



Play fair

Ensuring that men and women are paid and treated fairly in the workplace



NATIONAL ADVISORY COUNCIL ON
THE EMPLOYMENT OF WOMEN
MANA WAHINE, MANA MAHI



Guide 1: Remuneration and Rewards

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Introduction

At an international level, the labour market is tight for employers seeking skilled workers. This creates pressing challenges for businesses needing to source, retain and engage employees.

There is evidence that fairer employment practices assist recruitment, retention and productivity. Both New Zealand and international research show that female-dominated occupations are more likely to be undervalued. Many factors contribute to the pay gap and include remuneration and rewards, opportunities for leadership, and more generally, the respect and fairness shown towards women and men at work.

We have provided three tools to guide you in examining your own employment practices in relation to gender equity. There are three critical equity indicators for ensuring your organisation provides fair opportunities for males and females: remuneration and rewards (covered in this guide); participation of women and men; and respect and fairness (see subsequent guides).

Purpose of this guide

This guide will assist organisations to assess whether their remuneration practices are fair and equitable to their male and female employees. If they need to, organisations can then choose how they might address any gender inequities that become apparent.

You can use this guide:

- As part of a wider review of pay and employment equity across your organisation.
- To assist in reviews of remuneration practices and systems
- To coach human resources professionals and managers about the often unintentional impacts of gender on workplace remuneration practices.

A glossary (see Appendix Three) explains the terms used in this document.

This guide makes a number of assumptions:

- The impact of organisational policies and practices for males and females need to be fair, but not necessarily the same
- Differences in the experiences of males and females are not necessarily unfair
- Fair employers address differences that are not explainable and justifiable
- Women are not one homogenous group; neither are men. Individual's experiences are also influenced by other factors such as ethnicity, age, disability and family circumstances.

Business rationale

Why worry about equity between men and women?

Good business strategy includes managing risk and ensuring talent is fully utilised and fairly rewarded. To do this you need to know what you are doing well and to identify any changes needed to improve your practices in providing male and female

employees with opportunities to access fair remuneration and rewards. Any differences that are identified between these groups of employees should be explainable and justifiable.

This doesn't mean reviewing all your policies and practices. You can take a stepped approach: identify those areas where there is a significant difference in female and male experience; assess whether those differences are fair and justifiable; and work out what to do about any differences that are unfair.

What are the benefits of a system that delivers equitably to males and females?

Many factors impact on whether females and males are treated equitably in terms of remuneration and rewards and few businesses have the time and resources to investigate all of them fully at the same time. That said, the business case for reducing the earnings gap that exists between females and males is indisputably strong. At firm level, there are several benefits: lower staff turnover, higher morale and job satisfaction, becoming an employer of choice with a better corporate image; and reduced worker stress through improved job quality.

In order to ensure human resource policies and practices contribute to the overall performance of the business in the long run, returns on investment in human capital need to be fully realised. Human resource strategies and systems need to contribute to the delivery of business objectives in all regards. Maximising the return on human capital requires an effective culture that promotes respect and engages employees. Apparent inequity works against such cultures.

Finally, at a more basic level, ensuring remuneration systems and practices are equitable protects your business against claims of discrimination (see Appendix Three for an overview of relevant legislative provisions).

How would you know if this was a problem in your business?

The primary indicator that you have it right is if males and females equitably share remuneration and rewards.

Indicators of inequity in a workplace include:

- Remuneration rates of females and males are different¹

¹ Equal pay is generally understood to mean a rate of remuneration for work in which there is no element of differentiation between male and female employees based on gender – where the work of male and female employees is substantially similar and calls for the same or substantially similar degrees of skill, effort and responsibility and is done under similar conditions.

The Equal Pay Act 1972, Employment Relations Act 2000 (ERA) and Human Rights Act 1993 (HRA) all contain provisions relating to gender pay discrimination and provide complaints-based mechanisms for employees to seek redress for gender pay discrimination claims. The Equal Pay Act applies to both private sector employees, and public sector employees.

- Females and males do not have fair shares of rewards other than base remuneration
- Females and males do not advance at the same or similar rates to higher levels and remuneration
- Females are not appropriately represented at senior levels.

