

## Putting the principles into practice: pay equity for social workers at Oranga Tamariki

**Amy Ross**

New Zealand Public Services Association Te Pūkenga Here Tikanga Mahi  
amy.ross@psa.org.nz

**Sarah Martin**

New Zealand Public Services Association Te Pūkenga Here Tikanga Mahi  
[sarah.martin@psa.org.nz](mailto:sarah.martin@psa.org.nz)

**Gretchen Dean**

Oranga Tamariki  
gretchen.dean@ot.govt.nz

### Abstract

In 2017 a joint New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi (PSA) and Oranga Tamariki (ŌT) working group began work to “assess and resolve” an equal pay claim for Social Workers that the PSA had lodged with the Employment Court under the Equal Pay Act (1972) in 2015. The parties agreed to apply the principles and processes recommended for addressing pay equity claims by the tripartite Joint Working group that was formed in the wake of the *Bartlett & Service and Food Workers’ Union v Terranova Homes & Care* equal pay court proceedings. This meant the PSA and OT working group became the first to use the newly drafted principles to address an equal pay claim. With settlement close, this paper presents key insights from the union and the employer on the application of the principles and the process used to address the claim, including a discussion on key steps such as identification and assessment of comparators, and the analysis of remuneration and settlement. It discusses lessons learned that will hopefully be of use for other parties to future equal pay claims.

### Introduction

This paper outlines the process used to settle the NZ Public Service Association’s (PSA) 2015 claim under the Equal Pay Act (1972) for social workers at Oranga Tamariki (OT). The parties were the first to use the principles for resolving pay equity claims established in the wake of the *Bartlett & Service and Food Workers’ Union v Terranova Homes & Care* equal pay court proceedings, and the process has been held up as a “gold standard” for future claims. This paper presents the key elements of the approach, the determinants of an efficient and successful claim, and provides some insights on lessons learned.

### Background

*Pay and Employment Equity Unit*

The origins of the PSA claim for statutory social workers dates back to 2004 and the establishment of a Pay and Employment Equity (PaEE) unit by the fifth Labour Government. Located within the Department of Labour, the unit developed a pay and employment equity review process and a gender-neutral job evaluation tool to assist organisations to investigate their practices and determine actions to remove pay inequities.

The unit also administered an annual contestable fund available to public service, public education and public health employers and unions to undertake specific projects to support pay and employment equity education and training in their organisation.

In 2006 the then named Child Youth and Family (CYF), a Government department within the Ministry of Social Development, was a recipient of funding via this contestable fund to enable it to investigate internal inequities and identify solutions. Between 2006 and 2008 this funding was used to produce multiple reports on the inequities within CYF and recommendations for action.

Critically, this research identified social work roles at CYF as suffering from gender-based undervaluation: male employees at CYF were paid 9.5% more than female employees and there was significant clustering of females in "female typed" occupations that are undervalued and low paid in comparison to neutral or male-dominated roles (Raven, 2007).

In addition, the funding was used to undertake analysis of the different frontline social work jobs. This analysis identified that the five core areas of "frontline" social work practice - Adoptions, Youth Justice, Residences, Call Centre and Care and Protection - were substantially similar to each other in terms of skills, responsibility and work demands. This meant they could be assessed and understood as one job for purposes of job evaluation (Burns, 2008:1).

Before this work could be utilised to generate substantial change the PaEE unit was closed in 2009 by the incoming National Government. The pressures it had created dissipated under the new government without the unit's continued existence. Nonetheless, it laid important ground work for the PSA's eventual equal pay claim for social workers at CYF, which was lodged with the Employment Court in 2015, under the terms of the Equal Pay Act 1972.

#### *The PSA equal pay claim*

A critical legal juncture in New Zealand's Equal Pay history came in 2013 when the Employment Court ruled in favour of Kristine Bartlett and the Service and Food workers' Union (SFWU) in their claim of gender pay discrimination under the 1972 Equal Pay Act. The court agreed with Bartlett and the SFWU that the Act allowed for the pay rates in female dominated occupations to be compared to pay rates in un-related male dominated occupations in determining discrimination. This decision set the precedent for the Equal Pay Act to be used in a new way to settle claims and was the impetus behind the PSA's decision to lodge its claim with the Employment Court.

