July 2021

Implementing pay equity for social services

Understanding the challenges for government funded social services

SOCIAL WELLBEING AGENCY | TOI HAU TĀNGATA

New Zealand Government

Summary

Ministers commissioned the Social Wellbeing Agency (SWA) to identify the challenges of funding and implementing pay equity across the 'funded sector' and to identify potential sustainable solutions.[1] The funded sector captures organisations sitting outside of the State sector which receive government funding to deliver social services.

This report summarises SWA's findings and was informed by research commissioned by SWA from FrankAdvice. FrankAdvice undertook a literature scan and engaged key personnel from government agencies, as well as representatives from unions and social service providers. This research focused on challenges of funding and implementing pay equity. Any issues with the current legislative settings for raising and settling pay equity claims were out of scope of this research.

Successfully achieving pay equity outcomes requires fit for purpose funding solutions

In New Zealand, the Equal Pay Act 1972 provides for a process to raise and progress pay equity claims in female-dominated industries where workers may not be receiving a fair or equal rate of pay due to historical or current pay discrimination (the pay equity process). This process was put into legislation through amendments in 2020. It provides a significant opportunity to advance fair pay and build capacity and capability across the labour market.

The pay equity process allows for claims to be raised between employees or unions with employers. In the funded sector (including mostly social, health, community and education services), providers of government funded social services work through the pay equity process with employees and their unions to determine the level of pay undervaluation. Most providers however will require a funding solution to be able to sustainably implement pay equity outcomes and address funding drivers of historic undervaluation.

Potential funding solutions for pay equity are complicated by the current mix of funding models in use across the sector. Across these funding models, partial funding of services is common and funding agencies often have poor visibility of providers' workforce costs. These are longstanding issues for the social sector which continue to be examined and worked on by agencies, providers and unions. An example of this is where agencies are collaboratively working with providers to identify the real cost of service delivery.

Partial funding arrangements raise the risk that pay equity outcomes will be unsustainable for providers, exacerbating existing demand and cost pressures in parts of the social sector where there is a history of underfunding. Where bulk funding is used (for example in primary health care and early childhood education), pay equity may increase co-payments for services users where these exist, and risk making services inaccessible for some communities.

[1] Ministers agreed to commission the Social Wellbeing Agency to identify the challenges of current funding models across the Funded sector and identify potential sustainable solutions for funding and implementing potential pay equity settlements in the Funded sector [CAB-20-MIN-0366].

Funding solutions need to support an equitable approach across providers and workers

A funding solution that adequately meets the cost of pay equity for a provider may still be unsustainable if it is only available for a small number of providers. Only funding providers that are party to a settlement raises the risk of funding creating workforce instability, staff shortages and being inequitable for workers not covered by the settlement. An example of this is the pay equity settlement in 2018 for Oranga Tamariki social workers. This settlement did not cover social workers employed by non-governmental organisations (NGOs) and made it difficult for providers to attract and retain staff.

Funding pay equity across providers who employ the same workforce, not just providers that are party to a settlement, raises challenges of how to ensure funding for pay equity reaches workers. Without an appropriate legal mechanism, there is a risk that additional funds are used to meet wider demand and cost pressures. Funding agencies have choices about the mechanisms they use to provide confidence that that funding is passed to workers. These mechanisms range from changes to service commissioning through to legislative mechanisms and the expected Fair Pay Agreement framework.

Once provided for, a workforce funding solution will have broader implementation challenges. Funding agencies are unlikely to hold workforce data needed to accurately estimate the cost of funding pay equity. These challenges are greater where funding cost models do not currently identify and accurately account for a providers' workforce costs. Flexible funding arrangements also encourage providers to make their own decisions about the workforce they employ, making it difficult to rely on actual costs faced by providers to ensure an equitable funding solution.

Further work on pay equity solutions should align with wider changes to social sector commissioning

Current cross-agency work is underway on how the future of social sector commissioning is intended to support the wider social sector to move to more effective and sustainable commissioning of services. Progress expected to be made through this work on funding, systems, processes and ways of working provides a potential avenue to support management of pay equity in the social sector and explore shared solutions, where these make sense. In the interim, direction and guidance to those currently involved in pay equity processes would help provide certainty.

Pay equity is important

A common process for settling pay equity claims

Since the 2014 Court of Appeal ruling that the Equal Pay Act 1972 provides for pay equity in female-dominated industries, subsequent governments have sought to address pay equity issues. This recognises that in female-dominated industries, workers may not be receiving a fair or equal rate of pay due to historical or current pay discrimination.

