



COVERSHEET

Ministers	Hon Jan Tinetti Hon Priyanca Radhakrishnan	Portfolios	Women Associate Workplace Relations and Safety
Title of Cabinet paper	Seeking in-principle agreement to the development of pay transparency legislation	Date to be published	16 October 2023

List of documents that have been proactively released

Date	Title	Author
April 2023	Seeking in-principle agreement to the development of pay transparency legislation	Office of the Minister for Women Office of the Associate Minister for Workplace Relations and Safety
5 April 2023	Seeking in-principle agreement to the development of pay transparency legislation SWC-23-MIN-0030.01 Minute	Cabinet Office

Information redacted

YES / NO

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 redacted for the reasons of confidential advice to government.

In Confidence

Office of the Minister for Women

Office of the Associate Minister for Workplace Relations and Safety

Cabinet Social Wellbeing Committee

Seeking in-principle agreement to the development of pay transparency legislation

Proposal

- 1 This paper follows decisions made by Cabinet in June 2022, which agreed in principle to the findings of the Education and Workforce Select Committee's recommendations in its inquiry into Pay Transparency [CAB-22-MIN-0247]. We are now seeking in-principle agreement to the development of pay transparency legislation.¹
- 2 We are proposing that we approach Cabinet policy decisions in two stages:
 - 2.1 The first stage, this paper, seeks in-principle Cabinet decisions on taking a legislative approach to pay transparency.
 - 2.2 The second stage will seek Cabinet decisions on the detailed policy design of the legislation in early 2024, following Ministerial decisions through the remainder of 2023.

Relation to government priorities

- 3 Implementing pay transparency aligns with the Government's Workplace Relations manifesto commitments to:
 - 3.1 Create an inclusive economy where economic growth is shared by all; and
 - 3.2 Make it easier for women to gain pay equity in their organisation or across their industry by ensuring there are better records of pay equity across New Zealand, including by ethnicity and age as well as gender.
- 4 Pay transparency will also align with the Government's Ethnic Community manifesto commitment to promote equal employment opportunities for all, with a view to removing the barriers to employment for people from ethnic communities.²

Executive Summary

- 5 Pay transparency is one of a suite of interventions used internationally to address gender pay gaps because it clearly illustrates to both businesses and employees where gaps exist within an organisation, and enables businesses to take action and employees to better negotiate their pay. The Organization for Economic Cooperation

¹ Available at:

https://www.parliament.nz/resource/en-NZ/SCR_121189/776d9dc8e62d36f94499009f952f4ff296e3a154

² These manifesto commitments can be found here:

https://drive.google.com/file/d/13uhcVm8HUXEoWoPQgkJYjHX_d_Za-O0/view

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and Development (OECD) and the International Labor Organization (ILO) strongly recommend pay transparency as a tool to close gender and ethnic pay gaps.

- 6 Pay transparency is an umbrella term that encompasses a spectrum of options to reduce pay gaps. Some progress has been made in Aotearoa New Zealand to address pay inequalities through initiatives such as the Fair Pay Agreements and amendments to the Equal Pay Amendment Act 2020. We need to build on this. The public service gender pay gap has also made progress through actions under Kia Toipoto, falling from 12.2% in 2018 to 7.7% in 2022, its lowest ever. This shows that with concerted effort change is possible.
- 7 The proposed legislation will focus on pay gap reporting. This is the first step in addressing pay transparency in New Zealand. Other options recommended by the Education and Workforce Select Committee, such as pay secrecy legislation, are not within the scope of this Cabinet paper. However, the intention is that a pay transparency system could eventually be expanded to consider other pay transparency measures (e.g. pay bands) and to include other groups who also experience pay gaps and poorer labour market outcomes (for example, disabled people).
- 8 New Zealand's national gender pay gap has been stagnant for well over a decade and is at 9.2 per cent.³ Women, Māori, Pacific peoples, and people from other ethnic communities experience persistently poorer labour market outcomes, reflected by higher rates of unemployment, underutilisation, and underemployment, as well as by persistent pay gaps when compared to Pākehā men.
- 9 Employers and employees in New Zealand generally treat pay as private and confidential information that is not easily accessible within or across employers or employees. This makes it difficult for employees to know how their pay compares to their colleagues, both individually and in aggregate. A lack of transparency about pay can also mask pay disparities, further exacerbating the existing gender and ethnic pay gaps.
- 10 Pay transparency measures could help businesses to identify their pay gaps in ways that are accurate and consistent across their sector, such as helping employers to set fair pay rates that match the market and employees to make informed decisions about where to work and to negotiate fair pay rates with their employers. This could benefit people who have traditionally experienced worse labour market outcomes, including women, Māori, Pacific peoples, and people from other ethnic communities. Focusing on both gender and ethnic pay gaps allows intersectional impacts resulting from bias and discrimination in the labour market to be addressed.
- 11 A pay transparency system needs to be based on principles of fairness (addressing current inequities in labour market outcomes) and practicality (what can be asked of businesses, and when). A good design of a pay transparency system will proactively prevent and address any unintended consequences, such as businesses outsourcing lower-paid jobs to be exempt from reporting.
- 12 In developing this approach, we have considered the pros and cons of options for a pay transparency system, including providing government support to encourage businesses to voluntarily report on pay gaps, introducing pay gap reporting as part of

³ Stats NZ: New Zealand Income Survey 2022

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government procurement requirements, and developing a pay transparency legislative framework.