Some of the symptoms that could be evident include:

- Employee dissatisfaction about the fairness of remuneration, reward and promotion practices – either internally or compared with competitors and/or the wider market
- Female appointees are consistently placed on remuneration packages (or pay scales) at a lower starting rate than males in the same occupation
- Female-dominated occupations are not eligible for bonuses or have lower performance rewards
- Women take longer to be promoted than men, progress more slowly or don't apply for senior roles
- Representation of women declines at middle management level and is low in senior positions overall or in significant occupations.

How will you know if pay equity has been achieved in your business?

- There will be no male/female differences in starting salaries where qualifications and experience are similar
- Males and females doing work of equal value receive equal rewards
- There is no significant overall gap between the remuneration that males and females receive in the business
- Causes of differences between males and females and their ability to progress have been identified and addressed
- Males and females are found in senior roles, including senior management, in similar proportions to the rest of the business
- Males and females are able to combine paid work and family life
- Part-time staff have equitable access to training and development compared with full-time staff.

What can you do?

There are three key steps to addressing any inequities in your remuneration and rewards system – get focused by deciding on the important issues to look at; set priorities by analysing the key differences and determining what requires a response; plan a response. Each of these steps is outlined in this section.

Step 1 below suggests some approaches to gathering the information you need to help you understand what's happening in your business with regard to remuneration and rewards.

Step 1: Understand your business data

Start by increasing your understanding of the overall picture of remuneration system outcomes for male and female employees. Gather information on male/female

remuneration outcomes, as well as the remuneration and rewards policies and practices you use. Work out the best way to organise the information.

The unit of pay you might examine will depend on how employees are paid². Start with just a few variables that reflect what you already know to be a useful way of thinking about your organisation's practices or possible areas of concern³.

Practical issues, such as what information is currently available, may also influence the choice of variables or whether you may need to gather new information. Once you have accessed this information, consider how you might look for patterns and trends. This could be in terms of:

- Business group or department
- Occupation
- Region
- Management level
- Part-time and full-time employment
- Employment status (casual/permanent/fixed term/contract)
- Age.

If the structure of your organisation has changed, you may want to disaggregate your data in a way that will help you assess the impact of restructuring on remuneration equity. It may be helpful to compare the profile of employees recruited before the restructure/merger/change with those recruited after. See Appendix One for help with how to organise data.

Step 2: Identify the key differences between women and men

Having created a gender profile, you can identify any areas where there are important differences between women's and men's experiences. We suggest you use the following four discrete stages (a to d) to help you to identify and understand any differences.

a. Decide whether a representation and distribution difference is important

Whether a difference is important or not will depend on the organisation. As a rough rule of thumb, representation and distribution differences of more than 20 percent may warrant further examination (e.g. if 65 percent of senior management are men and 35 percent are women).

b. Decide whether a pay difference is important

Pay differences of more than five percent⁴ may warrant further examination. In some situations, it may also be important to understand pay differences between three and five percent.

² This term is used to refer to the method used to calculate employees' pay and other benefits as compensation for employment.

³ See Appendix One for examples of the aspects of remuneration that may be useful to examine.

⁴ The United Kingdom Equal Opportunities Commission said this level of variation merits further consideration in equal pay reviews. It is important to recognise that the review covers every employee – it is not a sample. Tests of statistical significance therefore are generally not relevant or appropriate. Every observed male/female difference is there, and it is valid to consider the reasons for it. In the UK and other jurisdictions, as in New Zealand, comparisons between jobs done by one man and one woman can be used in equal pay cases. The reason to analyse male/female-dominated occupations (as defined above) is that it may reveal pay differences that are gendered in the

c. Decide on which of the key questions (that follow) to start with

Using the results of the preliminary scan and the key representation, distribution and pay data, review the key questions below and decide which are the most important for your organisation to focus on at this time. Be realistic about how many you can investigate, as it will be more helpful to examine four or five in depth than to do a quick skim over all the key questions.

d. Analyse key gender differences

The final stage of the analysis considers the nature of any differences you observe:

- Are there any important differences in the outcomes for women and men?
- If there are differences, what is contributing or causing them? (are they explainable?)
- If there are differences, are they fair and just? (are they justifiable?)

Appendix Two provides examples of some of the patterns you may find and possible contributing factors across the groups you are looking at.

Key questions

Key question 1: Are the rates of pay for women and men in your organisation affected by their gender?