In 2020, the Equal Pay Act 1972 was amended to improve the process for raising and progressing pay equity claims. This process aligns with New Zealand's existing bargaining framework and allows for claims to be raised by employees or their unions. It provides for a spectrum of claims ranging from claims with individual employees through to multi union and multi-employer claims which cover large numbers of workers.

Supporting oversight of pay equity claims across public and funded services

As an employer and funder, the Government has specific responsibilities for achieving pay equity. In December 2019, Ministers agreed to the Framework for the Governance and Oversight of State Sector Pay Equity Claims [CAB-19-MIN-0678]. This Framework clarified the role of Ministers and central agencies throughout the claim process for State sector employers. It was intended to provide agencies with greater certainty and provide Ministers with greater visibility and assurance.

Adapting the State sector Framework, in August 2020 Ministers agreed a Framework for the Oversight and Support of Funded Sector Pay Equity Claims [CAB-20-MIN-0366] (the Funded Sector Framework). Most of the organisations making up the funded sector are providers of social services (including social, health, community and education services) and receive funding from multiple sources.

The Funded Sector Framework clarifies the oversight role of funding agencies in pay equity process involving organisations in the funded sector. It also facilitates access to advice and support (when this is requested), while preserving the rights and responsibilities of their employer/employee relationship.

Funding and implementation of pay equity for funded services

The Funded Sector Framework is not intended to guide how pay equity settlements should be funded and implemented. Earlier pay equity settlements, most notably the settlements for care and support workers in the health and disability sector illustrated the complexity of implementing pay equity in the funded sector. These claims were settled prior to amendments to the Equal Pay Act 1972 and required agreements with the Crown to fund increases in pay rates.

Understanding funded services

New Zealanders rely on funded health, education and social services

Thousands of organisations in New Zealand receive government funding to deliver health, education and social services to New Zealanders. These organisations are both not-for-profit providers and for-profit private providers.

In 2020/21, central government agencies will have commissioned an estimated $7.8 billion worth of social services from non-government, community and private organisations.[2] These agencies include the Ministry of Social Development, Te Puni Kōkiri, Ministry of Education, Ministry of Health, Ministry of Housing and Urban Development, Accident Compensation Corporation, Oranga Tamariki, Department of Corrections, Ministry of Business Innovation and Employment, and Department of Internal Affairs.

Beyond central government, funding for services also comes from District Health Boards (DHBs), local government, and non-government sources, including philanthropy, donations and user payments.

Workforces fall across public and funded services

Many funded social services could be delivered by the State sector but have been devolved to non-government, iwi and whānau ora, community and private for-profit providers. This has been the result of a historical shift by the State away from direct responsibility for service provision. Organisations outside of government are also often better placed than government to deliver services as they are deeply embedded in their communities and can respond to specific needs.

For Māori and iwi, autonomy over the shape and responsiveness of service delivery reflects Te Tiriti o Waitangi principles, particularly Tino rangatiratanga.

With similar services and workforces, we have recently seen pay equity claims raised first in the State sector or encompassing employers in both the State sector and funded sector. This is illustrated in four current and anticipated pay equity claims which have informed this work (this is not a full list of claims):

- **NGO social workers** – a claim raised covering five NGOs[3] by the Public Service Association after a claim was previously settled by social workers directly employed by Oranga Tamariki.
- **Early learning teachers** – a claim raised by union NZEI Te Riu Roa, on behalf of members in over 600 private and community-based centres or services. The claim also covers Early Intervention Teachers, registered Kindergarten Teachers and qualified and certified teachers in Primary and Composite Schools, making the Ministry of Education a funder and an employer.

[2] This is MSD's high-level working estimate presented to Cabinet Social Wellbeing Committee in July 2020 (Cabinet Paper – The Future of Social Sector Commissioning). It does not include investments into social services through District Health Boards and only takes a high-level estimated figure for the following Votes: Housing and Urban Development, Tertiary Education, Internal Affairs, and Corrections.