- 13 We are proposing a legislative approach. This is the best option for making the most enduring change towards reducing pay gaps and improving pay equity, and beginning to address the deeply embedded societal attitudes towards women, Māori, Pacific peoples, and people from other ethnic communities, whose persistent poor labour market outcomes partly due to bias and discrimination in hiring practices and pay decisions.
- 14 More specifically, a legislative approach for pay transparency is more likely to have a wider scope of business participation and be most effective in driving behaviour change because the requirement will be mandatory. It would impose a legal obligation on employers to report pay gaps, and ensuring employers are consistent in the way that pay gaps are measured. This would see widespread business sector pay gap reporting.
- 15 Comprehensive policy work for each of the features of a pay transparency system will be completed by November 2023, including identifying the size of business and measurement, compliance and reporting requirements. The cost and complexity of reporting measures will also be considered, to ensure a fair balance is struck between effective reporting and action on pay gaps, and reasonable cost to businesses.
- 16 The National Advisory Council on the Employment of Women (NACEW), in its role of advisory group on pay transparency, is leading sector engagement with businesses and key stakeholder groups and its advice will be incorporated in the pay transparency system design.

Background

- 17 In March 2022, the Education and Workforce Committee released a briefing (the Select Committee Report)⁴ recommending (by majority) that the Government develop pay transparency measures in line with the recommended policy considerations in the report.
- 18 The Cabinet Social Wellbeing Committee [SWC-22-MIN-0174] agreed on 19 October 2022 that policy development of a pay transparency regime should commence, and that Ministers would submit a paper to Cabinet Social Wellbeing Committee to seek policy decisions.
- 19 The policy decisions from Cabinet are being sought in two stages:
 - 19.1 The first stage, this paper, seeks an in-principle decision from Cabinet on taking a legislative approach to pay transparency.
 - 19.2 The second stage will seek Cabinet decisions on the detailed policy design of the legislation in early 2024.

⁴ Available at:

https://www.parliament.nz/resource/en-NZ/SCR_121189/776d9dc8e62d36f94499009f952f4ff296e3a154

The importance of a pay transparency system in Aotearoa New Zealand

- 20 There are compelling reasons to implement a pay transparency system in Aotearoa New Zealand.

Women, Māori, Pacific and ethnic people continue to experience poor labour market outcomes

- 21 Women (in particular, wāhine Māori and Pacific, ethnic and disabled women), Māori, Pacific people, and people from other ethnic communities continue to experience persistently poorer labour market outcomes, reflected by higher rates of unemployment, underutilisation and underemployment, as well as by persistent pay gaps when compared to Pākehā men. There are fewer opportunities for career progression or development and are more likely to experience harassment or discrimination in the workplace.
- 22 The Ministry for Women estimates that women earn \$888,108 less on average over their lifetimes, compared to men. Throughout the course of their working life, Pacific men earn \$385,959 less than European men. For Māori and Asian men, the differences are \$174,511 and \$263,481 when compared with European men, respectively⁵. Lower lifetime earnings in turn have impacts on women's health, wellbeing, economic independence, and ability to save for retirement.

Aotearoa has persistent gender, Māori and ethnic pay gaps

- 23 The national gender pay gap, as calculated by Stats NZ in August 2022 is 9.2%⁶, but progress has stalled in the last decade. There is a persistent gap in pay between men and women. Currently, the median hourly wage for women is \$28.00 per hour, compared with \$30.85 for men. The degree of this pay gap is not the same for all women. Wāhine Māori, Pacific women, and Asian women face the compounding impact of both gender and ethnic pay gaps. For example, the pay gap against all men's earnings for wāhine Māori and Pacific women and men is 15.7%.
- 24 The causes of gender and ethnic pay gaps are multi-faceted. About 20% of the gender pay gap in Aotearoa can be accounted for by differences between men and women in education and leadership roles, occupation choice, age, type of work and family responsibilities⁷. This is similar for ethnic pay gaps. Māori, Pacific, and Asian workers are over-represented in lower-paid occupational groups, and there are relatively fewer people from ethnic minority communities in leadership and senior roles.
- 25 This leaves the majority of pay gaps as 'unexplained' factors (e.g., behaviours, attitudes, and assumptions about women in work, workplace racism, sexism and discrimination and unconscious bias).⁸

⁵ New Zealand Human Rights Commission. (2022) Voices of Pacific peoples. Eliminating pay gaps. Wellington, Human Rights Commission. <https://pacificpaygap.hrc.co.nz/about-the-inquiry/pacific-pay-gap-inquiry-reports/>

⁶ Based on median hourly wage and salary earnings.

⁷ Pacheco, Li, & Cochrane, *Empirical evidence of the gender pay gap in New Zealand*, 2017. Accessible at: https://women.govt.nz/sites/public_files/Empirical%20evidence%20of%20GPG%20in%20NZ%20-%20Mar2017_0.pdf

⁸ *ibid.*

Pay transparency has been widely used as a tool to address gender pay gaps overseas, and has proved effective

- 26 Over the past decade, an increasing number of countries have implemented and amended their pay transparency legislation (refer **Appendix One**: International pay transparency comparators). In these countries pay transparency has been used as a tool to reduce pay gaps by helping to surface existing pay inequities that commonly go unnoticed by both employees and employers, incentivise employers to address current inequities and enable employees to make better decisions.
- 27 The OECD and the ILO have reported that pay transparency measures can help to address gender pay gaps (as is the focus in overseas jurisdictions) and reduce broader gender inequalities in the labour market. These reports, combined with other international evidence suggests that pay transparency as part of a wider range of policy responses is likely to have a more effective impact on pay gaps as opposed to pay transparency on its own. These findings are in line with the Select Committee Report.

