



## 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 3: Respect and Fairness

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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: respect and fairness (covered in this guide) remuneration and rewards; and, participation of women and men (see subsequent guides).

### Purpose of this guide

This guide will assist organisations to assess where they stand so they can be confident that their practices are respectful, fair and equitable to both males and females.

In particular this guide focuses on minimising the risks and effectively managing employee complaints of inappropriate behaviour, and on the operation of the performance management system. With this knowledge, organisations can 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 your practices and systems that support anti-discrimination, fairness and respect
- To coach human resources professionals and managers about the fair and respectful operation of your organisational policies and practices.

A glossary (see Appendix Two) 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 a 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 practices that equally deliver respect for males and females?**

Many factors impact on whether females and males are treated equitably in terms of the provision of non-discriminatory and fair practices and few businesses have the time and resources to investigate all of them fully at the same time. That said, the business case for ensuring practices are fair and respectful of males and females is indisputably strong. At firm level, 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 are all recognised benefits.

In order to ensure human resource policies and practices contribute to the overall performance of the business in the long run means ensuring that returns on investment in human capital are 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 fairness, and engages employees. Apparent inequity works against such cultures.

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

## **How would you know if this is a problem in your business?**

The primary indicator that you have it right is if males and females have equal confidence in the fairness and respect they are accorded in key human resource management practices.

If they aren't you might see that:

- There is a difference in the level of confidence males and females have in how complaints may be dealt with
- The organisation, or parts of it tolerate harassment, inappropriate behaviours and/or discrimination
- There is a non-explainable or justifiable difference in the outcomes of performance appraisals for males and females
- 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
- Women perceive the work environment to be more likely to show respect to their male colleagues than to them

- Managers and supervisors are not equipped or willing to address unfair or disrespectful behaviours in their teams
- Inconsistent application of performance appraisal policies amongst males and females
- Women take longer to be promoted than males, progress more slowly or don't apply for senior roles.

### **How will you know if respect and fairness practices are equitable in your business?**

- Males and females are equally likely to feel confident that harassment or discrimination complaints are dealt with appropriately
- Males and females are equally likely to be confident that the business does not tolerate harassment or discrimination
- There is no difference in the way that males and females are assessed against key performance criteria
- Males and females are confident in both the design and implementation of the business's HR systems.

### **What can you do?**

There are three key steps to addressing any inequities in regards to respectful and fair operation of your systems and processes – decide on the important issues to look at; analyse the key differences and determine which requires a response; and thirdly plan a response. Each of these steps is outlined in this section.

#### **Step 1: Understand your business data**

Start by increasing your understanding of the overall picture of those systems that seek to minimise the risks of inappropriate behaviour (e.g. harassment, discrimination, bullying), and those processes that support fair and respectful implementation of your HR framework for males and females. Gather information on:

- The experience with managing any complaints
- Exit interviews
- Initiatives to train and support staff in the appropriate management of complaints and creation of inclusive work cultures
- Policies and procedures regarding harassment and/or discrimination and for the performance management system
- Processes used to determine pay and other remuneration
- Outcomes for males and females from performance assessment processes
- The performance criteria used in different parts of the business.

It will be useful to disaggregate performance data to identify distributional differences, such as whether there are patterns that are based on region, business group, occupation, age, management level, part-time/full-time etc.

#### **Step 2: Identify the key differences between women and men**

Having gathered information, you can identify any areas where there are important differences between women's and men's experiences. We suggest you use the following three discrete stages (a to c) to help you to identify and understand any differences that exist.

*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) into whether processes are being fairly implemented.

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

Using the results of the information scan, 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.

*c. 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 One provides examples of the sorts of patterns you may find and what may be contributing to them across the groups you are looking at.