[3] These five NGOs are Barnardos, Wellington Sexual Abuse HELP, Christchurch Methodist Mission, Stand for Children, and Ngāpuhi Iwi Social Services

- **Community nurses** – a claim has been raised on behalf of nurses employed by DHBs by the New Zealand Nurses Organisation and a pay equity claim is anticipated for community nurses if parity cannot be achieved.
- **Clerical and administration workers in social and community settings** – a claim has been raised by the Public Service Association on behalf of members across 43 public service agencies and 1,500 unique job titles. It is anticipated that a similar claim would follow for funded services.

Estimating the number of workers in the funded sector

Understanding who is employed in funded services will be important for understanding what is required to implement pay equity in specific workforces. It can be difficult however to get accurate workforce data. Difficulties stem from:

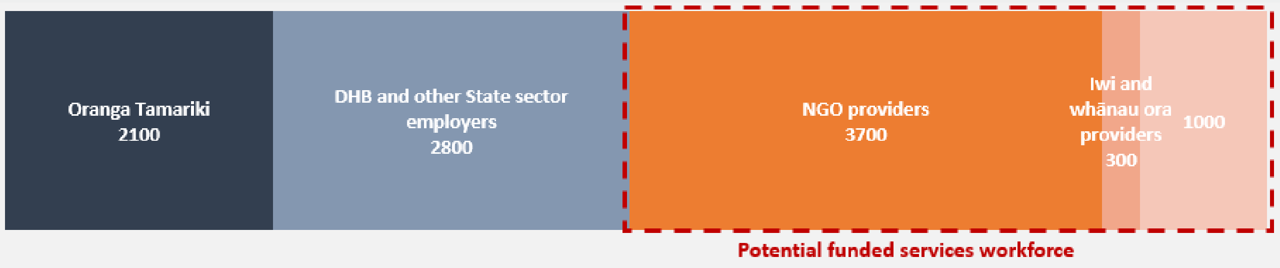
- limitations using census data (lack of detail in some occupations, particularly in Tikanga Māori settings, open-answer responses, and known issues with the 2018 census).
- multiple and fragmented data sources (this stems from many employers, training providers, registration bodies and oversight bodies who collect information on parts of the workforce).
- variability of registration data (registration bodies can collect good information but this varies across different registration bodies).
- poorer data about unregistered workers (such as Kaiāwhina (the unregistered health and disability workforce)) with low levels of workforce planning.
- low trust or commercial sensitivities preventing data sharing and issues with coordinating data sharing.

We have estimated the number of workers in funded services in four workforces with current or anticipated pay equity claims. Three of these workforces use registration, supporting better data and visibility of workforce.

These estimates help provide a sense of size of workforce but do not attempt to estimate the size of workforce which will be subject to a pay equity settlement. Claims cover all same or similar work which will impact on the size of the affected workforce.

Estimated number of social workers in funded services

(Sources: Annual Social Worker Registration Board Survey 2020 and Social Worker Public Register)



Estimated number of early learning teachers in funded services (registered and non-registered)

(Sources: Early Childhood Education Census Results 2020)

Estimated number of New Zealand nurses in funded services

(Source: Nursing Council Annual Practising Certificate Data 2020)

Estimated number of New Zealand admin and clerical workers in funded services

Estimated 10,000-30,000 workers (this is a broad estimate based on Census 2018 data on occupation and industry and MartinJenkins estimates for the size of the sector[4]).

Funding agencies use different models for funding social services

Funding models, and the pricing formulae used, differ across funding agencies and service types, accounting for workforce costs differently. Funding models include: funding for specific services, bulk and operating funding, grant funding, and funding to support devolved decision making.

Often funding agencies will not have good visibility of a provider's workforce and whether funding is set at a sustainable level to meet these costs. This will affect how funding agencies work with providers to support implementation of pay equity.

Providers may also receive funding through a mix of funding models and sources across a range of their activities. Some activities may be funded by government, while other activities may be self-initiated with funding coming from other sources, including donations and volunteers, or with government making a contribution towards full cost.

Service funding

Where contracts for services are contestable, funding agencies procure and fund providers for individual services. Competitive tendering and agency cost models are used to determine the appropriate amount of funding. Cost models do not always identify and accurately account for a providers' workforce costs.

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[4] MartinJenkins (2019). *Social Service System: The Funding Gap and How to Bridge it*. https://sspa.org.nz/information/funding-gap

Many contracts are underfunded with funding not adequately meeting a providers' basic running costs. The extent of these issues however is contested, with questions focusing on whether funding is priced accurately and is adequate to fund pay rates and overheads, whether funding allows a provider to meet service demand, and the degree to which self-initiated and contributory activities should be fully funded.

