
All District Health Boards



DHB/Midwifery Pay Equity Claim

Bargaining Process Terms of Reference

The Parties

1. The parties to these Terms of Reference (TOR) are the 20 District Health Boards (DHBs) represented by TAS, and the Midwifery Employee Representation and Advisory Service (MERAS) and the New Zealand Nurses Organisation (NZNO).

The Background

2. The parties have agreed to the process set out in this ToR in order to address the pay equity claim on behalf of union members of MERAS and NZNO performing midwifery work and are employed by the DHBs (“the Unions’ Claims”).

Note: The DHBs and NZNO have agreed to address the pay equity claim for nursing work in a separate process.

3. The parties note that this process is being undertaken in the context of the Terms of Reference agreed in May 2017 by the State Services Commission Te Kawa Mataaho (SSC) and the New Zealand Council of Trade Unions Te Kauae Kaimahi (NZCTU) to guide agencies and unions in progressing identified pay equity claims in the State sector in advance of legislation to implement the Reconvened and Joint Working Group’s (R/JWG) Pay Equity Principles (“the Pay Equity Principles”).
4. The parties note that the unions ultimately reserve the right to progress this matter under law should the unions wish to at any time prior to any settlement of the Unions’ Claims.

The Purpose

5. The purpose of these ToR is to apply the Pay Equity Principles to effectively and efficiently assess and address the Unions’ Claims.
6. These ToR establish the good faith bargaining process by which the parties will address the Unions’ Claims. These ToR constitute the written agreement anticipated by clause 3, schedule 1 of the Equal Pay Amendment Bill 2018, and in accordance with the Code of Good Faith – Public Health Sector.

The Scope

7. The parties agree that the Unions' Claims are for work being undertaken by midwives employed by the 20 DHBs.
8. The Unions' Claims are limited to matters of pay equity that is equal pay for work of equal value. Wider issues contributing to any gender pay gap, such as career progression, access to training opportunities, and flexible working arrangements, are outside the scope of the Unions' Claims and these ToR. However, it is acknowledged that a possible outcome may be, but is not limited to, new salary or classification structure(s).
9. On signing this ToR the DHBs will notify their respective other employees who perform work that is the same as, or substantially similar to, the work performed by the claimants.

How we work together

10. The principles and expectations underpinning our engagement are:
 - The parties will bargain in good faith to settle the pay equity claim.
 - The parties are committed to an effective and efficient process and to undertake this work as effectively and efficiently as possible.
 - The parties commit to attending the necessary meetings and will meet as agreed to review progress.
 - Respect for the independence of each organisation including recognition of each other's specific responsibilities and accountabilities.
 - The parties commit to keeping their respective executive groups and other key stakeholders informed.
 - Acknowledgment that as the MERAS and NZNO are the collective representatives and leaders of their respective members in the DHBs, MERAS and NZNO are key stakeholders in the DHBs.
 - The pay equity process requires the participation of employees including managers. The parties commit to actively support DHB employees, managers and union members, in the pay equity process to address the Unions' Claims.
 - Timely and effective participation in decision-making processes based on a relationship of honesty.

Communication

11. The parties recognise the importance of preserving the integrity of the R/JWG Pay Equity Principles pending legislation and agree to manage communications throughout the pay equity process, including settling the claim, accordingly, and specifically:
 - During the assessment stage of the process and at the end of each pay equity meeting, the parties will agree key messages for the parties' internal and external constituents.
 - During the negotiation (settling the claim stage) of the Unions' Claims each party's communications will comply with the principles of good faith and the provisions of the Employment Relations Act 2000. Each party recognises the right of the other to communicate with members or employees via normal channels of communication.

- Approaches from the media regarding a pay equity claim(s) may require either party to respond within short timeframes. In this situation the parties will use best endeavours to maintain a 'no surprises' approach.

Research and Information

12. Previous work relating to the Unions' Claims may have been undertaken. This work and information may be useful to parties and should be made available. In assessing the Unions' Claims using the Pay Equity Principles, recognition should be given to this work where relevant.
13. The parties will supply each other with any relevant information to assess the Unions' Claims or to substantiate a position relevant to pay equity bargaining. The parties will have access to all information collected via this joint process. Methods for data gathering, storage and assessment will be jointly agreed.
14. The parties will maintain the confidentiality of this information, unless otherwise agreed.