Prompt questions

- (a) Have all job evaluation and/or classification or grading systems been checked to ensure they are gender-neutral?
- (b) What are the relationships between qualifications and pay in male-dominated and female-dominated occupations?
- (c) Where there are small numbers of females in male-dominated occupations, how does their pay compare to the pay of their male colleagues?
- (d) Are there any gender differences in the pay rates of roles that have been evaluated as being of equivalent size?
- (e) Is there any difference between the proportions of women and men who ask for reviews of their job evaluation or classification or grading results?
- (f) Is there any difference between the number of reviews requested in male-dominated occupations, female-dominated occupations and mixed-gender occupations?
- (g) Are job descriptions adequate for matching jobs to market surveys? Are the matching processes valid and transparent?
- (h) Are the market surveys sufficiently representative in numbers and types of jobs covered for the jobs to be matched? Are the methods of surveys robust? Are they sufficiently current?
- (i) If rates have been set taking account of market surveys, and the use of the market survey produces gender differences in remuneration, do the surveys provide an adequate basis for rates paid?

areas they are most likely to occur, while they may also occur in other areas. Where the numbers are sufficiently large, regression analyses may assist in identifying significant correlations among workforce characteristics (such as workforce experience, qualifications, age, disability and ethnicity) and gender, which may assist in ascertaining whether apparently gendered patterns can be explained by differences in other workforce characteristics.

- (j) If market surveys are used, is there any difference between the way they are applied to female-dominated roles compared with male-dominated roles (for example, in the variation allowed between the market rate in the survey and the rate paid)?⁵
- (k) If skills shortages established in market surveys are the reason for differences in male/female rates, are there regular reviews of the skills supply and current validity of the market loadings?
- (l) Is there general and evidence-based confidence within the organisation (administrators of the system, managers, other employees) that the pay relativities between occupations (especially any that are male- or female-dominated) are fair and reflect actual current value/size of the work?

In some organisations you may also need to examine the following:

- (m) Is there any difference in the starting pay in male-dominated, female-dominated or mixed-gender occupations?
- (n) Is there any gender difference in the starting pay of females and males within the same occupation?
- (o) Is there any difference in the proportion of females and males at or above the top step, at the bottom step of their grade/scale, or clustered around the grade/scale boundaries?

Key question 2: Do women and men have fair shares of rewards other than base pay?

Prompt questions

It is likely that you will need to examine a number of remuneration/reward aspects:

Bonuses or performance payments

- (a) What proportion of women and men are eligible for bonuses or performance payments?
- (b) Are the occupations eligible for performance pay male-dominated or female-dominated?
- (c) What proportion of women and men actually get performance payments?
- (d) How much do they get on average (in dollars and as a percentage of their salary)?
- (e) If your organisation uses performance management scores, is the relationship between performance scores and bonuses or performance payments different for women than it is for men?

Superannuation

- (f) Which occupations are entitled to higher rates of superannuation subsidy⁶?
- (g) Are there significant differences between what female-dominated and male-dominated occupations are entitled to?
- (h) Are there significant female/male differences in who takes up subsidies?

⁵ In Judgment No: WC 16/04 in the Employment Court, application of market rates with a margin of more than 10 percent was found to be contrary to company policy and employment agreements and to have resulted in unfair treatment.

⁶ Higher than the minimum employer subsidy under KiwiSaver.

Other rewards

- (i) Are there other types of rewards that people are entitled to (for example, car parks, cars, payment of professional fees, health insurance)?
- (j) Are there any gender differences in who is entitled to them?
- (k) Are there any gender differences in who actually gets them and/or what they get?

In some organisations you may also need to examine:

- (l) Which occupations are entitled to shift and/or overtime allowances?
- (m) Who is paid shift and/or overtime allowances (by gender)?
- (n) How much on average do they receive (by gender)?

Key question 3: Do women and men advance at the same or similar rates to higher levels and higher pay?

Prompt questions

It is likely that you will need to examine the following:

- (a) Do occupations dominated by women and those dominated by men or those of mixed gender have similar numbers of steps in the grades/pay scales?
- (b) Do women and men report similar confidence in their prospects for progression and/or being appointed to higher-level jobs?
- (c) Is there any difference in the average time women and men take to be promoted (by occupation and level)?
- (d) What is the average increase (in dollars or levels) that is received by women and men when they are promoted?
- (e) Are some occupations more likely to be considered as 'feeder' groups for key management roles? What is the representation of women and men in those groups?
- (f) Are women and men promoted at similar rates?

