

Secondary Review of Methodology to Determine Sex-Based Undervaluation of Care and Support Work

Prepared by Link Consulting Group Limited
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Executive Summary

1. Focus of the Review

Te Whatu Ora, as lead funding agency for the Care and Support Worker Pay Equity Claim, commissioned Link Consulting Group Limited (Link Consulting) to conduct a secondary review of the methodology used to determine sex-based undervaluation of care and support work covered by the claim (the Review).

The Review focuses on the choices and application of methodological approaches to capturing the work of the claimant and comparators, assessing the work through factor scoring, and determining the undervaluation.

2. Our approach to the Review

The Review involved the analysis of documentation and evidence provided to us by key stakeholders including Health New Zealand, the claim Project Team and employers along with a small number of interviews with key people, including employer representatives. To avoid doubt, Union parties declined to participate in the Review.

We analysed the methodology for decision-making for this claim, and whether this had been consistent with legislation and guidance. In accordance with the Terms of Reference for the Review, we did not, nor was it appropriate to, re-construct work undertaken by the parties.

Our findings and conclusions in this report are based on the evidence provided. In some cases, we requested further significant documents that were indicated or referred to in the documents we did receive. Some were not provided; others were provided only on the basis that they could not be shared further.

This has meant that in some areas, not enough evidence was received to fully answer the matters for review in the Terms of Reference. We have highlighted where this is the case in this report.

Importantly, we acknowledge that the parties' decision making occurred within a context that is unique to this claim, and also within a Pay Equity system which has largely been untested for the organisations that receive Government funding to deliver social services (the Funded Sector).

Notwithstanding this context, methodological choices were ultimately made which led to the parties' conclusions in their Milestone 3 and Milestone 4 Reports, and that have given rise to Te Whatu Ora, as lead funder, seeking a secondary review of the methodology.

Given that a full documentation set is not able to be made available, we have not included any of the received documentation in this report; doing so would represent an incomplete document set. Instead, the report describes our understanding of, and views on, the documents we did receive.

This report is restricted to the methodological matters outlined in the matters for review in the Terms of Reference and has meant that neither the wider context in which this claim was progressed, nor the Pay Equity system which has supported the parties, has been included in this report.

A draft report was provided to the stakeholders outlined in the Terms of Reference. Feedback has been considered in this report.

We note that some feedback suggested that the Review should have been a wider ranging review that considered a broad context, system constraints, the limitations of guidance and the 2021 Framework for the Oversight and Support of Funded Sector Pay Equity¹ (the Funded Framework).

To confirm, we have sought to stay within with parameters of the Terms of Reference, noting that the Milestone 5 Reports and roles and responsibilities, were not in scope for our Review.

3. Context

We acknowledge the importance of addressing pay equity for care and support workers, and the considerable mahi already done to find a solution that has the confidence of all participants in this complex, multi-union, multi-employer, multi-sector claim. This claim is one of the early pay equity claims for funded roles being progressed under the Funded Framework – and to some extent, participants in the process are learning by doing.

We appreciate that determining a pay equity claim involves both science and the art of judgement. The Pay Equity Assessment Process Guide – December 2021 provides advice on methodology to support robust processes, however the guidance is not prescriptive, recognising that there will be different contexts for each claim.

We hope that the perspectives and insights arising from this Review will contribute to resolution of this claim and assist in the approach to settling of funded claims in the future.

¹ [GOV-20-MIN-0033 refers]

4. Key Conclusions

Based on our review of the evidence provided, we have formed three main conclusions:

1. The parties followed the legislation and largely followed available guidance. However, as guidance is not prescriptive, there is considerable scope for interpretation and judgements by the parties.
2. More information may have helped increase confidence in the estimation of the undervaluation reached, particularly in relation to the consideration and thinking that underpinned the parties' decisions on the factor level for each of the fifteen blocks in the Te Orowaru factor plan.
3. Notwithstanding a) and b) above, we consider that the cumulative effect of the methodological choices made by the parties has potentially led to an over-estimation of the undervaluation, though it is difficult to size the extent of any over-estimation.

Our view on the impact of cumulative effect of the methodological choices made by the parties is that:

- The decision to develop a single work profile resulted in both a lack of transparent distinction between the work of a 'competent practitioner', work that is outside the common core and the inclusion of some higher-level skills in the profile that are not common to all.
- The inclusion of some higher-level skills in the broad single profile means there is potential that the factor scoring did not reflect the core work appropriately and leads to a risk that factor scores lean-to higher-level skills and responsibilities.
- Factor scoring of comparators was based on summary work profiles in the repository with no direct engagement with comparators to help understand the work, as the parties had done for the claimants. The subsequent single comparability score between the claimant and comparators gives the impression of a degree of precision that belies the range of judgements underneath.
- In this case, we consider that using the score difference as a 'precise' loading to compare remuneration is not appropriate, as this led directly to the estimate of undervaluation.
- When these methodological choices are combined, there is a risk of the cumulative effect leading to potential over-estimation of the undervaluation.

Secondary Review

1. Purpose

This report sets out the findings of a secondary review of methodology to determine sex-based undervaluation of care and support work. This secondary review was commissioned in October 2023 by Te Whatu Ora, as the lead funder of care and support workers.

The report has the following sections:

1. Purpose
2. Background: Care and Support Workers Pay Equity 2022 Claim
3. Context for the Review
4. Consideration of Review Matters
5. Conclusion.

2. Background: Care And Support Workers Pay Equity 2022 Claim

2.1 Legislative and policy underpinning

The Equal Pay Act 1972 (the Equal Pay Act) provides for pay equity in female dominated workforces that are subject to systemic undervaluation.

The first pay equity claim under the Equal Pay Act was initiated in 2012 and was concluded with an agreement between Unions and the Government resulting in specific legislation in 2017, the Care and Support Workers (Pay Equity) Settlement Act² (the Settlement Act), to implement a five year, \$2B, pay equity agreement for care and support workers in NZ aged and disability residential care, and home and community support services sector.

In July 2017, a related settlement was agreed for 1,700 disability vocational support workers. In 2018, a third related settlement was agreed for 3,800 employees delivering mental health and addiction services.

² Care and Support Workers (Pay Equity) Settlement Act 2017
<https://www.legislation.govt.nz/act/public/2017/0024/28.0/DLM7269110.html>

In 2020 the Government made decisions that strengthened support for pay equity claim processes:

- The Equal Pay Amendment Act 2020 (the Amendment Act) was passed enabling workers to make pay equity claims through a practical and accessible assessment process to determine the extent of undervaluation; and
- Cabinet agreed a new Framework for the Oversight and Support of Funded Sector Pay Equity³, which was enhanced in 2021. The Funded Framework supports pay equity claims in the Funded Sector.

2.2 Expiry of the 2017 Care and Support Workers Pay Equity Settlement

The Settlement Act was originally due to expire on 30 June 2022.