Following the court decision, a tripartite working group – the Joint Working group (JWG) - was convened to establish some principles to support future parties to resolve Equal Pay claims outside the court system. These principles were completed in 2016 and amended in 2018 when the JWG was reconvened by the newly elected Labour led Coalition Government. The original JWG principles were used by OT and the PSA to resolve the PSA's equal pay claim.

In its claim PSA argued the applicants, two CYF social workers and a senior practitioner social worker, were subject to historical and ongoing gender-based undervaluation. The case argued that the remuneration they received for their work was lower than the rate of remuneration that would be paid to male employees with the same or substantially similar skills, responsibility and service, performing the work under the same or substantially similar conditions and with the same or substantially similar degrees of effort.

In December 2016, as part of collective agreement negotiations, the PSA and CYF agreed to progress the PSA's equal pay claim through a working group process. The parties agreed to the following wording within the Terms of Settlement document which was subsequently ratified by members:

*The Ministry and the PSA note the Government's decisions to update the Equal Pay Act 1972 and amend the Employment Relations Act 2000 to implement recommendations of the Joint Working group (JWG) on Pay Equity. This proposes principles and a process for employers and employees to address pay equity claims.*

*The Ministry and the PSA will meet within two months of ratification of the collective agreement to agree how to apply these principles and process to the pay equity claim for social workers.*

*The PSA notes that it reserves the right to advance its claim in the ERA [Employment Relations Act] if it is not satisfied with progress.*

#### *Establishing the working group*

In March 2017 a very early version of the working group that would address the equal pay claim was convened in order to meet the two-month deadline outlined in the Terms of Settlement. At this meeting parties agreed to initiate the formal exchange of letters between the PSA and OT to provide more detail on the claim and initiate the joint working group principle process. Gráinne Moss the Chief Executive of Oranga Tamariki responded to the PSA in May 2017, confirming that OT saw there was merit in the claim and expressing OT's commitment to applying the joint working group principles.

May 2017 onwards was a critical time in forming the working group and establishing ways of working. Members of the group solidified as staffing was clarified within OT and representation from the PSA was finalised. This allowed the group of 10 to forge ahead with putting together the Terms of Reference (ToR), a document that would become a significant reference point for the group throughout the complex work to come.

#### *The Terms of Reference*

The jointly designed ToR covered all the detail regarding how parties would work together. From the negotiating teams through to detailing disputes resolution, considerable time was spent getting this document right. The ToR included an estimated timeline which proved useful in terms of giving the group the necessary impetus to push ahead and look at ways to progress work. This was underpinned by a shared agreement to work as efficiently and effectively as possible.

While the ToR were extremely valuable in their entirety, particular components of it were significant to the success of the group. One of these was the express commitment made to using the JWG principles. At the time of the drafting the ToR, draft legislation to embed the JWG in the Equal Pay Act had yet to be introduced. Nonetheless the PSA-OT working group agreed to apply and preserve the integrity of the JWG principles and this was strongly reinforced under the "Purpose" "Objectives" and "Outcomes" sections of the ToR. This allowed the working group to continue with the JWG principles process regardless of any future changes to the legislation. It also established a level of trust in the group and we shared a commitment to this approach. It was a critical decision that gave necessary stability and certainty to the process.

Another notable area of the Terms of Reference was the "Outcomes" section. When working through uncharted and often complex territory it was invaluable to state explicitly what success would look like and what the group was here to do. The full section reads as follows:

*The principles will have been successfully applied and the negotiations successful when:*

1. *The value and recognition of work by social workers is free from gender-based discrimination.*
2. *A negotiated agreement is reached that achieves a pay equity rate for social workers which has no element of gender-based undervaluation.*
3. *There is a clear agreed mechanism for maintaining the value of agreed equal pay rates.*
4. *Other terms and conditions of employment are not reduced by the introduction of pay equity.*
5. *That the PSA/MVCOT relationship is enhanced by the successful negotiation and application of equal pay rates utilising the principles rather than the courts.*

The above wording ensured that consistent application of the JWG principles and the enhancement of the relationship between the parties was an explicit measure of success.