Issues with underfunding are more prominent for older pre-existing contracts which have experienced minimal movement on renewal to reflect cost and demand pressures faced by providers. Most of these contracts can be described as providing partial or contributory funding, with funds not meeting a providers' full costs for supplying a service. The box below highlights some of these issues.

Oranga Tamariki and MSD have recently developed new funding frameworks to support a more consistent approach to new contracts. This is seeing these agencies starting to adopt a more collaborative and transparent approach to pricing services, working to ensure pricing accurately meets provider overheads and workforce costs. Recent services such as Oranga Tamariki transitions and intensive support services and MSD Whānau Resilience initiatives, have received full funding under this approach.

Understanding the impacts of underfunding[5]

In 2019, Social Service Providers Aotearoa (SSPA) commissioned research from MartinJenkins that helped to identify the impact that underfunding can have. This research was commissioned independently of government, with agencies having different views on the degree that underfunding exists and the extent of impacts.

Examples of impacts of underfunding include:

- **Providers are not funded for the basics:** current funding arrangements generally not covering basic running costs and not allowing them to invest in their sustainability.
- **The community and provider workforce is underpaid and overworked:** it is getting harder to attract and retain staff with a growing wage gap with the public sector. Those employed by providers are under-resourced and stretched.
- **Providers are often forced to compete against each other:** competitive tendering benefits better-resourced providers. It also means that providers are incentivised to accept under-funded contracts, and disincentivised from collaborating with each other.
- **Providers are struggling to make ends meet:** providers will stretch themselves to fulfil their 'duty of care' and meet community needs, rather than turning people away. They endeavour to make ends meet through heavy reliance on additional philanthropic funding, public donations, and other funding strategies.
- **New Zealanders are not getting the support they need:** providers are struggling to meet the high level of service demand, and they are forced to triage clients in need. People often wait too long for limited services that are too inflexible to meet their complex real-life needs.

[5] MartinJenkins (2019). *Social Service System: The Funding Gap and How to Bridge it*. https://sspa.org.nz/information/funding-gap

Bulk and operating funding

Bulk funding or operating grants are more common in the education and health sectors. This funding becomes available to a provider when eligibility is met, for example meeting any regulatory requirements. Examples of services receiving bulk funding include licensed early childhood services, and DHB funding of 30 separate Primary Health Organisations (PHOs). PHOs ensure the provision of essential primary health care services in New Zealand.

Funding calculations for bulk funding apply across all providers eligible for funding, with funding often calculated based on population, not on the real costs faced by a provider. While pricing models for bulk funding can be relatively blunt, providers can have flexibility to seek user co-payments where funding does not meet the full costs of service delivery. However, raising co-payments can have implications for service users, with the risk of services becoming unaffordable and inaccessible for some communities.

One-off grant funding

Funding providers and community organisations through one-off grants can be used in situations where a particular community project or initiative exists. The grant may provide for the full cost of an initiative or provide a contribution from government. They are less likely to be used by government to procure ongoing service delivery and factor in ongoing workforce costs into pricing calculations.

Devolved decision making

Recent additional investment in community-led initiatives has seen an increased focus on funding to support devolved decision-making. This approach sees funding agencies making funding available (sometimes pooling funding across agencies) but not commissioning services directly. There is often significant flexibility in how this funding is used to deliver outcomes.

Examples of this include the work of the three Whānau Ora commissioning agencies and two Place-based initiatives (South Auckland Social Wellbeing Board, and Manaaki Tairāwhiti). In the disability sector, Enabling Good Lives and Mana Whaikaha funding approaches devolve decision making to the disabled individual and their whānau.

Work is underway to improve commissioning of social services

In 2018, a cross-government work programme on social sector commissioning was established to improve the way we work with social service providers and ensure commissioning supports these providers to be effective and responsive to need in our communities. It is jointly led by MSD and Oranga Tamariki and reports to the Social Wellbeing Board to ensure a cross-social sector approach[6]

The Social Sector Commissioning work programme builds on previous work and investigations into funding and commissioning issues. This includes the 2015 Productivity Commission report *More effective social services*, and more recently, the 2019 MartinJenkins' report commissioned by Social Services Providers Aotearoa (SSPA) and other social service organisations *Social Service System: The Funding Gap and How to Bridge it*.

[6] The Social Wellbeing Board comprises Chief Executives of social sector government agencies.