## Key questions

### Key question 1:

**Do women and men have equal confidence that the organisation is taking active and deliberate steps to minimise the risk of discrimination and harassment (including sexual harassment) and other inappropriate behaviours, and will respond appropriately if it occurs?**

#### *Prompt questions*

- a. Does the organisation monitor the incidence of harassment, discrimination and inappropriate behaviour?
- b. What levels of harassment and discrimination do women and men experience?
- c. Do women and men have similar levels of confidence that harassment, discrimination and other inappropriate behaviours will not be tolerated?
- d. Do women and men have similar levels of confidence that if they were harassed, the organisation would deal with it appropriately?
- e. Does the organisation actively promote a workplace culture that supports a safe environment in which difficult issues can be raised?

### Key question 2: Is the performance management system fair for both women and men?

#### *Prompt questions*

- a. What proportion of women and men have their performance formally assessed?

- b. Are the measures/criteria used in performance assessment transparent and free from gender-bias?
- c. Does the performance management system allocate ratings or scores? If so, what is the distribution of these ratings and scores by gender and/or main occupational groups and/or work areas?
- d. Are there significant differences between the ratings and/or scores for women and men?
- e. Where the performance management system is connected to the allocation of rewards, are the experiences of women and men similar?
- f. Do women and men have similar levels of confidence in the fairness of the performance management system?

**Key question 3: Do women and men have equal confidence in the fairness of the organisation's key human resources management policies and systems<sup>1</sup>?**

*Prompt questions*

- a. Are human resources management policies, practices and systems evaluated or monitored for outcomes by gender? If so, are there any significant differences between outcomes for women and men?
- b. Do women and men report similar confidence in human resources management policies, systems and practices?

**Key question 4: Do women and men have equal confidence that they are treated fairly and equitably by their managers?**

*Prompt questions*

- a. Do women and men report similar levels of confidence and satisfaction in being treated fairly by their managers? Information may be available from exit interviews and/or climate surveys.
- b. Do women and men have proportionately similar levels of complaints (other than harassment and discrimination) and personal grievances?

**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 gender equity.

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<sup>1</sup> Human resources management policies and systems include recruitment, health and safety, employment relations, performance, recognition and reward, study support, discipline, and leave.

## Appendix One: 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 how 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 individual women or men. You are looking for patterns across the groups, not individual circumstances.

Many of the patterns focus on women being treated less favourably 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. Do women and men have equal confidence that the organisation is taking active and deliberate steps to minimise the risk of discrimination, harassment and other inappropriate behaviours (including sexual harassment) and will respond appropriately if they occur?	
Pattern	Possible causes
Women are more likely than men to experience harassment and/or discrimination.	<ul style="list-style-type: none"> <li>• The workplace culture permits sexual harassment and/or discrimination</li> <li>• The workplace culture permits aggressive or bullying behaviours.</li> <li>• There has been no anti-harassment and/or anti-discrimination training to support the policies.</li> </ul>
Women have less confidence than men that harassment and/or discrimination complaints will be dealt with appropriately.	<ul style="list-style-type: none"> <li>• The organisation does not have clear policies and procedures regarding harassment and/or discrimination.</li> <li>• Managers and supervisors are not sufficiently equipped to respond to harassment/discrimination complaints.</li> <li>• There have been recent complaints that have been handled poorly.</li> </ul>
Women have less confidence than men that the organisation will not tolerate harassment and/or discrimination.	<ul style="list-style-type: none"> <li>• The policies and procedures have not been effectively communicated to current or new staff.</li> <li>• Individuals in senior positions have a reputation of making sexual or discriminatory comments and jokes.</li> <li>• Women perceive a gap between what the organisation says it is committed to and what actually happens.</li> </ul>