Australia

- 28 Australia has a comprehensive pay transparency model, which requires employers with over 100 employees to publicly report their gender pay gap. Employers with over 500 employees also need to put in place a formal policy or strategy. The Workplace Gender Equality Agency (WGEA) was created under the Act as a standalone agency tasked with promoting, educating, and enforcing the Act.
- 29 Recently, Australia has also banned pay secrecy clauses in order to improve transparency and reduce the risk of gender pay discrimination by allowing women to compare their pay with that of their co-workers without fear of punishment.

The United Kingdom (UK)

- 30 In the UK, private and public sector employers with more than 250 employees must report their gender pay gap. The overall gender pay gap is calculated using both the median and mean average hourly pay rate. Employers must also calculate the proportion of men and women in each pay quartile and the difference in bonuses paid out to male and female employees (which helps to highlight where pay gaps are concentrated).
- 31 The introduction of the policy led to a 1.6% increase in women's hourly wages relative to those of men. Over half of women would accept a 2.5% lower salary to avoid the employer with the highest pay gap in their industry. On average, women are prepared to accept a 4.9% lower pay to avoid this employer.⁹

Pay transparency must be part of a wider range of policy responses to be effective

- 32 As noted above, pay transparency as part of a wider range of policy responses is likely to be more effective in reducing pay gaps and improving pay equity as opposed to pay transparency on its own. We propose that pay transparency can be the next logical

⁹ Blundell, *Wage responses to gender pay gap reporting requirements*, 2021. Available at: [dp1750.pdf \(lse.ac.uk\)](#)

steps following the other broader measures already taken by the Government to reduce pay gaps and improve pay equity (see **Appendix Two**) including:

- 32.1 **Equal Pay Amendment Act 2020:** The *Equal Pay Act 1972* (the Act) was amended in 2020 to provide a clear process for employees and unions to raise a pay equity claim directly with an employer rather than with the courts. The Act prohibits discrimination in pay on the basis of sex. Since its passing, over 104,000 people have had a remuneration adjustment through pay equity settlements, with the average adjustment being 33 percent.
- 32.2 **Fair Pay Agreements Act 2022:** Government passed the *Fair Pay Agreements Act 2022*, which establishes a Fair Pay Agreements system to bring together unions and employer associations within a sector to bargain minimum employment terms for all covered employees in an industry or occupation¹⁰. These changes could improve outcomes for vulnerable employees, in particular for Māori, Pacific peoples, young people, and disabled people.
- 32.3 **Kia Toipoto:** Te Kawa Mataaho Public Service Commission (PSC) continues its work on gender and ethnic pay gaps in the public service. PSC publishes and analyses gender and ethnic pay gaps across public sector agencies and gender pay gaps for individual agencies annually. Under Kia Toipoto (the new Public Service Pay Gaps Action Plan 2021-24), agencies and Crown entities will begin to publish ethnic pay gaps in addition to gender pay gaps. Agencies and Crown Entities are also being required to publish the action they will be taking to close pay gaps on an annual basis.
- 32.4 Other initiatives includes the Employment Strategy and its seven employment action plans (includes *Te Mahere Whai Mahi Wāhine, the Women's Employment Action Plan*); protection provided by the Human Rights Act 1993 and the Employment Relations Act 2000 where pay discrimination solely on the basis of a person's race, colour, and ethnic or national origins is explicitly prohibited; and broader initiatives to improve labour market outcomes include increases to the minimum wage, reforms to vocational education and training, investment through the Provincial Growth Fund, and deepening early-stage capital markets.

Increased support for implementation of pay transparency in Aotearoa New Zealand

- 33 Various stakeholder groups, including the New Zealand Council of Trade Unions, Human Rights Commission, and MindtheGap, are advocating to make pay information more transparent in the private sector to reduce pay gaps and improve pay equity. This builds on from the Select Committee inquiry in 2022:
 - 33.1 The Human Rights Commission has published the Pacific Pay Gap Inquiry to understand why the Pacific pay gap exists and recommend actions to close it.¹¹

¹⁰ See here for progress: <https://www.mbie.govt.nz/business-and-employment/employment-and-skills/fair-pay-agreements/>.

¹¹ <https://pacificpaygap.hrc.co.nz/about-the-inquiry/pacific-pay-gap-inquiry-reports/>

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- 33.2 MindtheGap has 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. As of March 2022, 199 businesses have committed to reporting on their pay gap. There is no requirement to publicly report or indicate how they are addressing their pay gaps. The introduction of pay transparency legislation would seek to build on this approach, and standardise reporting.
- 33.3 Business NZ has indicated as part of the NACEW led engagement on pay transparency, their in-principle support for pay transparency measures, (subject to further work to determine who would be subject to a pay transparency system). They noted a balance needs to be struck between compliance and ease of implementation, and resources provided to businesses to facilitate implementation.
- 33.4 Champions for Change, a group of more than 80 Chief Executives seeking to promote diversity, inclusion in equality in the business sector, has introduced measuring pay gaps as one of the minimum requirements for becoming a Champion.

