

### Time for gender pay transparency

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There is a fundamental inequality of bargaining power in employment relationships in New Zealand; generally employers know what each individual in the organisation is paid while their current and prospective employees do not.

This affects all employees but has particular implications for women. The gender pay gap currently stands at 9.3 percent.<sup>1</sup> Discrimination in employment against women is prohibited by New Zealand law<sup>2</sup> but there is research which shows that discrimination is a contributor to inequality between men and women.<sup>3</sup>

Pay transparency is increasingly recognised as both effective<sup>4</sup> and essential for the elimination of pay gaps.<sup>5</sup> Indeed, the New Zealand government itself has recognised the need for pay transparency. The Gender Pay Principles which the government recently agreed to following recommendations from the Gender Pay Principles Working Group, include Principle 2 which explicitly states<sup>6</sup>

*Transparency and accessibility is essential to the sustainable elimination of gender pay gaps.*

Yet, despite this apparent consensus, the government does not appear to be taking any active steps toward introducing comprehensive and universal pay transparency requirements.

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<sup>1</sup> Ministry for Women *Gender Pay Gap* <<https://women.govt.nz/work-skills/income/gender-pay-gap>>. This is as measured by median hourly earnings as of August 2019.

<sup>2</sup> Employment Relations Act 2000 s104; Human Rights Act 1993 s22; Equal Pay Act 1973 s3

<sup>3</sup> See generally Gail Pacheco, Chao Li1 and Bill Cochrane, *Empirical evidence of the gender pay gap in New Zealand* (New Zealand Work Research Institute) 2017 <<http://women.govt.nz/work-skills/income/gender-pay-gap/research-evidence-gap-new-zealand>>.

<sup>4</sup> See eg, Morten Bennesen, Elena Simintzi, Margarita Tsoutsoura, Daniel Wolfenzon *Do Firms Respond to Gender Pay Gap Transparency?* (NBER Working Paper No. 25435) January 2019; Cynthia Estlund, 'Extending the Case for Workplace Transparency to Information About Pay' (2014)4 *UC Irvine Law Review* 781, at 786; Rubery and Koukiadaki (n 7) 32.

<sup>5</sup> Jill Rubery and Aristeia Koukiadaki, *Closing the gender pay gap: A review of the issues, policy mechanisms and international evidence* (International Labour Office) 2016 at 33.

<sup>6</sup> Ministry for Women *Gender Pay Principles* <<http://women.govt.nz/work-skills/income/gender-pay-gap/gender-pay-principles>> Principle 2.

Effectively this means that women are expected to negotiate salaries and pay increases and to enforce discrimination law while lacking vital information.

What form should pay transparency take? The Human Rights Commission has recently launched an online petition demanding an independent pay transparency agency to close the gender pay gap.<sup>7</sup> Australia<sup>8</sup> and the United Kingdom<sup>9</sup> have gone down this path but there are other options. In Norway, information on the pay of every single employee is publicly available to any interested party through the tax system.<sup>10</sup>

Privacy and confidentiality concerns should not be used as a pretext for failure to implement transparency. While New Zealanders may feel it is somehow embarrassing to discuss wages, this social norm is outdated and does not serve the best interests of employees.<sup>11</sup> Employers may feel threatened by a new culture of transparency but employers with nothing to hide have nothing to fear.

The United States Department of Labour Women's Bureau succinctly makes the business case for 'open pay' stating that such policies<sup>12</sup>

*[s]top speculation about pay—workers will know they are being paid fairly[;]  
[m]ake it clear that top performers are rewarded, which creates an incentive to  
work harder[;] [s]top meritless complaints about unequal pay[; and] [i]dentify  
pay disparities so they can be fixed.*

There may be resistance to the idea of pay transparency on the grounds of cost to employers and to the state. However, these costs must be weighed against costs of discrimination and inequality which are currently being born by women

Discrimination is unlawful and it is unjust. At present the onus is on women to enforce their rights to non-discrimination and to negotiate their pay and they are expected to do this without access to adequate information. The New Zealand government is obliged to '*take all appropriate measures to eliminate discrimination against women in the field of employment.*'<sup>13</sup> It is time that gender pay transparency was introduced in New Zealand

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<sup>7</sup> Demand an independent pay transparency agency to close the gender pay gap (Petition) <<https://action.hrc.co.nz/end-pay-secrecy>>.

<sup>8</sup> For an overview and critique of the Australian initiatives in the area see Belinda Smith and Monica Hayes 'Using data to drive gender equality in employment: More power to the people?' (2015) 28 *Australian Journal of Labour Law* 191.

<sup>9</sup> Staff with 250 or more staff must report in the United Kingdom. See *Gender Pay Gap Service* <<https://gender-pay-gap.service.gov.uk/>>

<sup>10</sup> Lars Bevanger 'Norway: the country where no salaries are secret' BBC News 22 July 2017. <<https://www.bbc.com/news/magazine-40669239>>

<sup>11</sup> For discussion on changing attitudes to privacy around pay rates see Marianne Delpo Kulow 'Beyond the Paycheck Fairness Act: Mandatory Wage Disclosure Laws— A Necessary Tool for Closing the Residual Gender Wage Gap' (2013) 50 *Harvard Journal of Legislation* 385, 431.

<sup>12</sup> Cited in Kulow (n 32) 429.

<sup>13</sup> *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979 (entered into force 3 September 1971); article 11