### **The process**

The following paragraphs describe the key steps in addressing the equal pay claim under the JWG principles.

#### *Step one: establishing merit*

As detailed above, establishing merit was one of the first steps undertaken by the working group to address the equal pay claim. The discussion on merit was held early in the working group's formation, which at that time was operating more according to a conventional bargaining process rather than a working group. The distinction might seem subtle, but it certainly flavoured the nature of the discourse.

The parties were both positional, with the PSA articulating that because the Chief Executive had accepted the case had merit in her letter, "merit" as a principle was effectively answered. OT on the other hand were clear that Moss had simply acknowledged there was "merit to proceed". This argument disrupted a full meeting of the working group and threatened to derail the process. In a

subsequent meeting we agreed to park that debate and proceed with the analysis work itself as this would ultimately be where "merit" would be demonstrated regardless of our current positions. This was the first lesson in the type of problem solving that prioritised progress, rather than trying to "win" the argument.

*Step two: analysing the claim*

Our next step was to assess the original claim by producing a thorough assessment of the skills, responsibilities, conditions of work and degrees of effort of the work done by our claimant group. The purpose of this was to ensure that we met the obligations of principles 3-6 to have a clear and detailed understanding of the work done by our claimant group that was free from any gender-based undervaluation or assumptions.

Drawing on multiple data sources, including interviews with social workers undertaken by the PaEE unit in 2008, current job descriptions, social work registration board information and standards of practice, the working group developed a rich understanding of the skills, responsibilities and effort of the social work role.

This information was mapped into tables that became known to the group as the "A3s". The A3s categorised and detailed skills, expertise, proficiency and the references we had drawn on to establish these. They became a platform for us to map and understand both our claimant and comparator groups in detail.

Reaching consensus on many of the elements in the A3 was a discursive process. It was valuable to have practicing social workers in the room as part of the working group, as well as those who were not from the profession. The practitioners in the room allowed for first-hand experience to deepen and contextualise a surface or theoretical level understanding of the work. At the same time, the process benefitted from having non-social workers as part of the group because they were able to ensure balance and guard against personal bias.

Once the A3 map for social work was complete, it was examined for robustness and validity by PSA's national delegate group and OT managers. This was important in providing a level of quality assurance and validation that the work was understandable to people who had been outside of the room.

Despite considerable doubts from the PSA about the risks of having managers and other external parties validate information it proved very useful. The managers considered that some of the skills had been underestimated and requested they be uplifted in terms of how critical they were, and other than some small technical changes, the feedback received indicated we were on track with a robust piece of work, which gave the group real confidence.

An important change occurred during the work undertaken on analysing social work in that there was a steady shift in how we worked together as a working group. The focus on information gathering, and analysis and the associated discussions forced us to work more as a research team, rather than opposite parties with positions to represent and /or defend. The building of relationships and trust

over this time gave the working group a useful platform going forward into the latter stages of the work.

*Step 3: identifying comparators*

Having established the rich detail needed on our claimant group, we were in a strong position to move to the stage of identifying and evaluating male dominated comparator groups. Both parties brought to the table their ideas of who those comparators should be. After considerable debate about whose to pursue we realised that the approach we had taken was not consistent with the principles or the ways that we had established we worked most effectively. We agreed to put aside our separately identified comparators and instead jointly agree some criteria for finding appropriate male dominated groups. We took guidance in part from the PaEE unit here as well as adding our own criteria. The criteria we established were

- be male dominated (defined as over 66% male) with preference given to those male dominated groups whose gender ratio were inversely closest to that of social. (Social work is 85.6% female).
- be the same or similar Australia and New Zealand standard classification of occupations (ANZCO) code
- have a collective agreement
- have 50+ within the profession
- be within the wider state sector (unless apparent that it met all other criteria and looked strong as a comparator).