The proposed pay transparency system

- 34 We considered options to progress a pay transparency system in Aotearoa New Zealand. A full options analysis table is included as **Appendix Three**:
- 34.1 Greater business support: Encouraging voluntary disclosure of certain pay information for the purpose of achieving pay transparency. A voluntary system, while it would still raise awareness of pay gaps and provide market incentives to reduce them, is likely to have narrower take-up across the business sector, and may not produce long-term data trends on pay gaps (i.e. if business report once or twice, but not annually). International evidence suggests that this alone will not make a significant difference.
- 34.2 Procurement requirement: Requiring greater pay gap reporting by businesses through Government procurement processes. This would only apply to suppliers which supply to the Government. It would also only apply to all procurement mandated agencies (approximately 138). Therefore, its effectiveness in reducing gender and ethnic pay gaps is limited.
- 34.3 Developing a pay transparency legislative framework. This is our preferred option, which is discussed below.
- 35 We note that these options are not mutually exclusive. However, we believe that non-legislative options alone would not create sufficient momentum to progress the implementation of pay transparency in New Zealand.

We are seeking an in-principle agreement on taking a legislative approach to pay transparency

- 36 As noted above, this is the first stage in the policy decisions being sought from Cabinet. A legislative approach for pay transparency is more likely to have a wider scope of business participation and be most effective in driving behaviour change because the requirement will be mandatory. It would impose a legal obligation on

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employers to report pay gaps, and ensuring employers are consistent in the way that pay gaps are measured. This would see widespread business sector pay gap reporting.

- 37 International evidence suggests that consistency in measuring and reporting methods drive the greatest outcomes, particularly where information is made publicly available and employees are able to easily access and compare pay gaps across firms to make employment decisions. This will ensure businesses are consistent in the way that pay gaps are measured, so that comparisons can be easily drawn between organisations and across sectors and strengthen the quality of reporting and publication of pay gaps.
- 38 The proposed legislative approach would be based on principles of fairness (addressing current inequities in labour market outcomes) and practicality (what can be asked of businesses, and when). Privacy considerations for employees and the cost and complexity of reporting measures will also be considered.
- 39 The initial focus of pay transparency legislations is on addressing gender and ethnic pay gaps. We are aware of a number of challenges with the design of an ethnic pay gap requirement including that some employees will self-identify with multiple ethnicities. Officials will work through these challenges in the design process.
- 40 Our intention is that pay transparency measures could eventually be expanded to include reporting on pay gaps beyond gender and ethnicity to include other groups who also experience pay gaps and poorer labour market outcomes (for example, disabled people). We could also eventually expand this focus to include other pay measures such as salary bands. The legislation would contain the following aspects:
- 40.1 mandatory pay gap reporting for businesses over a certain size;
 - 40.2 requirement of actions to address pay gaps;
 - 40.3 enforcement of pay transparency requirements; and
 - 40.4 other elements that officials consider relevant.
- 41 We want this approach to be as easy as possible for businesses and employees to use and to bring employers along on the journey so that they understand why pay transparency is important and are motivated to make changes where needed.
- 42 In developing pay transparency legislation, we will look to models that are already in place in international jurisdiction such as Australia, the UK, and Canada, to inform the most effective design choices. Importantly, we note that many overseas jurisdictions have focussed only on addressing the gender pay gap. In New Zealand, we are also looking at addressing the ethnicity pay gap (and other pay gaps such as disabilities in the future).

Decisions on the detailed policy design of the pay transparency legislation

- 43 The second stage will seek Cabinet decisions on the detailed policy design of the legislation. Comprehensive policy work for each aspect of the proposed pay transparency system will be completed to inform a potential draft Bill. Determining the size of business, measurement, compliance, and reporting are interrelated and will be reported back together.

44 We will continue to seek advice from NACEW, the business sector, and other stakeholder groups to determine the workability and effectiveness of a pay transparency system. Once policy has been developed, we will return to Cabinet to seek agreement to the overall system design.

45 In the development of further policy, the following elements are being considered:

Size of employers to include, and when

46 We need a detailed understanding of business' capability to implement pay transparency and employee make-up of the private sector. However, in the New Zealand private sector, large businesses (100+ employees) make up 0.4% of businesses (around 2100 businesses¹²) and employ approximately 41% of all employees in the sector.¹³ ¹⁴ Groups such as the Champions for Change organisations, which include many of our larger businesses, already have reporting capability and some of them are already voluntarily measuring and reporting their gender pay gaps. These organisations are working to measure their ethnic pay gaps.

47 In discussion with officials from Australia (Workplace Gender Equality Unit) and the UK, both recommended to start initially with business with higher numbers of employees. Australia requires employers with over 100 employees to publicly report their gender pay gap and employers with over 500 employees also need to have a formal policy or strategy; UK requires private and public sector employers with more than 250 employees to report their gender pay gap. NACEW has endorsed this approach.

48 With this understanding of business capability and the business-employee make-up of the private sector, we propose to focus on larger enterprises i.e. likely excluding micro-small-medium enterprises.