In 2020, six principles for improved commissioning were published by the work programme in its progress update. These principles are intended to enhance sustainability of services delivered by the Funded Sector. In addition to these principles, 10 key actions were described in an Update to the Sector in September 2020. These form the foundation of ongoing work.

Principles for social sector commissioning[7]

- **Individuals, families, whānau and communities exercise choice:** communities work collaboratively and flexibly to meet local needs; one-size does not fit all; different local circumstances require local solutions, change led by communities is supported and valued.
- **Māori-Crown partnerships are at the heart of effective commissioning:** recognising and giving practical effect to the Te Tiriti o Waitangi is essential to achieve wellbeing for Māori.
- **The sector works together locally, regionally, and nationally:** all levels of government, philanthropic funders, NGOs, and communities all have roles, and work tougher to improve commissioning.
- **The sector is sustainable:** building up a set of funding principles and funding methodologies centred on deliberate, informed, and consistent decision making that recognises the true cost of service provision.
- **Decisions and actions are taken transparently:** government is transparent and clear about how funding decisions, funding levels, and funding models are arrived at. There is clarity and acknowledgement of trade-offs that are made.
- **The sector is always learning and improving:** implementing continuous learning, development and innovation. Agreeing what data and insights are necessary and meaningful and sharing knowledge.

[7] Ministry of Social Development (2020). *Social Sector Commissioning: Progress, Principles and Next Steps*. https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/planning-strategy/social-sector-commissioning/msd-social-sector-commissioning.pdf

Challenges for pay equity

Pay equity outcomes will be unsustainable for providers without the right funding

Expectation that government will fund pay equity

Existing underfunding and cost and demand pressures across most social services mean that meeting the cost of pay equity outcomes will be unsustainable for most providers without a funding solution. This makes affordability and funding the primary concern for providers that are part of a pay equity claim, with a funding solution required to both sustainably implement pay equity outcomes and address drivers of historic undervaluation.

Potential financial impacts on providers will vary across the sector. For example, we would expect greater financial resilience from for-profit providers which are able to raise co-payments where pay equity increases cost pressures (although higher co-payments may have a negative impact on some communities and make some services inaccessible) . We would expect not-for-profit providers to be most vulnerable to the costs of pay equity.

The Government has already established a precedent for funding pay equity and there is an expectation that it will continue to do so. Most notably, it funded the settlement reached in 2017 for care and support workers in aged care, disability support workers, home support and later extended to mental health and addiction support workers. This funding however did not fully meet salary oncosts or the impact on leave liability and increased costs pressures, which had an adverse impact on service quality.

Increased demand and cost pressure if providers only receive partial funding

If Government funds pay equity, there is a risk that funding will not be sufficient to meet the full costs of pay equity. Scenarios where this could be a concern include:

- across contracts with partial or contributory funding if pay equity funding is in proportion to existing funding with an expectation that the cost of pay equity is also met by other funders
- where providers hold multiple contracts and a funding uplift is not consistently applied across all contracts
- where providers employ more workers than regulatory or contract minimums (for example, early childhood education providers offering services with better teacher to children ratios).

In these scenarios, partial funding would exacerbate existing demand and cost pressures and/or increase costs for other funders, including user co-payments where these exists. This may lead to providers reducing the size of their workforce and/or making changes to services to relieve pressures.

Pay parity for certificated and qualified teachers in education and care services

In May 2021, the Government announced a budget initiative to move towards pay parity for certificated and qualified teachers in education and care services with certificated teachers in kindergartens. The two stage approach to pay parity illustrates some of the challenges of the current funding model.

Funding to support pay parity will be paid in two stages through increases to the subsidy rates. The first stage will be an increase to all funding rates for education and care services on 1 July 2021 and a corresponding increase to the minimum salary that services must attest to paying their certificated teachers. This mirrors the increase to the minimum salary for certificated teachers in kindergartens on 1 July 2021. Services that choose not to attest to paying their certificated teachers at least the minimum salary will drop to the lowest funding band of 0-24% certificated teachers.

The second stage is contingent on the passage of the Education and Training (Grants – Budget Measures) Amendment Bill. Government intends on setting a higher set of premium rates that services can 'opt into'. The opt in approach is due to challenges with the funding model, which does not separate salary costs from other costs, and does not differentiate funding based on the experience profile of teachers at a service. Different salary rates for certificated teachers will be set as funding conditions on the opt in funding rates.