This process then threw up a range of occupations for us to consider including park rangers and surgeons. As a team we then had to run what we called a 'sense check' over these occupations. To do this we had to agree some additional criteria which could rule an occupation out. Entry criteria was one of the things considered here. This excluded some professions at each end of the spectrum. Surgeons were excluded as the level of extra specialisation and training we felt pushed it too far away. Likewise, park rangers were excluded as there was no discernible entry criteria, meaning that it was not a viable comparator.

Joint discussion and evaluation of comparators created a strong, agreed outcome which led to four comparator groups being chosen for further investigation.

*Step 4: evaluating the comparator groups*

The working group agreed to use the Equitable Job Evaluation (EJE) questionnaire from the EJE tool as the basis for gathering information on the comparators. EJE was developed by the Department of Labour in 2007 with the intent that it would:

*provide a clear and fair measure of the relative values of jobs within an organisation, a job discipline, or other specified group of jobs. Job evaluation also provides a means of establishing external relativities with jobs of similar value in other organisations (Department of Labour, 2007:4)*

Having a tested and validated tool as a base was important for the group as we wanted the process of comparison to be robust and have integrity. However, as we were traversing quite unfamiliar territory

in terms of following the JWG principles we needed to also ensure that we were able to adapt or add to it to provide the depth of information we needed. EJE was particularly useful for this as was not designed to be a hard and fast tool.

*It is important to remember that job evaluation is a process, not a formula, and this manual is only a tool to assist in that process. The manual provides a structured methodology that enables the evaluator to arrive at an appropriate job size through a logical and consistent process. The guidelines in this manual are just that: guidelines, not absolute rules. (Department of Labour, 2007:4)*

The EJE questionnaire was used by the PaEE unit in 2007 to interview social workers. The OT/PSA working group made small amendments to this original questionnaire to ensure it captured the information we were looking for as per the JWG principles. Two of the chosen comparator groups workers completed the survey themselves; while for the other two groups interviews and focus groups were conducted to complete the surveys.

Gaining access to workers from other organisations was not simple and required diplomatic handling. There were and still are, very different levels of understanding about pay equity processes and the implications of being a comparator group. Comparator employers expressed considerable nervousness about exposure of the data, the reaction of their staff to being compared to a social worker, and implications for their own wage negotiations.

Senior leadership from within OT and the PSA took on roles at this time to speak to both employers and unions of our chosen comparator groups to try and smooth the path and increase understanding about the process. We also made some commitments to these organisations about the security of their information to ensure they felt more confident about allowing participation. It is certainly an interesting ongoing question for us all in terms of the volume of pay equity cases still to occur about how we ensure positive engagement of male dominated occupations groups who may get repeated requests for information.

Once we had all the written responses back and the interviews had concluded we had all the data for each job compiled into a composite by an analyst. The working group reconvened and mapped all of this data, alongside any other data points we had collated into matching A3s such as we had undertaken for social work. Once complete we then replicated the validation process by asking those interviewed, and their managers, to confirm the A3s described their work accurately and robustly.

An important learning for the group throughout this process was how much richer the detail was from those that we had interviews or focus groups with than those that we gave the written questionnaire to fill in. This is primarily because the respondent doesn't have any guidance from the interviewer when filling in the written version so there is scope for misunderstanding and defensiveness to creep into how people respond. An example would be a respondent who prefaced almost every written answer with his outrage at being compared to a social worker as his work was "so much harder". The perception of this individual that comparability was predetermined meant that his answers were truncated and abrupt. In an interview context an explanation could have been given that comparability had in fact not yet been established, and this questionnaire was an opportunity to understand the work of potential comparators in more detail.

There is also potential for female dominated claimant groups to undervalue their own work without having skilled interviewers to frame questions in a way that elicits detailed responses.

*Step 5: ascertaining comparability*

With good data on all our comparator groups we proceeded to work together to apply the EJE factor scoring to the claimant as well as each comparator occupation as part of how we would look at comparability. This is a process whereby elements of a job are broken into "factor families", These "families" being skills (factors 1-4) responsibilities (factors 5-8) demands (factors 9-11) and conditions (factor 12). Each factor has multiple levels and attracts a score based on what level is required to do the job.

