



## COVERSHEET

<b>Ministers</b>	Hon Jan Tinetti Hon Priyanca Radhakrishnan	<b>Portfolios</b>	Women Associate Workplace Relations and Safety
<b>Title of Cabinet paper</b>	Development of a Pay Transparency System – Phase One	<b>Date to be published</b>	16 October 2023

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
August 2023	Development of a Pay Transparency System – Phase One	Office of the Minister for Women  Office of the Associate Minister for Workplace Relations and Safety
2 August 2023	Development of a Pay Transparency System – Phase One  SWC-23-MIN-0104 Minute	Cabinet Office
25 May 2023	Pay transparency – Key policy decisions for phase one	Ministry for Women, MBIE

### 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 withheld for the reasons of privacy of natural persons, confidential advice to government and free and frank opinions.



# Cabinet Social Wellbeing Committee

## Minute of Decision

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*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.*

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### Development of a Pay Transparency System: Phase One

**Portfolio**                      **Women / Associate Workplace Relations and Safety**

On 2 August 2023, the Cabinet Social Wellbeing Committee (SWC):

- 1        **noted** that in October 2022, SWC agreed that policy development of a pay transparency regime commence, and invited responsible ministers to submit a paper to SWC in due course seeking policy decisions [SWC-22-MIN-0174];
- 2        **noted** that in April 2023, SWC noted the preference of responsible Ministers to take a legislative approach to pay transparency and invited them to report back with developed policy proposals for pay transparency legislation [SWC-23-MIN-0030.01];
- 3        **noted** that policy design for pay gap reporting legislation has been split into two phases, and the paper under SWC-23-SUB-0104 paper covers the key elements for gender pay gap reporting (phase one), including:
  - 3.1      who the pay gap reporting system should apply to;
  - 3.2      what should be measured and reported on; and
  - 3.3      whether there should be any other requirements (eg action plans);
  - 3.4      Who the pay gap reporting system should apply to;
- 4        **agreed** that the pay gap reporting requirements will apply to employers (including public sector employers):
  - 4.1      with 250 or more employees from the commencement date; and
  - 4.2      with 100 or more employees after four reporting cycles (ie employers with 100 to 249 employees will start reporting in the fifth reporting cycle);
- 5        **noted** that an assumption in the design of the system is that it will only apply to employees and not contractors;

- 6 **agreed** that employers that meet the size threshold but do not have at least 20 male or female employees be required to calculate their male/female gender pay gaps, and other mandatory measures, but the reporting requirements may not apply or may be different (which will be determined as part of the detailed design of the system);
- 7 **agreed** that employers that meet the size threshold and have employees that identify as ‘another gender’, but do not have at least 20 employees in that category, be required to calculate pay gaps (and additional measures) for ‘another gender’, but the reporting requirements may not apply, or may be different (which will be determined as part of the detailed design of the system);
- 8 **agreed** that a specified date (or dates, if a different date is set for the public sector) is used for determining if the employer meets the size threshold, and for determining which employees should be included in the pay gap calculation (and additional measures);

### What should be measured and reported on

- 9 **agreed** that employers that meet the size threshold are required to request information from employees about their gender, based on the Statistics New Zealand recommended categories (‘male’, ‘female’, or ‘another gender’), but employees’ responses will continue to be optional;
- 10 **agreed** that if an employer has employees that identify as ‘another gender’, they are required to calculate and report pay gaps for the ‘another gender’ group in addition to calculating and reporting pay gaps between male and female, noting that paragraph 7 above would apply;
- 11 **agreed** that it will be mandatory for employers that meet the size threshold to report:
- 11.1 organisation-wide mean and median gender pay gaps (the ‘gender pay gap calculation’);
  - 11.2 the difference in the mean and median discretionary pay (eg: bonuses) paid to male employees compared to female employees (the ‘discretionary pay gap calculation’);
  - 11.3 the difference in mean and median discretionary pay paid to ‘another gender’ compared to a comparator group (to be determined in phase 2) if they have employees that identify as ‘another gender’;
  - 11.4 the proportion of males, females and ‘another gender’ that receive discretionary pay;
  - 11.5 the proportion of males, females and ‘another gender’ in each pay quartile;
  - 11.6 the number or proportion of males, females and ‘another gender’ who reported their genders, as well as the number or proportion of employees that did not provide a response on their gender;
- 12 **agreed in principle, subject to** further work on the definition and scope of these elements of pay and whether discretionary pay is included, that the gender pay gap calculation will cover the key types of remuneration employees receive, including base pay and variable pay;
- 13 **agreed** that the unit of comparison for the gender pay gap calculation is an hourly rate of pay and that for employees whose hours do not differ from week to week over a long period, an employer can use contracted hours of work rather than actual hours of work to calculate hourly pay;