49 This is to help strike the balance between fairness, i.e. ensuring that a significant number of employees are captured by the system and practicality, and that smaller businesses are not overburdened with additional compliance costs at this time. It also addresses privacy concerns that become greater when gathering data from smaller groups of employees. This will be worked through in further detail.

Setting standardised measures for the collection of gender and ethnic data, and calculating pay gaps

50 Work will need to be done on:

50.1 The guidance and resources that the Government could provide to businesses to assist them with collecting this data and calculating pay gaps, such as a reporting template; and

¹² Stats NZ: Business demography statistics, February 2022. This data only includes “economically significant enterprises” i.e. those with GST turnover greater than \$30,000 per year.

¹³ Stats NZ: Business demography statistics, February 2022. This data gives an annual snapshot and is indicative only. It includes enterprises with GST turnover greater than \$30,000 per year and the employee number is based on a headcount of all salary and wage earners for February 2022.

¹⁴ For these numbers, private sector has been defined as financial business enterprises and non-financial business enterprises (i.e. excluding: general government institutions, non-profit institutions serving households, and households). Further work is required to determine exactly how we will define the private sector and who exactly a pay transparency system would apply to.

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- 50.2 What data is collected. We suggest that the most straightforward approach, at least initially, would be for businesses to ask employees how they self-identify in terms of gender and ethnicity. We would need to work through the implications of this (e.g. privacy). We note that this data is often already collected by businesses on a voluntary basis, in order to assess diversity and demographics.
- 50.3 How gaps are measured by businesses – for example, using median or mean pay to determine gaps, and whether to split pay by quartile.

Setting reporting and monitoring procedures

- 51 International evidence suggests pay gap reporting can be done on an annual basis, with employers also reporting on the actions they are taking to address pay gaps. The policy design will consider what compliance and enforcement measures should be implemented, including how to support and incentivise businesses to report and take actions to address pay gaps.

Costs of implementing pay transparency

- 52 A paper will also be developed looking at the estimated establishment costs of a pay transparency system. Officials consider there are useful comparators that may be sourced through, for example, the Australia system and in the establishment of the Gender Pay Taskforce that has led Kia Toipoto in the public sector.

System evaluation

- 53 We propose to evaluate the impact of the pay transparency system over time. This has been recommended by Australia and the UK. It could lead to changes such as: reduction in the business size covered by the pay transparency system and changes to reporting, measurement or enforcement, as has occurred overseas, to ensure the system is fit for purpose.

Risk assessment

- 54 Making an in-principle decision on legislation prior to full policy development carries a risk that expectations may be set for certain outcomes that pre-empt later decisions made by Cabinet. To mitigate this, work is underway on a public engagement strategy to ensure expectations from this work are carefully managed.
- 55 There is a risk that businesses may feel that pay transparency is unworkable or difficult to implement. There will be cost to business, and officials will undertake a cost benefit analysis as part of the policy design phase. There will, however, also be guidance for businesses developed as part of the system to aid implementation.
- 56 Policy elements for potential pay transparency legislation will need to be tested with businesses and stakeholder groups in order to determine workability and effectiveness, as this is crucial for pay transparency's successful implementation in the business sector.
- 57 Depending on feedback received throughout this process, a phased approach to implementation could be put in place. For example, pay gap reporting could initially be mandatory only for large businesses, with smaller business included in later years once the system has been in place for some time.

58 Additional indicators could also be brought into reporting (for example age, sexuality, disability etc.) when data collection is feasible from a privacy perspective. Differing reporting requirements could also apply to businesses of different sizes (e.g. larger businesses with more sophisticated payroll systems could be required to produce more detailed reports, whereas smaller businesses could simply provide their gaps with no additional detail.)

Financial implications

59 The introduction of pay transparency legislation will incur costs to the Crown and employers. The extent of these costs will depend on the design of the system, but we expect Crown costs will likely accumulate from costs related to information and education, monitoring, compliance and enforcement costs. The costs to employers will include the development (or enhancement) of systems for data collection, analysis and reporting, as well as direct salary costs as they act to address pay gaps identified.

60 It is important to note that many businesses already do this. The policy intent is to keep cost to a minimum. However, cost to business needs to be weighted against the cost to employees who are experiencing pay discrimination due to unreported gender or ethnic pay gaps. Our ability to quantify the financial implications currently is limited as the policy work to support the introduction of legislation is comprehensive and expected to be completed in November 2023. Officials will advise us on a range of policy options (from 'light touch' to a full regulation and compliance), with cost estimates.

61 Confidential advice to Government



62 Although we are expecting this to be less complex than the modern slavery example, we will need further details of what pay transparency legislation will look like in order to provide detailed costing; however, we anticipate costs to be at the high end as a comprehensive approach to monitoring, enforcement and education is preferred. Alternatively, should the final policy design for pay transparency not include a public register and have limited penalties and enforcement functions, establishment and ongoing costs will be lower.

Legislative implications

63 There are no direct legislative implications arising out of this paper, however, this paper is seeking agreement to report back to Cabinet at a later date with detailed proposals for pay transparency legislation.