Funding pay equity for a portion of a workforce risks instability for service delivery

Pay differences will make it difficult for some providers to retain workers

The Equal Pay Act 1972 provides for pay equity claims to be raised involving multiple employers but is not necessarily across a full workforce (and this would not be possible for a workforce with low levels of union membership). This is different to pay equity claims settled before amendments to the legislation in 2020.

Funding agencies, providers and unions share concerns that only funding pay equity for a portion of a workforce will cause instability across that workforce and be inequitable for other workers. A provider whose workforce has pay equity will be advantaged in attracting and retaining staff, pulling staff away from providers who are not funded to provide higher wages. This is already happening for social workers. Providers are finding it difficult to retain social workers after the pay gap with Oranga Tamariki social workers was significantly exacerbated by a pay equity settlement for these workers.

In May 2021, the Government announced the design of a Fair Pay Agreement system. Once in place, Fair Pay Agreements are intended to provide a mechanism distinct from the Equal Pay Act 1972 to bargain minimum terms and conditions across an industry or workforce. Pay equity rates could be included within those minimum terms and conditions.

Competition impacts likely for providers with pay equity

We would expect providers with pay equity settlements to become less competitive when tendering for new contracts if other providers with the same or similar workforce are not also funded to pay pay equity rates. This could put pressure on these providers to find cost savings. While section 3ZH(2) of the Equal Pay Act 1972 prevents an employer from reducing any terms and conditions of employment when settling a claim, providers may look to change how they deliver services however to find cost savings. For example, using less experienced workers where this is possible.

Funding for providers outside of a settlement

Increasing funding to providers does not ensure higher pay rates to workers

If providers receive additional funding for pay equity but are not legally bound to pass this on to workers, there is no assurance that funding will result in higher pay rates. This reflects the demand and cost pressures faced by many providers.

In earlier settlements where providers have not been a party to the settlement (prior to amendments to the Equal Pay Act 1972), agencies used contract terms and/or legislation to ensure workers pay rates were adjusted. Both mechanisms can be problematic. Using contract terms makes a funding agency responsible for monitoring how funding is passed onto workers, effectively monitoring conditions of employment which is not currently seen as core business. Legislation is a lengthy and inefficient process, but is transparent and provides clear remedies for workers who are not being paid specified pay rates.

NGO Social Workers

In 2018, a pay equity claim for social workers employed by Oranga Tamariki was settled, increasing pay disparities between the NGO and public sector workforce. This pay differential is estimated to be 30-45%.[8] This has made it increasingly difficult for providers to attract and retain staff.

In 2019, the Public Service Association raised a claim on behalf of its social worker members at five NGO providers. While this claim only involves a small number of providers, both the union and providers view the claim as a 'representative claim' on behalf of the NGO social worker workforce. The NGO workforce is not heavily unionised and is spread across many providers. This would make it difficult to raise a claim that covered the full workforce.

The pay equity claim is rightly focused on determining the level of pay undervaluation and there is an expectation that alongside the settlement will be a funding solution that covers other NGOs.

Oranga Tamariki has provided funding increases in both FY20 and FY21 to reduce NGO cost pressures. This included a higher increase of 7.5% in both years for services that rely on social workers and similarly skilled staff. In Budget 2021, Oranga Tamariki received an additional $16.5 million over two years to further recognise the pay differential between Oranga Tamariki and NGO social workers.

Providers receive increases in funding through variations to funding contracts and are able to exercise discretion as to how they apply the increases across their budgets. Oranga Tamariki does not currently require any increase to be passed on to social workers, although it expects that this occurs in response to labour market pressures.

[8] MartinJenkins (2019). *Social Service System: The Funding Gap and How to Bridge it*. https://sspa.org.nz/information/funding-gap

Estimating funding will require accurate modelling of workforce costs

Funding agencies are unlikely to hold workforce data

Unless funding agencies are using full-funding cost models to contract services, they are unlikely to have the data to accurately estimate the cost of funding pay equity across different providers. Full funding makes workforce costs more easily identifiable (and adjustable). For all other cost models, funding pay equity will likely require significant work to identify workforce costs.

Earlier pay equity settlements have required agencies and providers to engage in resource-intensive exercises to collect data on the make-up of providers' workforces. Workforce data was a key issue for settlements for care and support workers in the health and disability sector, with only high-level cost estimates available at the time of the original settlement.