- 14 **agreed** that ‘discretionary pay’ for the discretionary pay gap calculation be required to be calculated over a 12 month pay period, noting the pay period for the gender pay gap calculation will be determined as part of the detailed design work;
- 15 **agreed** that it will be mandatory for employers to report their pay gaps and additional measures annually to a regulator, who will publish the pay gap information centrally;


### **Should there be any requirements on employers in addition to reporting**

- 16 **agreed** that the government will encourage voluntary action plans, and provide guidance to employers to develop them;
- 17 **agreed** that there will be a review of whether mandatory action plans should be introduced after three reporting cycles;

### **Next steps**

- 18 **authorised** the Minister for Women and Associate Minister for Workplace Relations and Safety (joint Ministers) to make decisions on any issues that arise in detailed design and drafting, consistent with the overall parameters set by the policy decisions above, including (but not limited to):
- 18.1 whether reporting requirements would apply or differ for employers that do not have 20 employees within a gender category, including what, if any, information is required to be provided to the regulator and whether any information would be made public;
  - 18.2 whether there are any situations where exemptions or extensions may be granted;
  - 18.3 whether there should be any differences in how the detailed requirements of the system apply to the public sector;
  - 18.4 what the specified date (or dates) should be for the employer threshold count and the calculation of employee pay for the gender pay gap measures;
  - 18.5 the most appropriate requirements for pay gap calculations involving ‘another gender’ (eg identifying the appropriate comparator group);
  - 18.6 the definition and scope of the core elements of pay (including base pay, variable pay and discretionary pay);
  - 18.7 whether any ‘fixed pay’ elements (like monetised allowances and employer superannuation contributions) should also be included in the gender pay gap calculation;
  - 18.8 whether discretionary pay is included in the gender pay gap calculation (or only reported separately in the discretionary pay gap calculation); and
  - 18.9 the pay period required for assessing the elements of pay in the gender pay gap calculation;
- 19 **noted** that the decisions outlined above will require some level of regulatory activity which will require government funding to implement;

20 Confidential advice to Government



21 **noted** that joint Ministers intend to publicly announce the core policy decisions agreed above, and that this announcement may commit the government to funding the policy proposals without having determined the amount or source of the funding;

22 **invited** joint Ministers to submit a further cabinet paper seeking:

22.1 agreement to the remaining high-level policy decisions needed to develop and implement a pay gap reporting system (phase two), including decisions on the inclusion of ethnic pay gap reporting, the support, compliance monitoring, enforcement aspects of the system, and which entity(ies) should perform the regulatory functions;

22.2 approval to issue drafting instructions to Parliamentary Counsel Office to give effect to both phase one and phase two policy decisions and agreement for priority of the Bill in the Legislation Programme.

Rachel Clarke  
Committee Secretary

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**Present:**

Rt Hon Chris Hipkins  
Hon Carmel Sepuloni (Chair)  
Hon Kelvin Davis  
Hon Grant Robertson  
Hon Dr Megan Woods  
Hon Jan Tinetti  
Hon Willie Jackson  
Hon Peeni Henare  
Hon Ginny Andersen  
Hon Barbara Edmonds  
Hon Willow-Jean Prime  
Hon Rino Tirikatene

**Officials present from:**

Office of the Prime Minister  
Office of the Chair  
Officials Committee for SWC