While the Settlement Act allows for employer and care and support workers to negotiate more favourable terms and conditions than set out in the Settlement Act, it extinguishes existing and potential pay equity claims for the duration of the Settlement Act; and does not provide for a process to review and maintain pay equity.

On 11 April 2022 Cabinet agreed to:

- Extend the expiry date of those sections of the Settlement Act covering remuneration to 31 December 2023;
- Fund an interim three percent adjustment to support worker wage rates from 1 July 2022 [CAB-22-MIN-0128]; and
- Repeal or let expire the original timeframe on all other sections of the Settlement Act.

As the period during which pay equity claims were prohibited was not changed from June 2022, it allowed Unions to make a pay equity claim under the provisions of the amended Equal Pay Act.

2.3 Process for developing the 2022 Care and Support Worker Pay Equity Claim

On 1 July 2022 the New Zealand Nurses Organisation, E tū and the Public Service Association (PSA) raised a pay equity claim (the claim) on behalf of 17,400 care and support workers (the Unions) against 15 representative Employers (the Employers) across Home and Community Support Service (HCSS), Aged Residential Care (ARC), Disability Support Services (DSS), and Mental Health and Addiction (MH&A) sectors.

³ [GOV-20-MIN-0033 refers]

The parties to the claim have signalled their intention to seek to extend benefits of any settlement across the wider workforce. The funded care and support sector contains approximately 1,000 providers who collectively employ around 61,500 care and support workers, predominantly female.

The work to develop the claim has progressed within the Funded Framework. The Funded Framework supports pay equity claims in the Funded Sector, and involves 7 milestone steps, as indicated below:

- Milestone 1: Arguability assessment and in-principle agreement to fund
- Milestone 2: Initial bargaining strategy
- Milestone 3: Work assessment process, including comparators
- Milestone 4: Assessment of remuneration and terms and conditions
- Milestone 5: Settlement bargaining strategy and funding contingency sought
- Milestone 6: Proposed settlement, and
- Milestone 7: Post-settlement review.

A Joint Working Group (JWG) of union and employer representatives was set up to investigate and progress the claim through the milestones. A joint Project Manager funded by Government was appointed in October 2022.

An Oversight Group comprising the key funders including Te Whatu Ora, Te Aka Whai Ora, Whaikaha, Te Oranga Tamariki, and the Accident Compensation Corporation (ACC) was formed to provide oversight for the claim and inform relevant government agencies on the progress of the claim. Te Whatu Ora is the designated lead funding agency for the claim. The Ministry of Health, as an independent monitor was also a member of the Oversight Group, noting that the Ministry is also the chief steward of the health system.

Normally, under the Funded Framework the lead funding agency would chair the Oversight Group. However, at the request of Te Whatu Ora, the Oversight Group for this Claim was chaired by the Public Service Commission (PSC) Chief Executive and System Lead Pay Equity.

Following establishment of the claim at Milestone 1, the process for investigating and bargaining the claim was set out in the Milestone 2 Report, the Employers Initial Bargaining Strategy (Jan 2023), and the Bargaining Process Agreement.

A Work Assessment Panel (the Panel) comprising four union and four employer representatives was formed to undertake the work assessment for claimants and comparators, using Te Orowaru factor levels and scoring.

The process of this work assessment and finding of undervaluation was presented to the Oversight Group in the Milestone 3 Report (April 2023) and Milestone 4 Report (May 2023). While the reports for both Milestone 3 and Milestone 4 have been endorsed, Te Whatu Ora and the Ministry of Health advised there are outstanding matters they wish to have addressed before endorsement of Milestone 5.

3. Context for the Review

3.1 Genesis of this review

Following the endorsement of Milestone 3 and 4 Reports, the claim has progressed to the Milestone 5 phase of the Funded Framework.

On 8 September 2023, Te Whatu Ora met with Unions and Employers and advised that a secondary review of the pay equity methodology, analysis, and outcomes would need to be undertaken before Milestone 5 could be endorsed by funders.

Te Whatu Ora has commissioned this Review in its role as the lead funder in the sector, in line with its obligation to be able to provide assurance at each milestone, that conclusions reached by the parties are based on sound evidence and analysis and that outcomes are robust.

3.2 Matters for Review

Te Whatu Ora's Terms of Reference states the following matters for review:

Single work profile - Does the single work profile adequately identify and distinguish between the full range and level of skills, responsibility and effort required for the roles in scope (i.e. to support clients with different levels of need)? And, has the single generic work role profile been applied in such a way that it allows for a distinction between skills, effort, and responsibility required to support clients with different levels of need?

Scope of the claim - Does the scope of the claim and the roles included comply with the Equal Pay Act (i.e. do the roles in scope perform the same or substantially similar work)? In particular, does the inclusion of house leaders, senior support workers, key support workers, hybrid enrolled nurse/support worker supervisors, trainers and shift coordinators in the single work profile extend the profile beyond the care and support work covered by the claim raised on 1 July 2022?

Work assessment methodology - Did the work assessment methodology thoroughly and appropriately assess the skills, responsibilities, conditions of work, degree of effort, level of experience and any other relevant work features of both claimants and comparators?

- *Are the skills, responsibilities and level of effort described in the single work profile aligned with the points given to each of the 15 Te Orowaru skill assessment factors?*
- *Has applying the highest level of points in each of the 15 Te Orowaru skill assessment factors resulted in a single work assessment score reflecting the skills, level of responsibility and effort required to support clients with complex needs being those required to meet the needs of all clients?*
- *Has the scoring of comparator roles accurately reflected the skills, responsibilities and effort required of those roles?*

Determining the extent of the sex-based undervaluation - Was the parties' approach to dealing with the difference in factor score between claimant and comparators logical and appropriate? Notably, has the scoring of comparator roles, the averaging of comparator factor scores and the resultant 14% (increasing to 14.6%) addition to comparator pay rates overestimated the extent of the sex-based undervaluation?

The Review analysis of these matters is discussed in Section 4 of this report.

3.3 Review approach

We have taken an evidence-based approach to this Review and focussed on:

- What evidence and analysis the parties used for their decision making; and
- Whether this evidence is consistent with legislation and the guidance.

We considered a range of documents provided by Te Whatu Ora at the beginning of the Review.

Further documents were made available on request, including (but not limited to):

- The pay equity claim raised on 1 July 2022;
- The Milestone 1, 2, 3 and 4 Reports and additional information provided to the Oversight Group in support of those reports;
- Advice prepared by the PSC Pay Equity Taskforce and provided to the Oversight Group; and
- Meeting minutes of the Oversight Group.

We requested other significant documents that were indicated or referred to in the documents that we did receive. Some were not provided; others were provided only on the basis they could not be shared further.

We also talked with key people necessary to understand the methodology choices and application as the claim progressed. The list of the people interviewed is attached in the Appendix to this report.