Impact Analysis

Regulatory Impact Statement

- 64 A Regulatory Impact Statement has been prepared for this paper, and is attached as **Appendix Four**. MBIE's Regulatory Impact Analysis Review Panel, which included a representative from the Ministry for Women, has reviewed the attached Regulatory Impact Statement prepared by MBIE. The Panel considers that the information and analysis summarised in the Regulatory Impact Statement partially meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

Te Tiriti o Waitangi

- 65 Wāhine and tāne Māori have historically faced disadvantage in the labour market, including being persistently undervalued when compared to more advantaged groups. In undertaking this work, we recognise our obligations to Māori under Te Tiriti o Waitangi and our commitment to Te Tiriti o Waitangi principles of active protection/rangatiratanga (self-determination), partnership, equity (addressing disparities in outcomes for Māori), and options (recognising Māori-specific approaches to issues that directly affect Māori).
- 66 This work acknowledges and seeks to learn from the WAI 2700 Mana Wāhine Kaupapa Inquiry currently being heard by the Waitangi Tribunal. This inquiry examines claims alleging prejudice against wāhine Māori arising from breaches of Te Tiriti o Waitangi, in both historical and contemporary times. At the heart of all the claims is the loss of rangatiratanga and the social, economic, environmental and cultural loss that has occurred as a result.
- 67 We intend to work closely with Māori throughout the policy design process to ensure that their experiences in the labour market are accurately reflected and addressed in the final policy design of a pay transparency system.

Population Implications

- 68 The proposals for a pay transparency system in this paper have implications for a number of stakeholder populations including women, Māori, Pacific peoples, and members of ethnic communities. Full analysis of these implications, and the effect that pay transparency is likely to have on these population groups, will be carried out as policy proposals are developed. Consultation on policy proposals related to pay transparency will include the perspectives of women, Māori, Pacific peoples, and members of ethnic communities, as well as employers and unions.

Human Rights

- 69 We consider this proposal is consistent with the New Zealand Bill of Rights Act 1990.
- 70 The proposals in this paper also support New Zealand's international human rights obligations. Pay equity or "equal pay for work of equal value" is a fundamental right under international human rights law, as recognised at Article 23(2) of the Universal Declaration of Human Rights and referred to in other major treaties which Aotearoa New Zealand has ratified, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), Articles 2, 3 and 7 and under the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), Article 11.

Consultation

- 71 The following agencies have been consulted in the development of this paper: The Department of Prime Minister and Cabinet, the Treasury, Statistics New Zealand, the Inland Revenue Department, the Ministry of Education, the Ministry of Business, Innovation and Employment, the Tertiary Education Commission, the Ministry of Social Development, Te Kawa Mataaho Public Service Commission, the Ministry of Justice, Whaikaha Ministry of Disabled People, Te Puni Kōkiri, the Ministry for Pacific Peoples, the Ministry for Ethnic Communities and Te Arawhiti. NACEW has also been consulted in the development of a pay transparency system for this paper, as the appointed advisory group on pay transparency.

Communications

- 72 Subject to the decision on this paper, we intend to publicly announce that an in-principle decision has been taken by Cabinet to progress with a legislative pay gap reporting requirement. Further details about who the requirement will apply to, what will be required to be reported and how it will be reported and how compliance will be enforced will not be available until further design work has been undertaken. To mitigate this, work is underway on a public engagement strategy to ensure expectations from this work are carefully managed.
- 73 A full communications plan related to this announcement will be developed based on Cabinet's decision, including a stakeholder engagement plan.

Proactive Release

- 74 This Cabinet paper will be released within 30 days of decisions being made by Cabinet.

Recommendations

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

- 1 **note** that on 19 October 2022 the Cabinet Social Wellbeing Committee agreed that the policy development of a pay transparency regime should commence, and that ministers should submit a paper to SWC in due course seeking policy decisions;
- 2 **agree in principle** to take a legislative approach to pay transparency;
- 3 **note** that in designing the proposed legislative framework, officials will consider the following elements:
 - 3.1 mandatory pay gap reporting for businesses over a certain size;
 - 3.2 requirement of actions to address pay gaps;
 - 3.3 enforcement of pay transparency requirements; and
 - 3.4 other elements that officials consider relevant.

I N C O N F I D E N C E

- 4 **invite** the Minister for Women and the Associate Minister for Workplace Relations and Safety to develop further policy recommendations on the scope and content of pay transparency legislation; and report back to Cabinet in early 2024 with developed policy proposals for pay transparency legislation.

Authorised for lodgement

Hon Jan Tinetti

Minister for Women

Hon Priyanca Radhakrishnan

Associate Minister for Workplace Relations and Safety

Appendix One: International country comparator

Table one provides the current state of a selection of countries with pay transparency systems in place. Reporting-only models require employers to report, but not take specific action. 'Comprehensive' models require further action than just reporting, such as action plans.

Table one: Overview of overseas jurisdictions

Jurisdiction	Employer size	Sector	Model
Canada (Federal)	10+	Federally regulated employers	Comprehensive
Sweden	10+	Private	Comprehensive
Iceland	25+	Public and private	Comprehensive
Finland	30+	Public and private	Comprehensive
Denmark	35+	Private	Reporting only
Belgium	50+	Private	Comprehensive
France	50+	Private	Comprehensive
Norway	50+	Public and private	Reporting only
Australia	100+	Private	Reporting only
Canada (Ontario)	100+	Private	Comprehensive
European Commission	250+	Private	Reporting only
United Kingdom	250+	Public and private	Reporting only (with some sanctions for not reporting)
Japan	300+	Private	Comprehensive
Germany	500+	Private	Reporting only

Table two: Efficacy of selected systems

Table two provides further detail on the efficacy – in terms of the percentage change in the gender pay gap¹ – of some of the systems referenced above.