Key question 4: Are women and men appropriately represented at senior levels?

Prompt questions

It is likely that you will need to examine the following:

- (a) What is the proportion of women in the main occupational groups and in any significant sections of the organisation (for example, business units)?
- (b) What is the proportion of women at senior levels in the main occupations and in significant sections of the organisation?
- (c) What do you think is an appropriate representation of women at senior levels across the organisation and in main occupations? For example⁷:

⁷ You may find it useful to use several reference points for assessing current performance and a stretch target. The comparison of your organisation's performance with external benchmarks is an important step in the analysis

- 50/50 (roughly the proportion of women in the population)
 - Proportionate to the number of women in the organisation
 - At least 40 percent (women are about 46 percent of the workforce)
 - Comparable with the industry/occupation average or as a whole
 - Comparable with the overall New Zealand workforce average
 - Comparable with international averages for occupations, industries, sectors, organisations.
- (d) Why is this representation appropriate?
- (e) How close is the organisation to this currently?
- (f) Has this changed over the last ten years? If so, how?
- (g) How well are women represented in 'feeder'⁸ groups for senior roles?

Step 3: Plan a response

When you have worked out the issues in your organisation that need a response, you will be ready to identify the steps needed to address them. Be realistic about how much your organisation will be able to do. If there are only a few issues, you may be able to address them all by spreading them out over a period of time. If you have a number of issues, you may need to prioritise them, possibly based on:

- The impact on employees
- The benefits for the organisation
- What else is going on or is planned that might help or hinder
- How difficult it will be to address
- Practical issues such as cost, time and scheduling
- Strategies that are most likely to facilitate or engender goodwill regarding pay and employment equity.

because it examines whether the organisation is recruiting women proportionally to their availability in relevant recruitment pools. Differences in the proportion of men and women in specific occupations and job levels raises particular issues e.g. about internal promotions, development opportunities and internal career pathways. Comparison of the organisation's occupational profile in relation to external pools raises other issues e.g. related to recruitment.

⁸ Refers to occupational groups from which potential senior appointments may come.

Appendix One: Organising pay and other data

Unit of pay⁹

How you examine pay will depend on how employees are paid. Organisations that use a range of ways to pay staff may need to do a range of analyses. The suggested rule of thumb is that if five percent or more of employees are paid in a particular way, then it would be useful to analyse their pay by gender (at least at an aggregate level).

For example, analysis may need to be by:

- Annual base salary – gross per annum amount
- Annual base pay, allowances (higher duties, extra duties, etc.) and overtime payments
- Total remuneration¹⁰ – includes base salary, additional non-cash benefits (employer-subsidised superannuation, reserved car parking, special allowances, and personal use of other employer-provided benefits) that are regularly received and any performance pay
- Hourly rate – based on the gross annual salary
- Average hourly earnings – based on the annual salary, regular taxable allowances, overtime payments
- Typical weekly or fortnightly pay – based on the annual salary.

If significant numbers of people are on fixed term/temporary or casual employment agreements, analysis might need to be by:

- Hourly rate
- Weekly rate¹¹
- Fortnightly rate.

The pay for part-time employees will need to be converted to a full-time equivalent for meaningful comparison with full-time staff.

Occupational groups

It is important to compare the pay profile of different occupations by gender. In some organisations it will be straight-forward to decide which are the relevant units to assess. Other organisations may need to use:

- Bands of job evaluation points
- Qualifications.

The groupings need to allow comparison of jobs by gender in terms of their skills, effort, responsibilities and working conditions. Whichever groupings are selected, comparisons should be able to show any gendered differences among jobs that have been classified as similar in skills, effort, responsibility and working conditions. It may

⁹ Method used by employers in calculating employees' pay and other benefits as compensation for employment.

¹⁰ 'Remuneration' is defined in the Equal Pay Act 1972 as the salary or wages actually or legally payable to an employee, including time and piece wages and overtime and bonus and other special payments, allowances, fees, commission and every other emolument, whether in one sum or several sums, and whether paid in money or not.