To ensure the process minimised the risk of bias each team member individually recorded their view of the appropriate score for each factor. The group then discussed all the numbers as a group, stating our rationale for the rating we had recorded. Where there was differences the group would discuss until a consensus was reached on the ultimate score provided. This allowed robust debate to ensure that preconceptions or biases held by group members were ironed out and justifications noted for each rating.

As a team it became clear this process had more legitimacy when the same team members were around the table doing the scoring for each factor. Consistency in the group meant that a shared understanding could be developed about how each factor was understood and applied. As EJE is not a scientific tool it is feasible a different group of people with the same data may score each factor differently. An important learning was that the scoring would be most effective for our purposes if it had internal integrity, quite simply the rigorous and consistent application of the factor plan across occupations by the same people.

Once the scoring was complete we developed and applied a secondary tool to help further understand comparability. We placed the EJE score for all our occupational groups onto one sheet grouped under three principal areas: skills, responsibilities and demands. The total EJE score for social work in each area became the 100% benchmark, against which the comparator occupations would be placed. The total EJE score for each of the comparator occupations was similarly aggregated under each of the three principal areas.

This allowed us to look each of the three areas across occupations and assess where they sat in relation to social work. For example, if an occupation rated higher than social work in the skills category (factors 1-4) it would attract a percentage over 100%, while lower ratings would be under 100%. We then applied a code to interpret the percentage difference, based on the following formula

Not at all comparable	50% or more difference
Small areas of comparability	Within 50%
Some comparability	Within 30%
Significant comparability	Within 20%
Broadly comparable	Within 10%



This tool provided a strong visual guide to understanding the scoring in more detail and sharpened the teams understanding of what the scoring meant for the undervaluation of social work.

At the completion of this process we were able to see the “size” of the social work job in relation to the comparator groups, all of which were male dominated. The evidence demonstrated that social workers were working at the same and/or higher levels of skills, responsibilities and effort than the each of the comparator groups.

#### *Step 7: bargaining the settlement*

The culmination of the research phases of the claim meant that the working group had to move into negotiating what all the research and work meant in terms of producing a monetary settlement.

The working group obtained and shared remuneration data on our comparator groups and did have an initial discussion about this data together. However, at this point a more traditional bargaining model was chosen as the parties prepared separately for the final stage negotiations and had different accountabilities. For OT this included discussions with other government agencies and Ministers to ensure they had mandate to bargain. Both parties had to make decisions about how to approach the discussion.

The pay systems of all the comparator groups were very different both in trajectory through the pay system (annual increments, merit-based steps etc) and how pay is calculated (total remuneration packages, base salary plus bonuses etc). This meant an easy correlation to lift pay was not feasible and more complex thinking had to be put in to how we could ensure genuine pay equity was achieved.

Having our research and analysis available to support negotiations was critical to success. Where we struggled with how to find agreement or how this would be affordable we were able to turn back to the evidence and make sure that our solutions would become answers to the gender-based undervaluation we had exposed. The ToR also assisted again at this point in reminding us what success looked like and what we needed to remain focused on.

After 3 days of negotiations we reached agreement. A pay equity agreement in principle had been reached and only awaited Cabinet sign off.

#### **The outcome**

On the 25<sup>th</sup> September 2018 Hon Tracey Martin, Minister for Children in the Labour-led Government announced that the Government had signed off on the pay equity settlement for OT social workers. The average percentage increase was 30.6% and this would be phased in across two years should it be ratified by members. It represents an injection into OT of \$114.6 million dollars over a 5-year period.

OT and the PSA travelled the country to take the deal to members and on the 23<sup>rd</sup> October the PSA announced that its social worker members at OT had unanimously endorsed the settlement.

#### **Key learnings**

A lot of important lessons were learnt by the working group throughout this work and also subsequent to it. For others embarking on a pay equity process using the principles there are learnings to be had from our experiences.

#### *Work together*

A critical element to our success was that the group worked as a team, not as oppositional parties. This did not mean that there was no disagreements, challenges or difficulties. It simply meant that when these occurred the group stayed at the table and worked them through. Being positional may feel more familiar or safe for many engaging in pay equity process and may even at times be necessary. However, the experience of the working group was that problems were solved more efficiently when we used the principles of co-design and collaboration to inform our discussion and processes.