Country	Overview of efficacy of the pay transparency system
Canada (federal)	On average, transparency laws significantly reduced the gender salary gap. They led to a statistically significant 1.2-2% reduction in the gender gap. A reduction in the gender wage gap firms within the scope of legislation was primarily driven by slowing wage growth for men.
Denmark	Gender pay transparency reporting duties reduced the gender pay gap by up to 7%, from 18.9% to 17.5% for firms with mandatory pay transparency duties. Gender pay gaps stayed the same at 18.9% for those with no mandatory pay transparency duties within the same period. A reduction in the gender wage gap firms within the scope of legislation was primarily driven by slowing wage growth for men, and resulted in 1.73% lower wage growth for male employees compared to female employees. Firms with higher gender pay inequality chose to close the gender gap more aggressively.

¹ This focus on the gender pay gap (as opposed to the ethnic pay gap) is due to the focus in these jurisdictions.

Country	Overview of efficacy of the pay transparency system
Australia	<p>Since reporting became mandatory, the gender gap in base salary has continued to decline, but this does not necessarily suggest a high level of impact because it remains close to the rate the gap has naturally fluctuated over the past few decades. As at 2022, the National GPG (based on ABS survey data) has remained steady at 13.3%. However, reports from the Workplace Gender Equality Agency reports a much higher, persistent pay gap of 22.8% when factoring in total remuneration, part time and casual employees. A recent review into the legislation stated that work to progress women's economic equality in Australia has been fragmented, leading to slow progress on closing the gender pay gap.²</p>
The UK	<p>Recent legislation changes led to a 1.6% increase in women's hourly wages relative to those of men. Research indicates that over half of women would accept a 2.5% lower salary to avoid the employer with the highest pay gap in their industry. On average, women are prepared to accept 4.9% lower pay to avoid this employer.</p>
France	<p>No impact on the gender wage gap or other gender equality indicators. This has been attributed to the nature of the law's obligations – while signing a gender equality agreement was mandatory, the implementation of the content of the agreement was not enforceable.</p>

² Note that recent changes in the Workplace Gender Equality Amendment Bill last month, require employers to individually report their pay gap (rather than it being collected on a more general, un-identifiable level which may impact the efficacy of the system.

Appendix Two: Overview of supporting government policy, initiatives, and legislation

The primary objective of the proposed pay transparency system is:				
to use pay transparency as a tool in combination with other broad Government initiatives, to support fairer workplaces that improve equity and labour market outcomes for women, Māori, Pacific peoples, and other ethnic communities to reduce the gender and ethnic pay gaps.				
The secondary objectives are:				
to incentivise employers to investigate and address drivers of their workplace pay gaps and pay-setting decisions.		to support employees to identify pay equity issues and enable them to take action.		
The proposed system will strengthen, and be strengthened by, existing government policy, initiatives, and legislation.				
Key supporting legislation:				Key supporting policy initiatives:
<p style="text-align: center;">Fair Pay Agreements Act (2022)</p> <p>Established a system whereby unions and employer associations within a sector can bargain minimum employment terms for all covered employees.</p>	<p style="text-align: center;">Equal Pay Amendment Act (2020)</p> <p>Provided a clear process for employees and unions to raise a pay equity claim directly with an employer rather than the courts.</p>	<p style="text-align: center;">Employment Relations Amendment Act (2018)</p> <p>Restored key minimum standards and protections for employees.</p> <p>Made changes to promote and strengthen collective bargaining and union rights.</p>	<p style="text-align: center;">Human Rights Act (1993)</p> <p>Prohibits discrimination in employment (e.g., on such as sex, race or age)</p> <p>The Human Rights Commission can help to resolve complaints of unlawful discrimination.</p>	<p style="text-align: center;">Government Employment Strategy</p> <p>The key focus is more inclusive employment outcomes, supported by action plans on improving employment outcomes for groups such as including women, Māori, Pacific peoples, disabled people and Former Refugees, recent migrants, and ethnic communities.</p>
				<p style="text-align: center;">Kia Toipoto (Public Service Pay Gaps Action Plan 2021-24)</p> <p>Outlines a comprehensive set of actions to help close gender and ethnic pay gaps in the Public Service, including requiring agencies and Crown entities to publish their pay gaps in pay gaps action plans annually.</p>

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Appendix Three: Options analysis