¹¹ If you are using a typical weekly or fortnightly pay, take care to choose a period that is not unduly influenced by statutory holidays, unusual amounts of overtime or high amounts of leave being taken.

be useful to use more than one approach to grouping jobs, to see if there are differences in the gender patterns.

Female-dominated and male-dominated occupations

The review suggests checking any pay differences in female-dominated and male-dominated occupations. The standard international definitions of male- or female-dominated occupations¹² are:

- Female-dominated occupations are 70 percent or more female
- Male-dominated occupations are 60 percent or more male.

Some occupations are more gender-balanced or less severely segregated, but their conditions may have been affected by a history of gender segregation, so you may want to include them in your female- or male-dominated occupations. The review involves comparisons between male- and female-dominated occupations in relation to pay, progression and a range of other employment experiences.

Measures

Where there are sufficient numbers of employees, it will be important to examine the *distribution* of men's and women's pay, as well as the average and the range. In larger organisations and occupational groups, it may be useful to split the payroll into 10 percent slices. In medium-sized organisations and occupations, it may be more appropriate to split the payroll into quarters. In small organisations or occupations, neither decile nor quartile analysis may be appropriate.

Representation and distribution

The representation and distribution profile should identify the proportions of men and women in different areas and at different levels.

Broadly, the pay profile seeks to compare:

- The average pay of women and men across the organisation and by any relevant sub-group (for example region or business group)
- The distribution of women and men within the range of pay
- The average pay of women and men within key occupations/work types
- The distribution of women and men within the range of occupational/work type pay.

¹² The standard international definitions of female- and male-dominated occupations are: female-dominated occupations are 70 percent or more female; male dominated occupations are 60 percent or more male.

Appendix Two: Patterns and possible causes

The following tables identify some of the patterns you may find and suggestions on what may be contributing to those patterns. The lists are not exhaustive. Ensure you have real and robust evidence before assuming what possible cause applies in your situation.

The tables use the terms 'women', 'men', 'male' and 'female'. They refer to women or men in general, rather than to any individual woman or man. You are looking for patterns across the groups, not individual circumstances.

Many of the patterns focus on women receiving less than men, or not being as well represented as men in senior or influential positions. This is because New Zealand remuneration and participation data indicates that that is the typical pattern. Naturally, if you identify unexplainable and unjustifiable differences that disadvantage men, it would be useful to examine these as well.

1. Are the rates of pay for women and men in the organisation affected by their gender?	
Pattern	Possible causes
Female-dominated occupations attract lower remuneration than mixed or male-dominated occupations.	<ul style="list-style-type: none"> • Job descriptions for female-dominated or male-dominated occupations do not reflect current requirements of the role. • Job evaluation scheme does not adequately capture the dimensions of female occupations. • Market survey data is not reliable, as it has been collected from an insufficient range and/or number of occupations and organisations. • Market survey data is applied disproportionately to male- or female-dominated occupations. • Male-dominated occupations (or individual members of the occupation) exert (or have historically exerted) more negotiating muscle in pay discussions. • Female-dominated roles genuinely require less skill or have less responsibility.
Female-dominated roles evaluated as being of equivalent size to male-dominated roles receive lower remuneration.	<ul style="list-style-type: none"> • There are identifiable and valid recruitment and retention issues influencing the pay of the male-dominated roles. • Greater bargaining power has been exerted in the male-dominated occupations or by more men than women. • Assumptions about the 'worth' of the female occupation have overridden the empirical job size information. • Market rates reflect the way organisations have undervalued female roles generally.
Female appointees are placed on a lower starting salary than men in the same occupation.	<ul style="list-style-type: none"> • Women have a lower skill/experience base on appointment. • Men have exerted greater bargaining power. • Men have come from higher-paying roles than women and are unwilling to take the 'rate for the job'. • The women are younger than the men and salary or wage levels have been formally or informally associated with age.

Pattern	Possible causes
	<ul style="list-style-type: none"> • Women are offered less than men.

