister of Workplace Relations and Safety recommend that Cabinet Legislation Committee:

1. note that on 17 March 2022 the Education and Workforce Committee presented its report to the House entitled "Briefing into pay transparency"
2. note that the Education and Workforce Committee recommended that "the Government develop pay transparency measures in line with this report"
3. note the submission of the Minister for Women and the Minister for Workplace Relations and Safety, and in particular, the plan to develop a work programme to improve pay transparency in New Zealand
4. approve the Government response, attached to this submission, to the Report of the Education and Workforce Committee entitled "Briefing into pay transparency" including that the Government will:
 - a. investigate whether a full pay transparency regime in New Zealand would be beneficial, as part of a range of other initiatives, to reducing the gender pay gap
 - b. accept in principle to consider the recommendation of the Select Committee to incorporate the policy considerations a to n outlined above at paragraph 17 into the work programme on pay transparency

5. note that the Government response must be presented to the House by 15 June 2022
6. invite the Minister for Women and the Minister for Workplace Relations and Safety to present the Government response to the House, in accordance with Standing Order 252.

Authorised for lodgement

Hon Jan Tinetti

Minister for Women

Authorised for lodgement

Hon Michael Wood

Minister for Workplace Relations and Safety



Cabinet Legislation Committee

Summary

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Government Response to the Report of the Education and Workforce Committee: Briefing into Pay Transparency

Portfolio Women, Workplace Relations and Safety

Purpose This paper seeks approval of the government response to the report of the Education and Workforce Committee (the Committee) on its “Briefing into pay transparency”.

Previous Decisions None.

Proposal The Committee presented the report on its “Briefing into pay transparency” (the Report) to the House on 17 March 2022. In this report, the Committee recommended that the government develop pay transparency measures in line with the report and made fourteen recommendations about what the underlying policy work should consider (**paragraph 17**).

The government response (**attached**) says that the government will:

- investigate whether a full pay transparency regime in New Zealand would be beneficial, as part of a range of other initiatives, to reducing the gender pay gap;
- accept in principle to consider the recommendation of the Committee to incorporate the policy considerations outlined in its report into the work programme on pay transparency.

Impact Analysis Not required.

Compliance Not required.

Timing Matters The response was due to be presented to the House by 15 June 2022.

Communications None indicated.

Consultation Paper prepared by Ministry for Women and MBIE (Workplace Relations and Safety). The Treasury, MoJ, TPK, DPMC (Prime Minister), IR, StatsNZ, Pacific Peoples, PSC and Ethnic Communities were consulted.

The Minister indicates that LEG Ministers, the Minister for Small Business, and the Minister for Diversity, Inclusion and Ethnic Communities were consulted.

The Minister also indicates that discussion has occurred with the government caucus.

The Minister for Women and the Minister for Workplace Relations and Safety recommend that the Committee:

- 1 note that on 17 March 2022, the Education and Workforce Committee presented its report to the House entitled “Briefing into pay transparency”;
- 2 note that the Education and Workforce Committee recommended that the government develop pay transparency measures in line with its report;
- 3 note the submission of the Minister for Women and the Minister for Workplace Relations and Safety, and in particular, the plan to develop a work programme to improve pay transparency in New Zealand;
- 4 approve the government response, attached to the submission under LEG-22-SUB-0111, to the Report of the Education and Workforce Committee entitled “Briefing into pay transparency” including that the Government will:
 - 4.1 investigate whether a full pay transparency regime in New Zealand would be beneficial, as part of a range of other initiatives, to reducing the gender pay gap;
 - 4.2 accept in principle to consider the recommendation of the Select Committee to incorporate the policy considerations outlined in paragraph 17 of the paper under LEG-22-SUB-0111 into the work programme on pay transparency;
- 5 note that the Government response was due to be presented to the House by 15 June 2022;
- 6 invite the Minister for Women and the Minister for Workplace Relations and Safety to present the government response to the House, in accordance with Standing Order 252.

Rebecca Davies
Committee Secretary

Hard-copy distribution:
Cabinet Legislation Committee
Minister for Women



Cabinet Legislation Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Government Response to the Report of the Education and Workforce Committee: Briefing into Pay Transparency

Portfolios **Women / Workplace Relations and Safety**

On 23 June 2022, the Cabinet Legislation Committee:

- 1 **noted** that on 17 March 2022, the Education and Workforce Committee presented its report to the House entitled “Briefing into pay transparency”;
- 2 **noted** that the Education and Workforce Committee recommended that the government develop pay transparency measures in line with its report;
- 3 **noted** the submission of the Minister for Women and the Minister for Workplace Relations and Safety, and in particular, the plan to develop a work programme to improve pay transparency in New Zealand;
- 4 **approved** the government response, attached to the submission under LEG-22-SUB-0111, to the Report of the Education and Workforce Committee entitled “Briefing into pay transparency” including that the Government will:
 - 4.1 investigate whether a full pay transparency regime in New Zealand would be beneficial, as part of a range of other initiatives, to reducing the gender pay gap;
 - 4.2 accept in principle to consider the recommendation of the Select Committee to incorporate the policy considerations outlined in paragraph 17 of the paper under LEG-22-SUB-0111 into the work programme on pay transparency;
- 5 **noted** that the Government response was due to be presented to the House by 15 June 2022;
- 6 **invited** the Minister for Women and the Minister for Workplace Relations and Safety to present the government response to the House, in accordance with Standing Order 252.

Rebecca Davies
Committee Secretary

Present:

Hon Chris Hipkins (Chair)
Hon Andrew Little
Hon Poto Williams
Hon Michael Wood (Deputy Chair)
Hon Kiri Allan
Hon Dr David Clark
Dr Duncan Webb, MP (Senior Government Whip)

Officials present from:

Office of the Prime Minister
Officials Committee for LEG



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Report of the Cabinet Legislation Committee: Period Ended 24 June 2022

On 27 June 2022, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 24 June 2022:

OUT OF SCOPE

LEG-22-MIN-0111

**Government Response to the Report of the Education
and Workforce Committee: Briefing into Pay
Transparency**

Portfolios: Women / Workplace Relations and Safety

CONFIRMED

OUT OF SCOPE

OUT OF SCOPE

Michael Webster
Secretary of the Cabinet

PROACTIVE RELEASE