We met the following limitations on our evidence gathering and considerations:

- We were unable to meet with Union representatives. We note that the Unions have not supported this secondary review of methodology.
- Some evidence, particularly detailed documentation showing the considerations and thinking that resulted in how the factor levels in the single work profile were assigned and subsequently factor scored, was not available to our reviewers. Appendix 3 of the Milestone 3 Report was a summary by factor of the responsibilities, skills, and effort of the support workers and the comparators. It did not contain the background thinking and explanations that underpinned final factor scoring decisions.
- We did not consider the draft Milestone 5 Reports as these are outside the Terms of Reference of the Review. We note that feedback from the project team, employers, and the PSC all represent a strongly held view that any remaining concerns would, and should, be resolved at Milestone 5.
- We also note the limitation of paper-based reviews, albeit enhanced by interviews, and the caution in the guidance about external checking of factor scores⁴.

Feedback we received highlighted and emphasised the Equal Pay Act requirement to separate out affordability considerations from the processes for assessing and correcting sex-based undervaluation.

We have not considered affordability in completing this Review.

⁴ page 18, The Pay Equity Assessment Process Guidance “It is not recommended best practice to have a person or group outside of the parties to the claim checking the scores. This is because the process of understanding the material and coming to consensus is through and involved. People without that deep involvement in the discussions and material may import bias into the process”.

4. Consideration of Review Matters

The parts below consider each of the Review matters identified in the Terms of Reference.

4.1 Description of the Work and Single Work Profile

Review questions

- *Does the single work profile adequately identify and distinguish between the full range and level of skill, responsibility, and effort required for the roles in scope?*
- *Has the single generic role profile been applied in such a way that it allows for a distinction between skills, effort, and responsibility required to support clients with different levels of need?*

4.1.1 Identifying Roles in Scope

To answer this Review question with confidence, we first need to understand the roles in scope of the claim. Understanding the roles in scope of the claim would help us check if the range and level of skill, responsibility, and effort is adequately identified and distinguished in the work profile. We requested, but were not provided, with a list of all roles in scope of the claim.

We understand the parties used an alternative method to identify roles in scope of the claim. We heard from employer representatives that the Equal Pay Act requires the parties in a claim process to focus on “the work” undertaken. Employers told us they believed that the work undertaken by care and support workers is clearly defined and applies to workers who performed the work, as described by the expired Settlement Act and related settlements, the descriptions in the Milestone 1 report on the Claim, and the parties Bargaining Process Agreement (see Appendix One, Milestone 2 report).

We understand the Unions and Employer representatives and peak bodies used their knowledge of care and support worker roles across the four sectors when creating the schedule of the specific roles and employees for interview (Milestone 2 Report, page 4). This identified a sample of employees performing care and support work under different service agreements and contract specifications.

We have been unable to verify the roles in scope from the definition above. Without that information we cannot confirm roles in scope when answering this Review question.

4.1.2 Parties approach to capturing the work

A key methodological step for parties to a claim is to gather information on the work of the roles in scope of the claim.

The guidance emphasises the importance of information gathering as being crucial to informing the work assessment process. Existing information, such as position descriptions and task lists, and particularly primary information gathered through interviews, are integral to developing a robust picture of the size and

complexity of the work. Interviewees should bring a range of experience and tenure in the job. Quality assurance and validation of interview information are also key process steps.⁵

In this claim the parties completed 48 interviews to capture the work, responsibilities, skills, effort and working conditions of those role holders. Interviews were conducted by trained interviewers using the Te Orowaru questionnaire. Interviewees had the opportunity to review their transcripts, then the transcripts were quality assured by two Quality Assurance (QA) Assessors, with further information sought where needed. The QA Assessors prepared summaries of each transcript against the Te Orowaru Factor Plan.

We have not seen evidence that additional information to inform the description of work (as outlined in the guidance) has been used.

4.1.3 Development of a single work profile

The decision to go with a single work profile was made by the JWG. This decision was made on the advice of the QA Assessors, who believed that the transcript summaries showed a range of common skills, responsibilities, and effort central to the role of all care and support workers.

We were provided with the paper the JWG considered when they agreed to adopt a single summary work profile. In reviewing this paper, we were looking for evidence of why this approach was favoured by the QA Assessors over other possible methodological approaches for describing care and support work e.g. developing several role profiles that reflected a range of work by sector, qualification, or skill differences.

The JWG paper briefly mentioned but did not fully explore other approaches for describing the work of care and support workers – e.g. General Areas of Responsibilities. Nor did it canvas the respective benefits, risks, and risk mitigations of using a single work profile to complete factor scoring. Instead, this paper⁶:

- Referenced the guidance indicating that the parties “may agree to develop a summary profile or another form of aggregated material which collates the findings of the interviews and any other information gathered”, and
- Indicated the summary profile would provide the “flexibility to recognise any capabilities that may be sector specific”, and also “highlight any particular levels of acuity, intensity or requirements that may sit outside of the core role but still need to be recognised as part of a range of roles for assessment”.

The JWG subsequently agreed to the development of a core summary job profile at their meeting on 10 February 2023, qualifying that ‘specific matters not common across all support workers to be captured’.

⁵ Page 7-13 of the Pay Equity Assessment Process Guide

⁶ QA Assessors paper to Joint Working Group, dated 7 February 2023

Following this agreement, the QA Assessors proceeded to finalise a draft single work profile and then, as required in the guidance⁷, to validate the draft profile. This finalisation of the draft summary profile was done through a series of union led focus groups attended by 51 workers and a survey of 16 managers (4 per sector). Further amendments and additions were made, and a revised profile was approved by the JWG Co-Chairs on 24 February 2023.

The guidance indicates that understanding the distinctions between a ‘competent’ worker and an ‘extremely experienced’ worker, as well as recognising ‘hidden or overlooked skills’ and differing levels of skill and complexity, are all distinctions that are important for factor scoring. These distinctions were not apparent in the single work profile.

We have assessed the single work profile to look for evidence of how the JWG’s request to capture ‘specific matters not common across all support workers’ was addressed. We observed that examples of additional skills were listed for each of the factors in the profile and that some of these additional skills were broader than our interpretation of the definition of a care and support worker in the expiring Settlement Act legislation and related settlements definition.

Indicative examples include:

- **Factor 1 (Knowledge):** the additional knowledge section includes the following description of work “Team Leader at a residential disability service minimum Level 4 qualification or equivalent experience (page 5 of the Care and Support Work Profile).
- **Factor 4 (Te ao Māori skills):** the additional knowledge section includes the following description of work “one job holder interviewed worked in a Te Ao Māori setting and the knowledge and skills they have would be considered additional” (page 15 single Care and Support Work Profile).
- **Factor 7 (Responsibility for people leadership (line management and influence):** the additional knowledge section includes the following description of work “one job holder had 7 direct reports as well as responsibilities for students and interns” (page 18 of the Care and Support work profile) and “one job holder was in a management role and had 12 direct reports” (page 19 of the Care and Support Work Profile).