2 Do women and men have equitable shares of rewards other than base pay?

Pattern	Possible causes
Female-dominated occupations either are not eligible for performance payments or are eligible for less than male- or mixed-gender occupations.	<ul style="list-style-type: none"> • The female-dominated work types are not suitable for individual performance measurement. • The female-dominated occupations have a higher base pay to compensate for the lack of performance payments. • Agreement was not reached between union(s) and employer on the use of performance-based pay for some occupations. • Female-dominated occupations are offered less than male-dominated occupations.
Even when eligibility is equitable, women receive lower performance payments than men.	<ul style="list-style-type: none"> • Women's performance ratings are lower than men's performance ratings, hence their associated performance payments are less. • The system for assessing performance does not adequately address the requirements of female-dominated work and hence people in these occupations are less likely to receive the performance ratings that are tied to performance payments. • Individual men have been more likely than individual women to negotiate a higher performance payment. • Women are offered less than men.
There are gender differences in eligibility for and receipt of rewards over and above base pay other than performance payments (for example superannuation, car parks, allowances).	<ul style="list-style-type: none"> • Male-dominated occupations (or individual members of the occupation) exert (or have historically exerted) more negotiating muscle in pay discussions. • Only senior staff are eligible, and women are less well represented in senior roles. • These rewards are being used indirectly to increase the pay or attractiveness of some occupations or professions, due to retention difficulties. • Women are offered less than men.

3 Do women and men advance at the same or similar rates to higher levels and pay?

Pattern	Possible causes
Female-dominated occupations have more steps in their pay scales than male-dominated occupations.	<ul style="list-style-type: none"> • The union and employer agreed this some time ago. • The female occupation is lower paid and shorter steps are more appropriate. • There are more genuine gradations of skill, knowledge or experience in the female-dominated occupations. • The female-dominated scales have not been reviewed for some time.
Women take longer to be	<ul style="list-style-type: none"> • Female staff tend to be less experienced and skilled than male

promoted than men.	<p>staff.</p> <ul style="list-style-type: none"> • Female staff are less likely to be considered in succession planning. • Women are not applying for promotion – perhaps because they do not understand, or are concerned about, the demands of higher-level jobs. • Women are not undertaking the appropriate training to put themselves in line for promotion. • Men are more likely than women to be formally or informally mentored. • Men tend to have had work opportunities (projects) that make them more ready for promotion.
When women are promoted, they progress more slowly than men.	<ul style="list-style-type: none"> • The nature of male occupations leads to a faster track to management roles. • Women are less ready than men for faster promotion. • Men tend to put themselves forward more for promotion. • Women take more time out of the workforce (for example, for child rearing) than men do, and this has disadvantaged them in terms of progression.

4. Are women appropriately represented at senior levels?

Pattern	Possible causes
The representation of women is low in the senior positions in the organisation as a whole or in significant occupations or parts of the organisation.	<ul style="list-style-type: none"> • Women are not applying for senior roles. • The organisation has not deliberately encouraged or prepared women for senior roles. • Particular occupations/disciplines are male-dominated in the labour market as a whole. • Women in middle management roles tend to leave the organisation. • Recruitment consultants tend not to put women forward for consideration for senior roles. • Recruitment decision-makers have not been trained in anti-bias strategies in recruitment and selection. • Women who might be eligible for these roles perceive they would not 'fit in' with the current management culture, and perhaps fear they would not cope with the demands because of family responsibilities. • People already in senior roles think women will not easily 'fit in' with the current management culture. • Women are not accessing the appropriate training or development opportunities for these roles.

This analysis aims to provide initial information on pay differences between women and men, particularly within or between occupations or work types with similar skills, effort, responsibility and conditions.

Appendix Three: Relevant legislation and glossary

No new legislation has been created to address pay and employment equity. However the Employment Relations Act, the Human Rights Act, Equal Pay Act and the State Sector Act do have pay and employment equity provisions.

Legislation and government policy are important in considering whether gender patterns you find during your review are justifiable. You may need to seek advice from agencies administering the legislation to ensure you are meeting the requirements.

Pay and employment equity legislation

The Equal Pay Act 1972, Employment Relations Act 2000 (ERA) and Human Rights Act 1993 (HRA) all contain provisions relating to sex discrimination and provide complaints-based mechanisms for employees to seek redress for sex discrimination in employment. The Equal Pay Act applies to private sector and public sector employees. Public sector employees are also covered by the Government Service Equal Pay Act 1960.

Equal pay is generally understood to mean a rate of remuneration for work in which there is no element of differentiation between male and female employees based on gender – where the work of male and female employees is substantially similar and calls for the same or substantially similar degrees of skill, effort and responsibility and is done under similar conditions.