Gathering workforce data can be difficult where there is a lack of trust. For-profit providers may consider data commercially sensitive and we know that other providers can be wary of sharing data with government. The social sector's Data Protection and Use Policy was developed to help the sector to navigate some of these issues through promoting the respectful, trusted and transparent use of people's data and information.[9] Peak bodies can also play a role if resourced to provide an intermediary for data collection.

There are also challenges where decision making is devolved, such as to a Whānau Ora Commissioning Agency, with the funding agency not holding the relationship with the provider in these situations.

Actual workforce costs will differ across providers

Even where workforce costs are clearly identified, providers will often have choices about the actual make-up of their workforce. For example, a whānau home visiting service may be presumed to employ a social worker, but a Kaupapa Māori provider may instead choose to employ a whānau navigator and make increased investment in cultural and clinical supervision.

These situations make it difficult to calculate funding for pay equity based on a provider's actual workforce. Removing this flexibility, for example by prescribing roles within contract, could have flow on impacts and may contribute to inequities in funding and disadvantage Kaupapa Māori providers.

[9] Data Protection and Use Policy. https://dpup.swa.govt.nz/

Supporting sustainable solutions

Identifying what sustainability means for providers and their workers

Achieving pay equity sustainably is best measured by workers in female-dominated industries being paid pay equity rates. Across funded services this will require sustainable funding solutions which address the range of challenges that exist for pay equity for funded social services. These solutions can be considered in terms of the:

A. **level of funding that is sustainable for providers** – how funding is calculated and whether it meets the full or partial cost of pay equity will determine to a large part how sustainable pay equity is for providers and whether pay equity is achieved.

B. **funding coverage across a workforce that promotes stable service delivery** – agencies have choices about how broadly to fund pay equity across its providers and contracts, potentially funding pay equity beyond providers who have been party to a pay equity settlement.

C. **confidence that funding will be passed to workers** – different accountability mechanisms exist for ensuring funding will be passed on to workers. This becomes more important if funding is available outside of a pay equity settlement but may be undesirable if providers are not fully funded for pay equity and are not able to fund pay rates.

D. **efficient monitoring** – where contract mechanisms are used to support funding of pay equity, there may be options for how monitoring and reporting is managed.

Potential mechanisms for supporting pay equity

This table summarises potential options that exist for supporting sustainable funding of pay equity, responding to challenges of current funding models. It is intended to support considerations of choices and trade-offs and is not intended to provide a full assessment.

Objectives	Options
A. Level of funding to support sustainable service delivery	**Fund a provider's pay equity costs** Fund at a level which will fully meet a providers' cost of lifting pay rates. This is most straightforward where costs are well understood (in most cases these costs are not well understood). This option best supports the financial resilience of providers, consistent with the government's social sector commissioning goals. *Risks* For most funding models, including partially funded contracts and bulk funding, costs are less likely to be well understood and significant work may be required to gather information and calculate funding. Improving the information collected from providers about workforce ahead of a pay equity claim could mitigate this risk. Risks will vary depending on how the 'full cost' of pay equity is calculated, whether this is based on a provider's actual costs or estimated consistently across providers. Using actual costs may raise inequities if some providers receive higher levels of funding based on the make-up of their workforce.

<table>
<tr><td></td><td>Partially fund a provider’s pay equity costs

Fund at a level which is relative to current funding levels in contracts. This will partially meet a provider’s pay equity costs where services are only partially funded. This includes bulk funding arrangements where providers collect a co-payment and contributory contract arrangements that rely on funding from other sources, including donations.

Risks

Where co-payments exist, such as early childhood education and primary health care, we would expect these to increase or for providers to change service quality. Where providers cannot meet the cost of pay equity through other funds, this option would increase cost and demand pressures and would likely impact on service quality.</td></tr>
<tr><td rowspan="2">B. Funding coverage that achieves pay equity and mitigates unintended workforce impacts</td><td>Fund only providers who are party to a settlement

Fund pay equity costs for providers who are party to that settlement. This provides the greatest assurance that funding will result in higher pay rates for workers as these providers will be required to reflect the settlement in individual and collective employment agreements.