The inclusion of additional knowledge and skill descriptions such as those outlined above, together with a lack of detailed documentation that shows the parties considerations and thinking about how this additional knowledge has been translated into factor scoring, does not enable us to determine if the single work profile has been applied in such a way that it allows for a distinction between skills, effort, and responsibility required to support clients with different levels of need.

⁷ the Pay Equity Assessment Process Guidance, p13

Furthermore, it is our view that this lack of distinction of different levels of acuity, intensity, and complexity of work in the single profile runs the risk of not capturing accurately the full nature and complexity of work carried out by support workers.

We examined the summary interview transcripts and noted there were visible differences in the levels of knowledge, training, client profile/need described in the transcripts, pointing to the potential that more than one role type and level of work had been included in the profile.

We also looked at a selection of managers' responses to the profile validation survey. By way of illustration, one manager survey respondent made it clear in relation to the profile that workers in their sector (Homecare) have less responsibilities, and a lot of the tasks mentioned (in the profile) are not being done, they have less autonomy, and a Level 2 Qualification is not a requirement (Homecare Sector, survey response).

We note that the Oversight Group was advised by the parties that concerns raised about the profile would be addressed at Milestone 5. Our view is that these matters should have been resolved ahead of Milestone 5. That stage covers the bargaining strategy, which needs to be based on a robust process and outcomes that are founded on sound evidence and analysis gathered at the earlier stages of the claim.

4.1.4 How the single profile has been applied

The description of the work is pivotal to all the remaining stages of the claim process, feeding directly through to the final estimation of undervaluation. The quality and depth of the steps taken to fully understand and record the tasks and work performed across different settings is key to being able to assess and score the work fully and accurately.

The guidance identifies a range of possible information sources for factor scoring, including the use of an aggregated profile, and the use of transcripts or representative transcript summaries. For this claim, the broad single role profile was the primary information source for factor scoring.

Application of the single profile is discussed more fully in sections 4.3 and 4.4 on work assessment and determination of the extent of the sex-based undervaluation.

4.1.5 Review observations and findings on the single profile approach

We considered the guidance and looked for evidence that the work description methodology applied in this claim described the skills, responsibilities, and effort of a competent worker (not a new starter or extremely experienced one nor an employee with specialist skills and responsibilities not integral to the core role)⁸.

⁸ The guidance, p17 refers "Consider the contribution of a competent employee (not a new start or an extremely experienced one)".

In addition to the Process Guide and the Te Orowaru Factor Plan guidance, we reviewed the anonymised interview summary transcripts, the anonymised survey responses, the aggregated single summary job profile, the QA Assessors' paper to the JWG recommending the single summary job profile approach, and minutes of the Oversight Group. We also talked with the Chair of the Oversight Group, the Project Lead, and Employer representatives.

Having reviewed this evidence, we make the following observations:

- The guidance on information gathering places strong emphasis on ensuring quality information from interviews and using other sources of information such as role profiles, professional standards, task lists, and workforce data, and applying quality assurance and validation processes.
- The parties worked within the parameters of the guidance and processes for the Funded Framework and took advice from the PSC Pay Equity Taskforce. The guidance, however, is not prescriptive and leaves considerable scope for interpretation and judgement by the parties.
- A decision was taken to develop a single work profile based on the summarised interview transcripts. This approach was chosen by the parties over others such as a General Areas of Responsibility (GAR) profile or multiple profiles differentiated by level of skill, complexity, client need and setting.
- Different methods carry different risks. Our view is that a risk of early aggregation is loss of information about particular work aspects and levels of complexity. It also risks conflating skills of a “competent practitioner” with those of more highly skilled, complex, or specialist roles. Understanding the distinctions between a ‘competent’ worker and an ‘extremely experienced’ worker, as well as recognising ‘hidden or overlooked skills’, are distinctions that are important for factor scoring and estimating the undervaluation.
- The QA Assessors’ paper provided did not provide a full analysis of the different options and the risks associated with each option.
- Inclusion of additional or specialist skills in a structured way would have helped minimise the risk of the roles with higher level or specialist skills being conflated with the core role in the factor scoring step. It also seems that some of the additional skills listed in the profile may be associated with managerial roles that were not within the scope of the claim, also discussed in Section 4.2.
- The approach of including the additional skills as examples in a broad profile, without distinction, raises the potential for over-valuation of the core or competent level claimant role and/or undervaluation of distinct and highly skilled and specialised roles.

We have arrived at the following conclusions:

QUESTION	CONCLUSION
<p><i>Does the single work profile adequately identify and distinguish between the full range and level of skill, responsibility, and effort required for the roles in scope?</i></p>	<p>We have not been able to identify the roles in scope in this claim.</p> <p>The single profile is very broad and goes beyond describing the skills, responsibilities, and effort of the core work of a competent practitioner.</p> <p>The profile gives a wide-ranging description of skills and experiences with numerous examples across both settings and sector. This includes skills and knowledge not common to all, but without sections that provide the specificity or granularity of the level of skill, knowledge, and effort required for differing settings and levels of client need.</p>
<p><i>Has the single generic role profile been applied in such a way that it allows for a distinction between skills, effort, and responsibility required to support clients with different levels of need?</i></p>	<p>The lack of distinction of non-common skills/responsibilities has given rise to the potential for over-scoring at the factor scoring stage and over-estimation of the level of undervaluation of the care and support worker role in the final stages of the work assessment process.</p>

4.2 Scope of the claim

Review questions:

- *Does the scope of the claim and the roles included comply with the Equal Pay Act (i.e. do the roles in scope perform the same or substantially similar work)?*
- *In particular, does the inclusion of house leaders, senior support workers, key support workers, hybrid enrolled nurse/support worker supervisors, trainers, and shift coordinators in the single work profile extend the profile beyond the care and support work covered by the claim raised on 1 July 2022?*

4.2.1 Equal Pay Act requirements on 'same and substantially similar' work

In July 2020, Parliament passed the Amendment Act, which introduced a new process for individual employees and Unions to raise a pay equity claim directly with an employer for work, which may be subject to systemic sex-based discrimination.

Under the Amendment Act only Unions can raise pay equity claims for groups of employees and in doing so, Unions have obligations to ensure that the claim has a brief explanation of how the work performed by the employees covered is considered to be the 'same or substantially similar' (clause 13 I (3b)).

Determining who performs 'same or substantially similar' work is a vital step during the early stages of multi-union, multi-employer, claim processes. This step underpins agreements to consolidate claims and supports the development of work profiles, identifying appropriate comparator groups and the obligations for notifying other affected employees.

Same and substantially similar work can be considered a set of knowledge, responsibilities, and effort that is similar, but not identical, in nature. While section 13K of the Amendment Act sets out the process that is required to consolidate claims across multiple Employers with workers with the same and substantially similar skills, there is no detailed methodological guidance on how to determine what is same or substantially similar work.

4.2.2 Guidance on 'same or substantially similar'

The guidance on 'same or substantially similar' is that job titles can be misleading, and parties must ensure that all employees who may do similar work regardless of title, are captured in a pay equity claim for that work.