State sector employers are subject to legislation covering aspects of pay and employment equity. This legislation focuses on the elimination of direct and indirect discrimination, generally at the level of the individual employee.

The Human Rights Act

The Human Rights Act makes discrimination unlawful on a range of grounds. Discrimination in employment is defined in the Human Rights Act as being when an employer:

... refuses or omits to offer or afford to that employee the same terms of employment, conditions of work, fringe benefits, or opportunities for training, promotion, and transfer as are made available for other employees with the same or substantially similar qualifications, experience, or skills employed in the same or substantially similar circumstances

because of the employee's:

gender, marital status, religious belief, ethical belief, colour, race, ethnic or national origin, disability, age, political opinion, employment status, family status, or sexual orientation.

The Human Rights Act recognises direct and indirect discrimination.

Direct discrimination occurs where people are disadvantaged because they are treated differently by reason of one or more of the prohibited grounds.

Example: A pregnant women has her duties changed to her disadvantage because she is pregnant.

Indirect discrimination occurs where any condition, requirement or practice has the effect of treating a person or group differently on one or more of the prohibited grounds of discrimination unless good reason for it is established.

Example: A women who is combining parenting and paid employment is not accepted for a promotion because an HR policy states that positions at this level cannot accommodate part-time work. Good reason cannot be established for the policy.

Discrimination could occur where redundancies are based on employees' length of service, (last to be employed, first to be dismissed) or where part-time staff are more likely to be dismissed first, and a greater proportion of more recent employees or part-time employees are women.

To determine if any conduct, practice, requirement or condition (including policies and behaviour) are lawful the employer needs to consider the following issues:

- whether the policy, practice or behaviour is based on gender, and if so;
- whether the employee(s) or applicant(s) is/are being disadvantaged, and if so;
- whether an exception in the Human Rights Act or Employment Relations Act applies e.g. different treatment based on gender may be a genuine occupational requirement
- whether measures to address or resolve the disadvantage based on gender would unreasonably disrupt the employer's business. Relevant considerations would include the effect on capacity to accomplish the organisation's purpose and other employees' workload or conditions. Each situation must be considered on its own merits.

For example, if a woman requested flexible arrangements to enable her to combine parenting and part-time paid work, denial of such a request could be unlawful discrimination if such arrangements did not have a detrimental impact on the organisation's ability to carry out its work, or on other employees.

A range of employment exceptions can justify discrimination if, because of the nature of the work, an employee is employed on the basis of gender. For example, where a female has been abused it could be justifiable for the employer to allocate a female worker to investigate or to advertise for a new female worker whose role is to work with women.

Measures to ensure equality can also be a justifiable reason to discriminate. For example a training course on career advancement could be offered to women employees only. This initiative could be justified by the organisation if they have evidence that women employees are under-represented in higher level jobs.

More information on discrimination and the Human Rights Act is available at www.hrc.co.nz.

Good faith principle

Good faith is a central principle in the Employment Relations Act 2000. Employers, employees and unions must deal with each other honestly and openly. Specifically, the Act:

- Promotes good employment relations and good faith behaviour, which includes mutual obligations of trust and confidence between employers, employees and unions
- Sets the environment for individual and collective employment relationships
- Sets out requirements for the negotiation and content of collective and individual employment agreements
- Provides prompt and flexible options for resolving problems in employment relationships.

The Employment Relations Act includes (Part 8A) a code of good faith for the public health sector.

More information about good faith, including codes of good faith, is available at <http://www.ers.govt.nz/goodfaith/code.html>.

Glossary

Discrimination

When a person is treated unfairly or less favourably than another person in the same or similar circumstances on a ground prohibited by law. The Human Rights Act 1993 recognises both direct and indirect discrimination.

Direct discrimination occurs where people are disadvantaged because they are treated differently by reason of one or more of the prohibited grounds.

Indirect discrimination occurs where any condition, requirement or practice has the effect of treating a person or group differently on one or more of the prohibited grounds of discrimination; unless good reason for it is established.

Equal pay

Equal pay is generally understood to mean a rate of remuneration for work in which there is no element of differentiation between male and female employees based on gender – where the work of male and female employees is substantially similar and calls for the same or substantially similar degrees of skill, effort and responsibility and is done under similar conditions.