	Option one – Status quo	Option two – Greater government support for voluntary pay transparency	Option three – Pay gap reporting as part of government procurement requirements	Option four – Develop a pay transparency legislative framework
Effectiveness: employer reporting and addressing drivers of pay gaps	<p style="text-align: center;">0</p> <p>Momentum is building in the private sector for voluntary pay transparency reporting, and pay gaps may be decreasing among businesses who voluntarily report.</p> <p>In the broader context, however, it is unlikely behavioural change will occur across the entire private sector as voluntary reporting is currently largely limited to large organisations in selected industries (such as banking, retail, and energy).</p> <p>Public sector improvements appear likely to continue.</p>	<p style="text-align: center;">+</p> <p>Increased awareness of pay transparency, and greater access to resources for calculating pay gaps is likely to result in an increased number of businesses adopting pay transparency measures than if the status quo is maintained. It is likely that businesses that voluntarily comply will also be open to investigating the drivers of pay gaps.</p> <p>However, as with status quo, the voluntary nature of non-regulatory measures means that those who continue to be unaware of, or do not value pay transparency, or could be disadvantaged by publishing their pay gaps, will be unlikely to participate.</p>	<p style="text-align: center;">+</p> <p>Likely to offer significant benefit in achieving pay transparency reporting among firms who want to contract with the Crown.</p> <p>However, any procurement requirements would only apply to suppliers working with the government, and all procurement mandated agencies (approximately 138). Therefore its effectiveness is likely to be limited to industries aligned with the Government’s spending priorities.</p> <p>The design of the system may influence whether employers genuinely address the drivers, or whether it is seen as a compliance activity as part of the tendering process.</p>	<p style="text-align: center;">++</p> <p>While the design is yet to be determined, legislative change will likely have a wider scope of business participation and be most effective in driving behaviour change, particularly among employers with the largest pay gaps, because the requirement will be mandatory, and those employers are less likely to report pay gaps voluntarily.</p>

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	Option one – Status quo	Option two – Greater government support for voluntary pay transparency	Option three – Pay gap reporting as part of government procurement requirements	Option four – Develop a pay transparency legislative framework
Effectiveness: employees and consumers identify where pay inequities issues exist and take action	<p style="text-align: center;">0</p> <p>Limited to employees and customers organisations who undertake voluntary reporting. Therefore the effectiveness is limited and unlikely to drive changes across the whole private sector.</p>	<p style="text-align: center;">+</p> <p>Benefits will depend on the number of businesses taking up voluntary reporting and whether this information is available to employees and consumers in a way that can be used to inform behaviour. . Less benefit may be seen with ethnic pay gaps due to the fewer available avenues for employees to address these issues, as compared to gender pay gaps.</p>	<p style="text-align: center;">+</p> <p>Effectiveness for employee pay equity will likely be seen in government-funded sectors and occupations – which may change over time, depending on spending priorities. May not provide additional benefit in sectors where there are already pay equity claims underway (eg many health and social service employers). There may be a different balance of gender/equity effects depending on government spending priorities.</p>	<p style="text-align: center;">++</p> <p>This option would likely be most effective at identifying where pay gaps exist across different industries and raise awareness of previously unknown pay gaps because of the mandatory nature of the requirements– this would likely have a flow on effect for employees bargaining to reduce pay gaps over time. Design factors will influence efficacy – not all measures of pay gaps might facilitate employee bargaining or influence consumer choices. Effectiveness at may be limited by levels of bargaining power.</p>
Cost considerations	<p style="text-align: center;">0</p> <p>No additional fiscal costs imposed.</p>	<p style="text-align: center;">-</p> <p>Direct cost to Government in providing tools and resources. Potentially increased burden on employment institutions if there is an increase in disputes arising.</p>	<p style="text-align: center;">-</p> <p>Requirements would impose an additional administrative burden on government agencies and suppliers to meet requirements. . Any increase in costs may be passed on to government through the tendering process.</p>	<p style="text-align: center;">--</p> <p>We are unable to quantify the exact costs to government and businesses as the exact pay transparency measures are yet to be developed, and would depend on the legislative design, eg the size of employers who are</p>

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	Option one – Status quo	Option two – Greater government support for voluntary pay transparency	Option three – Pay gap reporting as part of government procurement requirements	Option four – Develop a pay transparency legislative framework
		Costs to businesses will depend on their agreed participation in the system.		impacted and the type of reporting required. Further funding would be needed to implement pay transparency measures, for example to resource enforcement. Costs to businesses would very likely be higher than options two and three.
Implementation considerations	0 No additional implementation considerations. Manatū Wāhine will continue leading work on reaching out to business sectors to initiate change through baseline funding.	- This option would take time and is conditional on Government funding for developing these support and resources. Shortest timeframe for implementation - more specific timeframes would be provided following consultation and detailed policy design.	- This option would take more time than Option two but less than Option four, relative to the status quo. Guidance and business engagement would be essential to bring in any change in this space. Medium timeframe for implementation - more specific timeframes would be provided following consultation and detailed policy design.	- Legislation will have a longer implementation timeframe than Options two and three. The earliest legislation could be introduced would be during 2024, followed by an implementation phase. In particular, if the implementation for the legislation is staged (eg to introduce voluntary and mandatory requirements in tranches), it could take more time to fully implement. However, implementation in stages would allow some interventions to begin sooner than if the full

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	Option one – Status quo	Option two – Greater government support for voluntary pay transparency	Option three – Pay gap reporting as part of government procurement requirements	Option four – Develop a pay transparency legislative framework
				range of interventions was implemented at once. Appropriate business supports would also be expected when legislative requirements come into effect.
Overall assessment	0	+ Slight benefit over the status quo.	+ Likely to achieve more benefit than Option two as the requirement would be mandatory.	+ Likely to achieve the greater benefit in the longer term, but with the associated costs which are greater than Options two and three. It's not possible to judge whether the benefits would outweigh the costs until the full design details are available.

Key for qualitative judgements:

- ++** much better than doing nothing/the status quo/counterfactual
- +** better than doing nothing/the status quo/counterfactual
- 0** about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- much worse than doing nothing/the status quo/counterfactual