The term is not further defined either in legislation or in the policy intent documentation from the Ministry of Business, Innovation and Employment (MBIE) and the pay equity bargaining template in the guidance covers this lightly.

However, the guidance does note that best practice is that roles may come into or out of scope during the assessment process as more information about the work is uncovered. We saw no evidence of this occurring throughout this claim.

4.2.3 Application of the 'same and substantially similar work' requirement

The claim outlines how the work performed by jobholders covered by the claim is same and substantially similar across employers. The claim does this by outlining a **core skill set** that is common across the 4 sectors **and** stating that all care and support workers are covered by the Settlement Act; and as such share:

- Legal definition of work (in relation to work performed under the Government Services agreements);
- Pay rates and a single progression system; and
- Recognition of qualification.

We note that the Settlement Act (clauses 5A & 5B) defines care and support services as focusing on assisting and supporting a person across different workplace settings, including in a person's home or in the community, or residential care, rest home or hospital facilities. The cover of the Settlement Act was extended in 2017 to include disability vocational services and in 2018 to include mental health and addiction support services.

The claim description of 'same and substantially similar' includes both workers who have the core skills and those job holders covered by the Settlement Act.

4.2.4 Review observations and findings

Having reviewed this evidence, we make the following observations:

- We note that the definition of ‘same and similar’ was outlined by Unions at Milestone 1 and was set out by employers in paragraph 6 of the Milestone 2 Report.
- Evidence provided to us through the schedule of roles interviewed indicates that most of the job holders interviewed both fit within the scope of core skill set and within the legal definition of a care worker under the Settlements Act.
- We note however that a small number of job holders interviewed had duties that included both assisting and supporting a person and higher duties such as management of staff and day-to-day planning of work and site management. These higher duties appear to be outside the core skill set in the claim. We are, however, unable to verify that, as we did not see a list of the job roles and associated work descriptions that are paid under the Settlement Act pay rates and single progression system.
- Furthermore, we have been unable to determine if a list of job roles, paid under the Settlement Act, were identified early in the claim assessments process and whether any work was undertaken to understand the overlaps with the Frontline Managers and Co-ordinators Pay Equity Claim (Sept 2022).

We have arrived at the following conclusions:

QUESTION	CONCLUSION
<p><i>Does the scope of the claim and the roles included comply with the Equal Pay Act (i.e. do the roles in scope perform the same or substantially similar work)?</i></p>	<p>Without a list of the job roles and associated work descriptions that are paid under the Settlement Act pay rates and single progression system, we are unable to definitively determine if the work of the jobs covered in the claim is ‘same and substantially similar’.</p>
<p><i>In particular, does the inclusion of house leaders, senior support workers, key support workers, hybrid enrolled nurse/support worker supervisors, trainers and shift coordinators in the single work profile extend the profile beyond the care and support work covered by the claim raised on 1 July 2022?</i></p>	<p>Because we did not see a list of job roles we could not determine if the roles listed in the question were included in the single profile.</p> <p>We note that of the list of roles selected for interviews, the majority fall within the scope of the claim. A small number of managerial roles with direct reports potentially extend beyond the care and support work covered by the Settlement Act and the scope of the claim raised on 1 July 2022. However, it is not possible to determine the materiality of this finding with the information we were provided.</p>

4.3 Work Assessment Methodology – Translating the Work Description into Factor Scoring

Review questions:

- *Did the work assessment methodology thoroughly and appropriately assess the skills, responsibilities, conditions of work, degree of effort, level of experience and any other relevant work features of both claimants and comparators?*
- *Are the skills, responsibilities and level of effort described in the single work profile aligned with the points given to each of the 15 Te Orowaru skill assessment factors?*
- *Has applying the highest level of points in each of the 15 Te Orowaru skill assessment factors resulted in a single work assessment score reflecting the skills, level of responsibility, and effort required to support clients with complex needs being those required to meet the needs of all clients?*
- *Has the scoring of comparator roles accurately reflected the skills, responsibilities, and effort required of those roles?*

4.3.1 Guidance on work assessment and factor scoring

The PSC Pay Equity Taskforce guidance includes the Te Orowaru job evaluation Factor Plan, and Factor Scoring Booklet, along with the Pay Equity Assessment Process Guide. The Te Orowaru job evaluation system contains fifteen factors covering skills/knowledge, responsibilities, effort, and working conditions.

Under the Guidance, the Panel is convened to apply the Te Orowaru factor plan to decide the appropriate factor level to reflect the degree of effort and complexity of the work for each of the factors, for both claimants and comparators. Parties can then engage in an optional process that overlays the factor levels with the points system in the Te Orowaru factor scoring booklet, to get clarity of the degree of comparability between the claimant and comparator work. To enable assessment of comparability, the scores are presented as both individual factor-based scores and an aggregate score for the claimants and each of the comparators.

4.3.2 Preparation of the Panel

For this claim, in addition to using the Guidance, the Panel were provided with training in how to conduct the assessment, and an independent facilitator was engaged to design and run the assessment sessions.

The JWG agreed the expectations⁹ for the Panel:

- Investigation, not advocacy;
- Work from the information provided, not assumed knowledge;
- Evaluate the work of a "competent practitioner", not the person(s), and not very new or very experienced workers;
- Process individual scoring first, then discuss scores and reasons, reach consensus on scores, ideally; and
- Review comparator scores after completing the claimant scores.

4.3.3 Translating the single profile description of the work into factor scoring

The single work profile developed for this claim is organised by the fifteen component factors in the Te Orowaru factor plan. As discussed in Section 4.1, the summary profile is broad, with illustrative examples of additional or particular skills/responsibilities/effort that might be present.

The guidance advises that once all relevant claimant information/data is gathered (including interview data, and other data such as health and safety data, job descriptions, and professional standards) the next step is to analyse the data using the Te Orowaru factor plan. The first crucial step in that process is deciding on the factor level for each of the fifteen blocks (for a competent practitioner) for the claimants. From these decisions, the point scoring follows.

The Panel in this claim used the single work profile as the basis for assigning factor levels. We are not aware if other sources of data were used. The guidance anticipates a range of work information be gathered on both the claimant and comparators, such as, relevant position descriptions, delegations, task lists, and scope of practice documents, along with the information drawn from the work assessment interviews of those who perform the work. This is then to be used to inform the factor scoring.

No evidence was sighted that indicated that either the JWG or the Panel discussed alternative methods for factor scoring, as used in some other claims (such as assigning factor levels to the anonymised transcripts or transcript summaries and identifying a range of scores or, scoring transcripts and using an averaging process where the scores fell in a range). While there is no requirement to consider alternative factor scoring methods, for a work profile that was so broad and a workforce that covered many sectors, other methods would have ensured the work had been fully discovered and appropriately factor scored.