Equity and equality

Equality refers to being equal or the same; equity refers to being just, fair or impartial. In the employment equity context, equity refers to proportionality between differences in relevant characteristics of people and jobs and how they are treated.

Explainable

A rationale for a situation can be articulated to account for why it is happening, so it is properly understood. Considering whether a situation is explainable is a necessary step before an organisation considers whether a situation is justifiable.

Female dominated occupations

The standard international definitions of male- or female-dominated occupations are:

- Female-dominated occupations are 70% or more female
- Male-dominated occupations are 60% or more male.

The reasoning for accepting 70% as female-dominated is that it is a level that accommodates a very substantial part of the range of levels of representation of women in occupations in organisations. The underlying concept of a female-dominated occupation is that there are more women than men – 50% + 1. The figure of 70% represents two standard deviations above 50% for an organisation of 100. For an organisation of up to 500, the comparable figure is 60% and it is 55% for an organisation over 500 (*Pay Equity: a New Approach to a Fundamental Right*, Pay Equity Task Force Final Report 2004, Canada).

In New Zealand, the Pay and Employment Equity Taskforce accepted the 70% figure and the Government has accepted that level. For the reasons outlined above, it would be inappropriate to exclude consideration of occupations close to the 70% figure. The 70% figure is a guide for establishing whether the occupation is female-dominated, not an arbitrary or absolute cut-off point.

Job evaluation

A structured process to determine the 'size' of different jobs within an organisation by examining skills, knowledge, responsibilities and working conditions. Establishing internal relativities between jobs (their 'size' relative to each other) in an organisation contributes to establishing pay rates and grading structures. The measurement process generally involves a number of factors and results in a numerical score.

Justifiable

Adequate grounds can be provided to establish that a practice is right, reasonable or valid. One important reference point in this review for considering whether something is justifiable is whether it is lawful. Factors to consider in determining if a conduct, practice, requirement or condition is unlawful include:

- whether the policy, practice or behaviour is based on gender, and if so
- whether the employee(s) or applicant(s) is/are being disadvantaged, and if so
- whether an exception in the Human Rights Act or Employment Relations Act applies e.g. different treatment based on gender may be a genuine occupational requirement
- whether measures to address or resolve the disadvantage based on gender would unreasonably disrupt the employer's business. Relevant considerations would include the effect on capacity to accomplish the organisation's purpose; other employees' workloads or conditions.

Some practices and treatments that are within the law may still be found to be unjustifiable.

Market surveys

Once a job evaluation exercise is completed, or when a new job is established in an organisation, use is often made of market surveys to help fix the pay range for particular jobs. Commercial databases record the salaries paid to jobs of a particular numerical 'size'. This is often described as 'the market rate' – the range of pay those particular jobs are attracting across organisations. Often the market will be segmented into particular sectors or industries to make the comparison more relevant. Any biases (gender or otherwise) inherent in the job evaluation systems from which the job size was derived will be reflected in and perpetuated through the market surveys.

Pay and employment equity

Pay equity and employment equity, combined, indicate the outcome of a systematic approach to identifying and eliminating unjustifiable causes of inequity to provide fair and productive workplaces.

Performance pay

Performance pay is money paid to reward employee performance at work.

Sometimes called merit pay, it may take the form of an increase in pay or a bonus one-off payment. It is generally paid on an individual basis. In some organisations, performance may be rewarded through non-cash means including vouchers, gifts or extra leave.

Remuneration

Remuneration is the sum of all direct and indirect cash payments to an employee. It can include cash and non-cash rewards such as base pay, allowances, health insurance, childcare allowance, personal use of a company car, superannuation contributions and bonus payments.

Components of remuneration include:

- Annual base salary – gross per annum amount
- Annual base pay, allowances (higher duties, extra duties, etc.) and overtime payments
- Total remuneration – includes base salary, additional non-cash benefits (employer-subsidised superannuation, reserved car parking, special allowances, and personal use of other employer-provided benefits) that are regularly received, plus any performance pay
- Hourly rate – based on the annual salary
- Average hourly earnings – based on the annual salary, regular taxable allowances, overtime payments
- Typical weekly or fortnightly pay – based on the annual salary.

Work-life balance

Work-life balance is about accommodating the interaction between paid work and other activities, including unpaid work in families and the community, leisure and personal development.