



## COVERSHEET

<b>Minister</b>	Hon Andrew Little	<b>Portfolio</b>	Workplace Relations and Safety
<b>Title of Cabinet paper</b>	<b>Equal Pay Amendment Bill: Outstanding Policy Issues</b> <b>Equal Pay Amendment Bill: Approval for Submission of a Supplementary Order Paper</b>	<b>Date to be published</b>	7 September 2020

<b>List of documents that have been proactively released</b>		
<b>Date</b>	<b>Title</b>	<b>Author</b>
17 February 2020	Equal Pay Amendment Bill: Outstanding Policy Issues	Office of the Minister of Workplace Relations and Safety Office of the Minister for Women
17 February 2020	Cabinet Minute – Equal Pay Amendment Bill: Outstanding Policy Issues (CAB-20-MIN-0031.01)	Cabinet Office
21 July 2020	Equal Pay Amendment Bill: Approval for Submission of a Supplementary Order Paper	Office of the Minister of Workplace Relations and Safety Office of the Minister for Women
21 July 2020	Cabinet Legislation Committee Minute – Equal Pay Amendment Bill: Supplementary Order Paper (LEG-20-MIN-0110)	Cabinet Office

### **Information redacted**

**YES**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reasons of:

- confidential advice to Government
- free and frank opinions.



# Cabinet

## Minute of Decision

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### Equal Pay Amendment Bill: Outstanding Policy Issues

**Portfolios**                      **Workplace Relations and Safety / Women**

On 17 February 2020, following reference from the Cabinet Economic Development Committee, Cabinet:

#### **Removal of the requirement to consolidate all pay equity claims raised with a given employer**

- 1        **agreed** to enable unions to raise pay equity claims on behalf of their members employed by a given employer;
- 2        2.1        **noted** that on 23 May 2018, DEV agreed that a single employer may combine multiple claims for the same work into a single pay equity bargaining process and settlement [DEV-18-MIN-0104, paragraph 41];
  - 2.2        **rescinded** the decision referred to in paragraph 2.1 above;
- 3        **agreed** to remove the existing requirement that employers consolidate all pay equity claims for the same or substantially similar work;
- 4        **agreed** to require multiple unions that raise a claim for employees of a given employer that perform the same, or substantially similar work, to consolidate their claims;
- 5        **agreed** to require unions to represent non-union employees for the purposes of pay equity bargaining, unless employees choose to opt out;
- 6        **agreed** to require employers to offer the terms of a union pay equity settlement to other employees who perform the same or substantially similar work;
- 7        **agreed** that employees who have accepted the offer of a pay equity settlement are not able to raise a pay equity claim for the work that is the subject of that settlement;

#### **Consolidation of claims across multiple employers**

- 8        **agreed** that if either unions or employers seek to consolidate pay equity claims across multiple employers, the other party may opt out of multi-employer consolidated bargaining only if they have genuine reasons based on reasonable grounds;
- 9        **noted** that there will be no formal mechanism for employers or employees to request the consolidation of non-union pay equity claims across multiple employers;

- 10 **agreed** that unions have an ability to request consolidation across multiple employers at the point of raising a claim, and in advance of the employer making a decision about whether the claim is arguable;
- 11 **agreed** to specify a maximum extension timeframe of 80 working days for deciding whether a claim is arguable in the context of multi-employer bargaining, and longer if both parties agree;
- 12 **agreed** to provide that unions can be required to provide more specific information about the employees' work that is the subject of a claim raised across multiple employers;
- 13 **agreed** that the default outcome of a multi-employer bargaining scenario will be the settlement of a multi-employer pay equity agreement (with an ability for individual employers to opt out and agree separate settlements, if they have genuine reasons, based on reasonable grounds);

### Other changes

- 14 **agreed** to allow claimants to retain their right to a choice of proceedings until they file an application for a determination to fix terms and conditions with the Authority, or when settlement of the claim is achieved;
- 15 **agreed** to specify a maximum extension timeframe of 20 working days for deciding whether a claim is arguable within an employer;
- 16 **agreed** to specify a maximum extension timeframe of 25 working days for notifying affected employees that a claim has been raised;
- 17 **agreed** to make it mandatory that parties consider section 13C matters (origins of the work, and social, cultural, historical factors etc) at assessment;
- 18 **agreed** to provide that parties must exhaust all other reasonable alternatives within a reasonable period to be able to apply for a determination to fix terms and conditions;
- 19 **agreed** to remove the ability for parties to use an alternative process when assessing the claim;
- 20 **agreed** to lower the threshold of the application of the transitional provisions from a case having been 'determined', to allow those claims which are in the process of being 'heard' by the time of enactment to continue;
- 21 **agreed** that a review process will allow parties to agree the matters in sections 13C (undervaluation factors), 13L (assessment of the work), and 13M (assessment of comparators) that they consider relevant when reviewing the settlement;
- 22 **agreed** that, where there is no applicable collective bargaining round, parties must review the pay equity settlement agreement at least every three years;
- 23 **agreed** to insert a provision allowing parties to challenge pay equity settlement agreements on the basis that the bargaining was unfair, where unfairness is based on section 68 of the Employment Relations Act (which considers undue influence and duress, etc);
- 24 **agreed** to amend the regulation-making power so that it cannot be used to reinsert a hierarchy of comparators;

- 25 **agreed** to allow for the Official Information Act 1982 to apply to pay equity settlement agreements collected by the Ministry of Business, Innovation and Employment;
- 26 **noted** that officials intend to work with Crown Law and the Parliamentary Counsel Office to ensure that certain provisions in the Bill reflect the policy intent, including that the arguable threshold requires only a 'light-touch' assessment;
- 27 **noted** that the wording in section 13L will be amended to remove 'currently' so that parties must determine whether work 'is undervalued', but that this change is not intended to change the current policy intent;

### Financial and general implications

- 28 **noted** that the proposed changes referred to above will have an impact on the Crown as an employer, and that the changes relating to the structure of pay equity bargaining are likely to have financial implications;
- 29 **noted** that:
- 29.1 pay equity claims are proceeding alongside the development of the Bill in accordance with the Pay Equity principles, and that any significant deviation from these principles may affect claims in process;
- 29.2 officials will monitor this and provide advice as needed;

30 Confidential advice to Government

### Legislative implications

- 31 **agreed** that a Supplementary Order Paper be drafted to amend the Bill to give effect to the above policy proposals;
- 32 **invited** the Minister for Workplace Relations and Safety and the Minister for Women to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above policy proposals;
- 33 **authorised** the Minister for Workplace Relations and Safety and the Minister for Women to make decisions, consistent with the above policy proposals, on any issues that arise during the drafting process.

Michael Webster  
Secretary of the Cabinet

*Secretary's Note: This minute replaces DEV-20-MIN-0010. Cabinet agreed to rescind an earlier Cabinet decision (paragraph 2 above), and deleted paragraph 27 from the DEV minute.*

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#### Hard-copy distribution:

Prime Minister  
Deputy Prime Minister  
Minister for Workplace Relations and Safety  
Minister for Women