Our enquires indicated that several considerations may have come into play in deciding on using the single summary job profile – e.g. the parties viewed that the single work profile was a sound description of the work, together with awareness that they had decided as part of the Bargaining Process

⁹ Expectations set at JWG meeting 10 Feb 2023 – see Milestone 3 report P13

Agreement to only use the single role profiles for their comparators that were available in the MBIE repository. We were advised from feedback on our draft report that that comparator interview transcripts are available in the repository for use. This is worth exploring in future pay equity claims.

We noted in section 4.1 that the single work profile, while giving examples of special or additional skills, did not separate these out in a structured, transparent way for exclusion and separate scoring if they were not part of the 'competent practitioner' role but reflected higher level skills and responsibilities or specialist roles.

We have not seen the working papers that document the Panel's considerations and thinking that resulted in the factor level assignment and subsequent point scoring, so it is not possible for us to form a view on whether the final score accurately and defensibly reflects the role responsibilities, skills, and effort of care and support workers. Without this evidence we cannot make a judgement on whether there was consideration in the assessment about excluding (at least some of) the additional skills.

We did note three instances where a range of factor levels was assigned. Feedback indicated that this approach was used to account for lack of consensus between panel members. Therefore, our view is that this may have also been a way of trying to account for the skill range for these factors¹⁰.

The factor scoring process followed the guidance weightings for the different factor blocks. A final single score was determined for the claimant.

The guidance (page 18) cautions against parties outside the claim checking over scores, because they will lack the involvement in the discussions coming to consensus, and risk bringing unintended bias to the claim. We did not conduct factor scoring, however, we did undertake a light touch exploration in relation to two of the fifteen factor scores (1 and 4) with employer representatives.

This discussion indicated that in one factor score, the parties' interpretation of guidance was not that of the reviewers, and in the other factor score, the parties' interpretation of guidance was consistent with the reviewers' understanding of the guidance, but not reflective of the skills outlined in the transcripts of job holder interviews for that factor.

This illustrates that interpretation of the guidance can vary from person to person and can result in a range of scores. It confirms our view that for the purposes of undertaking this secondary review, we would want to see the parties' working documents that detail the considerations and thinking that resulted in how the factors in the single work profile were assigned levels, and subsequently point scored. This would potentially increase confidence that factor scoring has followed guidance.

¹⁰ see Milestone 3 report p 15. This identifies level ranges for Factors 1, 2 and 14. This does not discuss the thinking behind the assignment of these range levels but focuses on a way of allocating the points when there is a range of levels.

4.3.4 Assessment and factor scoring of the comparator work

The guidance requires that the process of assessing the work of potential comparable workforces be similar to the process undertaken for the claimant workforce. The guidance also suggests different ways the interview information can be factor scored, including the option of using aggregated summaries, stressing that whatever process is used, it should be undertaken consistently between the claimant and comparator. Keeping good records of decisions and the reasons for decisions is key to a 'good' process.

The Panel used comparator single work profiles held in the MBIE repository to score each potential comparator across the fifteen factors in the Te Orowaru factor plan.

Comparator assessment results are set out in the Milestone 3 Report. We have not seen any evidence that sets out the thinking behind these assessments.

The guidance indicates that the same work, terms and conditions, and remuneration information must be collected for both claimants and comparators (see page 23 guidance). We did not receive evidence that indicated that an equally rigorous process for both claimant and comparator was undertaken. The guidance indicates the key source of information on the work of the claimant and comparators is the data gathering by interviewing those who perform the work. This primary research is integral to the process of work assessment (see guidance p7 and p14). The expectation in the guidance of an equally rigorous process for both claimant and comparator did not apply to comparators in this claim, as only the single profiles contained in the repository were used. With at least one comparator (Fisheries), the summary job profile was not created using Te Orowaru, but rather a different assessment tool preventing direct comparison of some factors and requiring additional judgment on their translation into the Te Orowaru approach.

4.3.5 Review observations and findings

Having reviewed the guidance and evidence, we make the following observations:

- The methods the parties chose to assess and score both the claimant and comparators, including using single work profiles, falls largely within the guidance. The evidence sighted showed that in some areas the guidance had not been entirely followed – e.g. the requirement to use a full range of information for both claimants and comparators.
- We know from the methodology used in other claims that an alternative approach could have been for each panel member to factor score transcripts or a selected sample of summarised transcripts, thereby delivering a range of scores to better reflect the range of levels of skill, complexity, and effort in both claimant and comparator roles. Feedback indicated that interview transcripts for the comparators were available in the repository, in addition to the summary role profiles.
- The guidance cautions against secondary assessment of scoring the claimant and the comparators' work profiles. We sought evidence of the rationale underpinning the assignment of factor level. We have not seen any written evidence, although we understand that the reasoning of the Panel may have been captured.
- Our light touch exploration related to two factor claimant scores (factors 1 and 4) with employer representatives demonstrated how easily scores could differ and the role that individual judgement plays.

- The lack of distinction of higher skills in the profile (discussed in section 4.1.2) has resulted in some factors potentially being scored at a level above ‘competent and common to all’.
- We note there is no required validation process for assessing work and assigning factor levels for comparators, particularly when this is held in the repository. There is potential for the comparator work assessment to not fully take account of the nuances of the work. The guidance, however, is that this risk is mitigated by the fact that the Panel undertakes both the assessment of the claimant and comparator workforces at the same time, and under the same training. While there is a logic to this approach, the question of validation at the factor scoring step may warrant further investigation, as it likely applies to other claims.
- Although out of scope of the Review, we appreciate that the decisions and processes around selection and exclusion of comparators are important in comparing roles that have similar skills, responsibilities, and effort. We note that in this claim the Panel excluded the Funded Sector Non-governmental Organisation (NGO) non-registered social workers on the basis that the information about these workers had been grouped across a range of roles rather than consolidated into a single work profile. Our view is that, had the work of care and support workers been distinguished so that varying roles and levels of complexity and skill of these workers were recognised, then the NGO non-registered social worker workforce, which was another Funded Sector workforce, could have been retained as a viable comparator. This would have broadened the range of comparators used, which could have helped provide more confidence in the estimate of undervaluation.

We have arrived at the following conclusions:

QUESTION	CONCLUSION
<p><i>Are the skills, responsibilities, and level of effort described in the single work profile aligned with the points given to each of the 15 Te Orowaru skill assessment factors?</i></p>	<p>The single work profile is not structured in a way that makes it easy to assess whether or not the skills, responsibilities, and effort of care, as described in the single work profile, align with the points given to each of the 15 Te Orowaru skill assessment factors.</p> <p>The work as described in the work profile, combined with the application of the guidance has meant that skill, knowledge, and effort of a competent care and support worker may have been conflated with those of higher level more complex or specialist roles in the assignment of factor levels. The assessment of the work should be of a competent practitioner, not a very experienced one, or a new hire.</p> <p>The lack of distinction about higher skilled roles in the profile has resulted in some but not all factors potentially being scored at a level above ‘competent and common to all’.</p>

Has applying the highest level of points in each of the 15 Te Orowaru skill assessment factors resulted in a single work assessment score reflecting the skills, level of responsibility, and effort required to support clients with complex needs being those required to meet the needs of all clients?