Representatives of the Parties

15. The parties will identify, select and notify the names of their respective representatives for each stage of the pay equity process including settling the claim (negotiations).
16. Representatives of the DHBs and Unions participating in each stage of the process, including the settling of the claim (negotiations) commit to:
 - Actively assisting in the resolution of issues.
 - Attending the necessary meetings and carrying out their respective tasks in a timely manner.
 - Keeping their respective steering groups and reporting lines informed.
17. The parties commit to maintaining the consistency of membership of their representatives, including negotiating teams as much as is practicable, to support an effective and efficient negotiating process. Where a team must change its membership, they will notify the other parties as soon as is reasonably possible with the view to ensuring continuity and maintaining momentum and progress.

The Process

Pay Equity Tools and Resources

18. The parties note the SSC has developed tools and resources in consultation with State Sector agencies and unions for the purpose of applying the Pay Equity Principles to pay equity claims in the State sector. The parties agree to use and pilot the SSC tools and resources to address the Unions' Claims, understanding that the tools may have to be appropriately amended for the particular workforce while retaining overall consistency.

Pay Equity Bargaining Process

19. The pay equity process has three main stages: raising the claim, assessing the claim and settling the claim. It is important that the processes and work done in these stages is free from assumptions based on gender.

Raising the Claim

20. Both NZNO and MERAS raised claims in MECA bargaining for their respective union members undertaking work done by midwives employed by the 20 DHBs. The 20 DHBs have accepted these claims and agree that this work in DHBs is predominantly done by women and it is arguable that the work is currently and/or historically been undervalued, while noting that agreeing to proceed with a pay equity claim does not in itself predetermine a pay equity outcome.

Assessing the Claim

21. This stage requires the parties to jointly and collaboratively undertake an investigation to gather information, data and evidence. This involves:

- a. Assessing the work of claimants and identified comparators; by examining the skills required, the responsibilities imposed by the work, the conditions of work, the degree of effort required, the experience of employees, terms and conditions of employment, and other relevant work features.
- b. Assessing the remuneration of the claimants and comparators.
- c. Comparing the remuneration between the claimants and comparators.
- d. Compiling the work from the assessment phase.

Settling the Claim

22. This stage requires the parties to consider the information, data and evidence compiled under the assessment stage and develop conclusions as to the undervaluation of the claimant group. This involves:

- a. Concluding whether the remuneration of the claimants is affected by gender based undervaluation.
- b. Negotiating and agreeing a new rate(s) of remuneration that does not differentiate on the basis of gender and does not reduce other terms and conditions.
- c. Negotiating and agreeing a process to review the claimants' terms and conditions of employment to ensure that pay equity is maintained, including the frequency of reviews which must be aligned with any applicable collective agreement negotiations.
- d. Recording the settlement in writing, including the agreed review process.

Dispute Resolution Process

23. The parties will make every reasonable endeavour to conclude a pay equity settlement prior to filing proceedings with the Employment Court under the Equal Pay Act.
24. If a disagreement on an aspect of the pay equity claim or bargaining over a pay equity claim cannot be resolved by the parties, the parties will enter mediation. Either party may request a mediator at any time. The mediator will either be from the Employment Relations Service of the Ministry of Business, Innovation and Employment or a mediator agreed by the parties.
25. If mediation is unsuccessful and very serious difficulties have arisen, the parties may agree to seek facilitated bargaining with the Employment Relations Authority. The current high threshold for facilitated bargaining will be lowered in relation to pay equity claims via new legislation. Recognising the new legislation may not be passed during this pay equity process, the parties agree to seek a non-binding recommendation from a mediator.

26. The parties note that unions ultimately reserve the right to revert back to the legal process under existing law.

Authority and Ratification

Authority

27. The Union parties, having made the claims, have the authority to address the pay equity claims for midwives employed by the DHBs using the agreements and processes in this ToR.
28. The DHB parties, led by TAS, has the approval of DHB Chief Executives to address the pay equity claims for midwives employed by DHBs using the agreements and processes in this ToR.

Ratification

29. The Union parties have the authority to enter into a proposed agreement to settle the pay equity claim (negotiation) for midwives employed by DHBs subject to the ratification by the members of each performing midwife work and employed by DHBs (within the scope section above). The threshold for ratification by each union shall be 50% + 1 in accordance with the respective rules of each union.
30. The DHB parties have the authority to enter into a proposed agreement to settle the pay equity claim (negotiation) for midwives employed by DHBs, subject to approval by the DHB Chief Executives after consultation with the Ministry of Health.

Signatories



Jim Green

For and on behalf of

All District Health Boards

Date: 19th March 2019



Glenda Alexander

For and on behalf of the

NZ Nurses Organisation

Date: 19th March 2019



Margie Apa

For and on behalf of

All District Health Boards

Date: 19th March 2019



Jill Ovens

For and on behalf of the

Midwifery Employee Representation &
Advisory Service

Date: 19th March 2019