Part of working together is also sharing the workload. Both the PSA and OT put a lot of work into our pay equity process and the workload was genuinely shared. This created a much better sense of team and ensured that there was a mutual sense of responsibility to the process and the outcomes.

#### *Talking about the money*

We made a deliberate decision not to talk about the money until the end. This enabled us to pursue a clear process of evidence gathering and analysis that allowed a genuine, unfettered look at skills, responsibilities and effort. This is not to say the parties did not have their own ideas about where things would or should end up in terms of remuneration, but this did not feature as a conversation until we had established our evidence base.

If desired settlement rates are in the conversation from the outset it can set quite a different tone and frame for the discussions, with each party flavouring discussions to lever the financial result that they are looking for. It also generates risk that either or both parties may undervalue a claimant group because a figure has been discussed without the process around it to justify it. Approaching remuneration last allowed the discussion around things like skills to be simply about identifying them, not a debate about what those skills would or should be worth.

#### *Professional identity vs job*

How you communicate with those on whose behalf you are negotiating equal pay is very important. As the process can take time, people can lose sight of what is happening and who the settlement will directly affect. As the PSA and OT negotiations were extremely politically sensitive, we erred on the side of not communicating much at all with members for some time except to say that the equal pay claim for social workers was progressing. The impact of this was that there were a number of employees within Oranga Tamariki who had thought that they were under scope and were extremely upset to find out that this was not the case.

Though the scope for the claim was consistent from the original analysis of the five core social work roles undertaken by Janice Burns in 2007, through to the roles on whose behalf the PSA filed the court case, we did not adequately consider the impact of talking about "pay equity for social workers" divorced from that history from members' perspective.

There are multiple jobs within OT that are undertaken by people whose professional identity is that of a social worker, including Supervisors, Practice Leaders, and the role of the Chief Social Worker. However, these are all different jobs, with different levels of skill, responsibility and effort and therefore they were out of scope. The pay equity process cannot provide a legitimate assessment of an entire profession or qualification, but rather looks at a job or group of jobs at a similar level. In this case this was the core statutory social work job.

A strong social work identity and a confusion around the pay equity process meant that some of those in social work roles outside of scope were genuinely distressed upon the announcement. They expressed the feeling that their social work identity was somehow being challenged. They asked both the union and the employer, with some validity, "am I not a social worker?" This question epitomises the confusion between professional identity and job role. There has been some damage to repair about this lack of clarity that we are still working through.

We would urge future claimants to consider peoples' professional identity carefully in communications and ask the question whether you could be giving a wider group than you anticipate a sense of being included.

#### *Disruption of pay equity*

Pay equity is a huge disruption: by design it upsets traditional relativities, hierarchies and where people fit in relation to each other. It is well worth working through strong communications plans and strategies to deal with the disruption as settlements are made. There will be some relativities within organisations that will be forever changed by pay equity, as gaps reflect the undervaluation of the claimant group to begin with. There will be some others, like the proximate social work roles in OT, that do require some adjustment. It is critical employers and unions be ready for this and agree on clear strong messaging around this to avoid or minimise confusion and upheaval. Similarly lifting people's awareness of the pay equity process is an important shared responsibility. It allows people to understand the opportunities and limits of a pay equity settlement.

#### **Conclusion**

Settling an equal pay claim does not have to be a daunting task for employers and unions. The JWG principles provide a strong framework for a process that is sophisticated and robust and yet straightforward and accessible. If the parties involved work together to apply the principles in an agreed and consistent manner then pay equity settlements can be achieved without industrial action, the involvement of the courts or other adversarial mechanisms. This has benefits that go beyond pay equity into supporting an industrial relations future based on mutual respect, trust and partnership.

## References

Burns, Janice (2008) *Child Youth and Family Social Worker Pay Investigation: Analysis of Five Social Worker Roles*, pp.3.

Department of Labour (2007) *Equitable Job Evaluation Factor Plan: Working towards Gender Equity*, pp.4.

Raven, Anthea (2007) *Final Report of the Child, Youth and Family pay and Employment Equity Review*, pp.9-11.