The Panel did not assign the highest level of points in each of the 15 Te Orowaru skill assessment factors. Points were scored for the factor levels assigned.

The levels and points assigned for some factors may have reflected the skills, responsibilities, and effort required to support clients with complex needs, rather than being 'competent and common to all'.

Has the scoring of comparator roles accurately reflected the skills, responsibilities, and effort required of those roles?

We have not seen the working papers that document the Panel considerations and thinking that resulted in the factor level assignment and subsequent point scoring, so it is not possible for us to form a view on whether the final comparator scores accurately and defensibly reflected the role responsibilities, skills, and effort of the comparators.

4.4 Comparing Claimants with Comparators and Estimation of the Sex-Based Undervaluation

Review questions

- *Was the parties' approach to dealing with the difference in factor score between claimant and comparators logical and appropriate?*
- *Has the scoring of comparator roles, the averaging of comparator factor scores, and the resultant 14% (increasing to 14.6%) addition to comparator pay rates overestimated the extent of the sex-based undervaluation?*

4.4.1 Guidance on methodology and approach to assessing the degree of undervaluation

The guidance contains a section on Assessing Comparability¹¹. This process involves examining factor scores and the remuneration of claimant and comparators to understand if there is sex-based undervaluation present.

The guidance recommends that parties consider all agreed comparators, including those scored within the range of 5 – 10% of the claimant, and those scored at a lower factor score than the claimant role, but are paid at a higher rate. The guidance provides a number of methodological options for how to assess the extent of undervaluation.

¹¹ The Pay Equity Assessment Process Guide p24

These include:

- Average of base pay across all comparators vs claimant, and addressing terms and conditions separately;
- Median of total remuneration across all comparators vs complainant;
- Median of base pay across all comparators vs claimant, and addressing remunerative, and any other agreed terms and conditions separately;
- Establishing the equitable midpoint or competent rate for all comparators vs claimant; and
- Using ranged comparisons i.e. entry step and top step for claimant vs comparators, forming a map of both the assessment range and the remunerative range of each job.

The guidance is silent on how to reach a final view of the extent of undervaluation using one or more of these methodologies. There is no best practice methodology suggested for estimating the level or percentage of undervaluation. There is no reference in the guidance to the method of calculating an average of comparator scores, calculating the percentage difference between the comparator average and the claimant score, and notionally raising comparator pay levels by that percentage.

We were advised that the parties were informed by the PSC that there were instances of other claims that had applied a loading of comparator rates. Those claims may have adopted different methodological approaches to work assessment and would need to be examined in full to warrant using them to affirm the approach in this claim.

4.4.2 Methodology on assessing comparability adopted in this claim

The final comparator factor scores agreed by the Panel of this claim were lower than the claimant's final factor score.

Following the completion of the factor scoring, a range of different methodologies and approaches were used to test how to assess terms and conditions and remuneration differences of the initial three comparators, so that comparisons could be made with the claimant remuneration terms and conditions. This is done to understand the full extent of the difference in total remuneration and terms and conditions of both claimant and comparators, to be able to arrive at the degree of sex-based undervaluation in the claimant remuneration.

The guidance requires that the same work, terms and conditions, and remuneration information must be obtained for both claimant and comparators, from the same point in time. Collective Agreements and interview information provided by the comparator and claimant Employers can be used.

For this claim, the assessment of remuneration and terms and conditions of comparators was completed using incomplete data. The data used included published pay rates and provisions in publicly available Collective Agreements. A range of claimant employers also provided information on their remuneration practices, however, information on how remuneration worked in practice in comparator organisations was only provided by the employer for one comparator (Customs Officers).

An example of why clarification from the employer is essential was found with the Fisheries comparator. The Fisheries pay scale is used in the remuneration comparison with care and support workers, with the indication that progression through the pay scale is automatic. The Collective Agreement provisions covering Fisheries Officers and the summary role profile from the repository, appear to indicate that progression is only automatic to step four of the scale, then requiring appointment and assessment before progressing to the higher level of Senior Fisheries Officer. The table at Appendix One of the Milestone 4 Report indicates Fisheries progression is automatic.

Assessed differences in pay and in terms and conditions were then documented. This revealed some terms and conditions that were either not present or substantially less favourable for care and support workers, some of which impacted on remuneration. Comparability was sometimes difficult to accurately assess.¹²

Following gathering and assessing the information on remuneration and terms and conditions, and after conversations with the Unions, options were developed to determine how best to establish the level of undervaluation of remuneration of the claimant role¹³.

The options provided a range of possible calculation methods using base pay rates measured at entry level, midpoint, and top of scale, and were as follows:¹⁴

1. Base rate of claimant expressed as a percentage of the comparator rate (by each comparator, then averaged);
2. 114% of the average comparator base pay rate, expressed as a percentage of the claimant rate;
3. Base rate of comparators expressed as a percentage of the claimant rate; and
4. Base rate of claimant expressed as a percentage of comparator rate plus 14%

The 14% loading in options 2 and 4 is based on the difference between the claimant factor score and the average of the three initial comparator factor scores. These options were presented in a paper to the JWG, which they considered at their meeting on 15 May 2023¹⁵. The JWG decided to use option 4.

Under option 4, the entry level, midpoint (or proficient level), and top step were compared using the pay rates lifted by 14% for comparators, and percentage differences at each level calculated. These ranged from 24% for Customs step 1 (minimum) to 38% for Fisheries step 1 (minimum). This led to the parties agreeing a range of undervaluation of 24% - 38%. (see Milestone 4 Report, page 26).

¹² for instance, penal rates having been absorbed into pay rates for Corrections Officers in earlier CEA negotiations at an estimated loading of 28%, and Fisheries Officer pay rates being higher than the other comparators but with very little by way additional allowances or penal rates, no discounting of rates occurred as a result.

¹³ Rose Ryan paper: Options for Assessing Undervaluation- 9 May 2023

¹⁴ Paper from Project Team to JWG titled "Options for assessing undervaluation" 9 May 2023

¹⁵ Minutes of JWG meeting 25 May 2023

At a later date, two additional comparators (Health Care Assistants and Mental Health Assistants) were factor scored. Their score and pay rates were then compared to the data on the first three comparators. The final view was that their addition to the data on the first three comparators would not make a material difference to the assessed and agreed range of undervaluation.

4.4.3 Impact of Adding 14%

The addition of 14% to comparator pay rates at entry level, midpoint, and top of scale provided a set of notional pay rates to be compared with the equivalent claimant rates.

The table below shows the impact of the 14% loading.