Risks

Unless a settlement covers nearly all workers (for example, there are a a small number of large employers and/or a highly unionised workforce), this risks flow on impacts and instability across the workforce. This may prevent pay equity processes reaching settlement if parties have significant concerns about impacts.</td></tr>
<tr><td>Fund all providers who employ the same or similar workforce

Fund pay equity costs for all providers who employ the same or similar workforce regardless of whether providers are party to a settlement. This allows funding agencies to take consistent approach across their contracts. It also mitigates risks of instability across that workforce but may still have flow on impacts for related workforces.

Risks

Without a settlement there is no assurance that a funding uplift results in higher pay rates for workers. Many providers will have other more immediate demand and cost pressures which may take precedence. This makes accountability options (objective C) below important.</td></tr>
<tr><td>C. Confidence that funding will be passed to workers</td><td>Pay rates only set out in a settlement

Fund pay equity costs and make no changes to funding conditions. Providers that are party to a settlement are legally required to reflect the settlement in individual and collective employment agreements.

Where providers are not party to a settlement, good information and communications can help create an expectation of pay rates and make it easier to identify where providers are not paying these rates.</td></tr>
</table>

	Risks Where a settlement doesn't cover a large portion of the workforce (for example, due to low levels of union membership), there is a high risk that funding is not passed on to workers.
	Specify pay rates through contract variations Fund pay equity costs with a contract variation that specifies pay equity rates. Providers that are not party to a settlement are required to pay workers the specified rates as a condition of funding. Alternatively, a contract variation could refer to an external mechanism that specifies pay rates. This could be a central register recording minimum pay rates for roles which have been through the pay equity process or a multi-employer collective agreement that specifies pay equity rates. *Risks* If the level of funding is not enough to meet a provider's pay equity costs, requiring higher pay rates through a contract variation adversely affect financial resilience. Funding agencies may become responsible for monitoring implementation of pay equity and potentially resolving pay disputes. This would be beyond core business for these agencies but may be managed through monitoring options (objective D)
	Specify pay rates using legislation or Fair Pay Agreement Fund pay equity costs and specify pay rates using legislation or a Fair Pay Agreement. The Fair Pay Agreement system is designed to support industry-wide bargaining and provides a mechanism for setting pay rates across a workforce, if initiated by unions. *Risks* Like other accountability options, if the level of funding is not enough to meet a providers' full cost of pay equity, requiring higher pay rates could impact the financial resilience of a provider. This option requires enabling legislation and makes interim solutions necessary for any claims settled ahead of this legislation. Once in place, it may not provide a timely solution.
D. Efficient monitoring	**Funding agency monitors pay equity** Funding agency monitors pay equity where pay equity is implemented through a contract variation. This could see a funding agency monitoring implementation through usual contract monitoring arrangements or alongside review mechanisms set out in a pay equity settlement. *Risks* Monitoring pay equity would be more difficult and complex for funding models that give providers a high degree of flexibility. This could lead to complex compliance processes for flexible funding models.

Agencies take an integrated approach to monitoring pay equity

Agencies adopt a shared or integrated approach to monitoring pay equity. This option could leverage existing mechanisms such as the Social Services Accreditation framework. Options to support rationalised contract monitoring are also being explored through the Social Sector Commissioning work programme.

Risks

An integrated approach that sits across different sectors and funding models may not be a timely solution.

Next steps

To support a consistent and proactive approach that avoids unintended consequences, further work is needed to look at the opportunities and co-benefits of each option as well as risk mitigation.

Issues with the current pay equity process were placed outside of the scope of this work. Any consideration of the impact of current settings on implementation of pay equity for the funded sector could form part of any future review of the legislation.

Further work should:

- **Support alignment across agencies**

  Pay equity should form a key focus area for, or sit closely alongside, cross-agency work to improve commissioning of social services. This broader work programme should help give effect to any shared or integrated approach for supporting the management of pay equity across funded services.

- **Provide for interim and long-term solutions**

  Some options are more feasible over a longer time horizon, particularly where enabling legislation is required. In the interim, options which can be supported by funding agencies are preferable.

  Shared guidance or direction could be considered to mitigate risks and to provide a level of certainty about implementation mechanisms for those currently involved in a pay equity process. This guidance should support agencies to take a consistent approach across shared providers.

- **Improve information on funding and workforces**

  Better information and data about current funding and funded sector workforces will help identify the size of the shift required to implement pay equity. This requires a coordinated effort by agencies, providers and unions to take stock of existing data while starting to identify opportunities to improve data sources over the long term.

  This work should also help identify what data is required to support implementation of pay equity and to ensure effective and trusted collation of this data.