2. Is the performance management system fair for both women and men?	
Pattern	Possible causes
There is a difference in the way men's and women's scores are allocated.	<ul style="list-style-type: none"> <li>• Performance criteria do not adequately include a full range of relevant competencies, including 'soft' competencies (for example. communications, relationship building).</li> <li>• Performance criteria are not defined in a gender-neutral way.</li> <li>• Managers are not equipped to understand and minimise the risk of bias.</li> <li>• Men have more typically negotiated an increase in their performance grading.</li> <li>• Male-dominated occupations receive higher performance gradings than female-dominated occupations.</li> </ul>
There is a difference in men's and women's participation in performance management.	<ul style="list-style-type: none"> <li>• Performance management is not implemented consistently across the organisation.</li> </ul>
There is a difference in men's and women's level of satisfaction with performance management.	<ul style="list-style-type: none"> <li>• Performance management policy and procedures are not adequately developed.</li> <li>• Employees are not equipped to participate effectively in the performance management process.</li> <li>• Managers are not sufficiently equipped to implement performance management effectively.</li> <li>• Women's lack of confidence reflects their past experience with the system.</li> </ul>

3. Do women and men have equal confidence in the fairness of the organisation's key human resources management policies and systems?	
Pattern	Possible causes
Women have less confidence in the design of the HR systems.	<ul style="list-style-type: none"> <li>• The design of HR policies and practices does not include an active consideration of equity issues and the impact on women.</li> <li>• The people involved in designing the HR policies and practices are not equipped to understand and apply equity principles to their work.</li> </ul>
Women have less confidence in the implementation of the HR systems.	<ul style="list-style-type: none"> <li>• The policies are not implemented consistently.</li> <li>• Managers are not sufficiently equipped to understand and take account of equity issues when they apply the systems.</li> <li>• Outcomes of HR systems are not monitored or evaluated and reported on.</li> <li>• Women's lack of confidence reflects their past experience with the systems.</li> <li>• Negative experience with one or two systems influences the view of the whole.</li> </ul>

## Appendix Two: Relevant legislation and glossary

Before conducting a review of how fair and respectful your practices are in relation to males and females, it can be helpful to consider existing guidance material and legislation. 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.

### 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:

*sex, 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. (e.g. A pregnant woman 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. (e.g. A woman 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 sex. 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](http://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.

### 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 percent or more female
- Male-dominated occupations are 60 percent 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 percent + 1. The figure of 70 percent represents two standard deviations above 50 percent for an organisation of 100. For an organisation of up to 500, the comparable figure is 60 percent and it is 55 percent 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 percent figure. The 70 percent figure is a guide for establishing whether the occupation is female-dominated, not an arbitrary or absolute cut-off point.

## **Harassment**

Harassment is unwanted and unwarranted behaviour that a person finds offensive, intimidating or humiliating and is repeated, or significant enough as a single incident, to have a detrimental effect upon a person's dignity, safety and well-being.

Various legislation (such as the Human Rights Act 1993, the Employment Relations Act 2000 s103, s108, s109 and s117, the State Sector Act 1988 s56 (2) and the Health and Safety in Employment Act 1992) covers differing aspects of harassment.

Behaviours that may constitute harassment include:

- A generally hostile work atmosphere of repeated put-downs, offensive stereotypes, malicious rumours or fear tactics such as threatening or bullying
- A general work atmosphere of repeated jokes, teasing, flirting, leering or sleazy 'fun'
- An isolated but significant incident, such as a violent attack or sexual assault
- Comments or behaviour that express hostility, contempt or ridicule for people of a particular sex, race, age, etc.
- An employee/employer is offered special treatment in return for sexual favours.

Further guidance on behaviours that may contribute to harassment, bullying or discrimination is in the State Service Commission publication *Creating a Positive Work Environment*.

## **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 whether any conduct, practice, requirement or condition is unlawful include:

- 1) whether the policy, practice or behaviour is based on sex, if so

- 2) whether the employee(s) or applicant(s) is being disadvantaged, if so
- 3) 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
- 4) whether measures to address or resolve the disadvantage based on sex would unreasonably disrupt the employer's business. Relevant considerations would include:
  - the effect on capacity to accomplish the organisation's purpose
  - other employees' workload or conditions

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

### **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.