	Range of individual percentage differences with claimant, across entry, mid, and top levels (%)	Range of average percentage differences at each level (%)
With 14% loading	24.1 to 38.5	28.9 to 31.7
Without 14% loading	13.5 to 29.9	18.9 to 22.2

The outcome of adding the 14% loading was a considerable lift in the assessed level of undervaluation of the claimant role. This placed a very high reliance on the accuracy of the factor scoring and appears to assume there is a linear relationship between the final factor points scores and wage levels.

The logic of the 14% loading is based on the difference resulting from the factor scoring. This approach suggests a degree of precision that belies the many individual judgments involved in assigning factor levels. It is particularly problematic where the factor scoring has potentially been weighted to higher skill levels.

Feedback from employers was that they used regression analysis in the manner applied in remuneration surveys and arrived at rates at a similar level to those with the 14% loading.

4.4.4 Review observations and findings

Having reviewed the guidance and evidence we make the following observations:

- There is no recognised best practice, established methodology for calculating the degree of undervaluation once the full assessment of factor scores, remuneration, and terms and conditions has been completed. This is left to the parties to decide based on the particular detail of the claim. This is potentially an area for further review or improvement to the established tools and guidance to aid future claims processes to arrive at a defensible outcome
- A high degree of reliance has been placed on factor scoring, which is a qualitative process relying heavily on the judgement of assessors in arriving at factor scores using the Te Orowaru job evaluation system. Job evaluation systems are used to assess comparability of different roles and work. They are not intended to be used as a precise tool or a structure to be used to set remuneration. As with any job evaluation process, there will be a margin for error
- Using comparator work profiles that are scored by a panel unfamiliar with the work of the comparators, without validation from representatives familiar with the roles, creates a risk of under or overscoring factors

- The processes followed in this claim resulted in claimants having a higher factor score and lower remuneration than all comparators used. The factor scoring results were then used very precisely to arrive at an average difference that was then used to notionally increase comparator pay rates. These were then used for the purposes of comparison with claimant pay rates and ultimately to determine a range of undervaluation. This was done without factoring in differences in the way comparator pay rates have been constructed. As with factor scoring, assessing the size of the undervaluation requires judgements around the remuneration and terms and conditions information to be used, and how to use that information. It is difficult to do sound remuneration assessments when comparator employers are not willing to provide background detail on how remuneration and conditions work for their comparator roles, even though sourcing this is a required step in the guidance.
- No discounting of rates or allowance in the in the percentage calculations was made where terms and conditions have been built into pay rates of comparators.

We have arrived at the following conclusions:

QUESTION	CONCLUSION
<p><i>Was the approach to dealing with the difference in factor scores logical and appropriate?</i></p>	<p>For this claim, given earlier methodological choices and the information used as the basis for assessing factor scores, we do not consider this approach to be appropriate.</p> <p>The guidance provides several possible approaches to estimate the degree of undervaluation. The approach used by the parties was not one of these. While it has been used by other claims, they followed different methodological approaches. PSC advice indicated it was up to the parties to decide the approach to take.</p> <p>Given the qualitative nature of factor scoring, using the score difference as a 'precise' loading for remuneration comparisons is too definitive.</p>
<p><i>Has the approach chosen overestimated the extent of sex-based undervaluation?</i></p>	<p>The combined effect of relying on a claimant factor score that may be over-scored, claimants and comparators not being scored consistently, averaging the factor scores of comparators, and then using the difference of 14% from the claimant score to lift comparator pay rates to a notional level for comparison with claimant pay, may have resulted in an overestimation of the sex-based undervaluation of the claimant role, though it is difficult to estimate the degree of overestimation.</p>

5. Summary Conclusion

The Terms of Reference for the Review asked us to focus on the choice and application of methodological approaches to capturing the work, assessing the work through factor scoring, and determining the undervaluation.

We have done this by looking at the evidence and analysis the parties used for their decision-making, (within the limitations set out in Section 3.3) and whether this is consistent with legislation and guidance.

Assessing sex-based undervaluation for 'same or substantially similar' work in a pay equity claim involves both science and the art of judgement.

The guidance provides extensive advice on methodology to support processes. The guidance is not prescriptive because it recognises there will be different contexts for each claim – judgements will be required on what methodology to use and how to apply it.

The cumulative effect of methodological choices made by the parties may have led to an over-estimation of the level of sex-based undervaluation.

In summary, we consider that the cumulative effect of methodological choices made by the parties has potentially led to an over-estimation of the undervaluation, though it is difficult to size the extent of any over-estimation.

- The methodological choice to develop a single work profile resulted in a lack of transparent distinction between the work of a 'competent practitioner' and work outside the common core.
- Although the JWG requested that 'specific matters not common across all support workers are to be captured' in the single profile, we observed that while some work aspects, not common to all, were identified in the JWG request, they were not addressed in a structured way that would have enabled the Panel to identify non-core skills for factor scoring purposes.
- The inclusion of some higher-level skills in the broad work profile means there is potential that the factor scoring does not reflect the core work appropriately, with some of the factor scores leaning to higher level skills and responsibilities.
- We looked for evidence of the scoring process and logic underpinning the assignment of factor levels, which are the basis for factor scoring. In practice we saw only very limited evidence. This limited evidence and our discussions showed an initial range of levels, illustrating both different interpretations of the guidance, and different judgements.
- We know from the methodology used in other claims that an alternative way of approaching assessment could have been for each panel member to factor score transcripts, or a selected sample of transcripts, thereby delivering a range of scores to better distinguish the range of levels of skill complexity and effort in both support and comparator roles. We acknowledge that this approach is more resource and time intensive than use of a single work profile.

- The parties agreed early in the process to use comparators with data contained in the data repository, and not to interview comparator workers. There was some attempt to interview comparator representatives at the remuneration estimation phase with only a very limited response. Without direct engagement with the comparator workforce it is more difficult to get a good understanding of the nature of comparators' work, to inform factor scoring and remuneration assessment. This issue is not unique to this claim.
- On the estimation of the extent of the sex-based undervaluation we note that there are a variety of practices across claims. Some other claims have used score differentials to notionally lift comparator pay. However, we are aware that this step had been preceded by in-depth analysis of the work, followed by transcript scoring, that led to a range of role levels being exposed which were then used to define different grades of role with different pay levels.
- Single score comparisons between the claimant and comparators gives the impression of a degree of precision that belies the range of judgements underneath. In this case, we consider using the score difference as a 'precise' loading to compare remuneration was not appropriate. There is a risk that this comparison has led to the level of undervaluation being over-estimated, which in turn could translate into an overcorrection of pay scales.

Appendix One: List of Interviews

Public Service Commission

- Grainne Moss, Chief Executive and System Pay Lead Pay Equity
- Amy Ross, Manager, Pay Equity Taskforce

Project Team

- Brenda Pilott, Project Leader
- Rose Ryan, Project Support

Employer Representatives

- Margaret Eccleton, People Director, Bupa
- Mike Peters, NZ Health Group

Employer Finance Committee Resources

- Max Robin, NZ Aged Care Association
- Richard Williams, NZ Health Group