

CHANNY MAO

**Eliminating the gender pay gap: the case for pay transparency in New
Zealand**

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Table of Contents

Abstract

<i>I.</i>	<i>Introduction.....</i>	<i>3</i>
<i>II.</i>	<i>The Iceland Example.....</i>	<i>4</i>
	<i>A. Legislative reform in Iceland.....</i>	<i>4</i>
	<i>B. Act on Equal Status and Equal Rights of Women and Men No. 10/2008.....</i>	<i>5</i>
	<i>C. Development of Equal Pay Standard.....</i>	<i>6</i>
<i>III.</i>	<i>Issues and Challenges.....</i>	<i>7</i>
	<i>A. Iceland</i>	<i>v.</i>
	<i>Zealand.....</i>	<i>New Zealand.....7</i>
	<i>B. New Zealand’s main concern.....</i>	<i>9</i>
	<i>C. Measures already in place.....</i>	<i>10</i>
	<i>D. Legislative reform in New Zealand.....</i>	<i>11</i>
<i>IV.</i>	<i>Advantages of a pay transparency standard.....</i>	<i>12</i>
	<i>A. Alignment with New Zealand’s international obligations.....</i>	<i>13</i>
	<i>B. Actively challenges outdated wage structures.....</i>	<i>14</i>
	<i>C. It is good for business.....</i>	<i>14</i>
	<i>D. Softer alternative to gender equality.....</i>	<i>15</i>
	<i>E. Addresses other areas of discrimination.....</i>	<i>15</i>
<i>V.</i>	<i>Conclusion.....</i>	<i>16</i>
<i>VI.</i>	<i>Bibliography.....</i>	<i>18</i>

Abstract

This paper is a comparative analysis of the approach of Iceland and its utilisation of a pay transparency measure. It will critically analyse whether this model could be applied in New Zealand and what issues or challenges will need to be addressed.

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Subjects and Topics

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I Introduction

The topic of pay equity gained momentum in New Zealand following a Court of Appeal decision in 2015¹ which reignited the debate about the gender pay gap. This has naturally raised questions as to how the gender pay gap can be eliminated. Although New Zealand is often seen at the forefront of social change, it is somewhat a surprise that internationally it ranks in 9th position for gender pay equality in the World Economic Forum's 2015 Global Gender Gap Index.²

Progression towards closing the pay gap in New Zealand has been slow.³ In March 2017 the Ministry of Women released a research report which states that 80% of the portion of the gap cannot be explained, while 20% may be due to factors such as differences in education or part-time work.⁴ The same report also provided data that concluded that the gender pay gap is at 12%. As at 1 September 2017 further data released from Statistics New Zealand reassessed the gap to be closer to 9.4%.⁵ When we look at the overall trend since data has been collected in 1998 the gender gap appears to be fluctuating around the 10-11% mark.

By international comparison, countries such as Iceland is leading the change in gender pay inequity by introducing the use of pay transparency measures in legislation. According to the World Economic Forum's 2015 Global Gender Gap Index, Iceland ranked in 1st position⁶ as having the lowest gender pay gap in the world and the report cites it at being at being 7%. It has held the top position in recent years and its Nordic counterparts followed closely behind in the rankings.⁷

Iceland's legislation, which comes into force next year, which will place a positive onus on both private and public organisation to prove that they are paying men and women equally.⁸ This means that organisations who employ 25 people or more must prove that they are paying employees fairly regardless of gender, ethnicity, sexuality, or nationality.⁹ This is achieved by an annual to ensure that they comply with the government's Equal Pay Standard. In doing so they

¹ *Terranova Homes and Care Ltd v Service and Food Workers Union Nga Ringa Tota Inc* [2015] 2 NZLR 437 (CA).

² "The Global Gender Gap Report" World Economic Forum (26 October 2016) <<https://www.weforum.org/reports/the-global-gender-gap-report-2016>>.

³ Prue Hyman *Hopes Dashed? The Economics of Gender Inequality* (Bridget William Books, Wellington, 2017).

⁴ "Empirical Evidence of Gender Pay Gap in New Zealand" Ministry of Women (March 2017) <http://women.govt.nz/sites/public_files/Empirical%20evidence%20of%20GPG%20in%20NZ%20-%20Mar2017_0.pdf>.

⁵ "Gender Pay Gap" Ministry of Women (1 September 2017) <<http://women.govt.nz/work-skills/income/gender-pay-gap>>.

⁶ *Ibid*, at 2.

⁷ *Ibid*, at 2.

⁸ Agence France-Presse "Iceland to Enshrine Equal Pay for Women and Men in Law" The Guardian (5 April 2017) <<https://www.theguardian.com/world/2017/apr/05/iceland-equal-pay-women-men-law>>.

⁹ Ryan Kilpatrick "Iceland has Become the First Country to Officially Require Gender Pay Equality" Fortune (9 March 2017) <<http://fortune.com/2017/03/09/women-iceland-pay-equality-gender/>>.

will receive equal pay certification. The legislation has been introduced with the goal of eliminating the gender pay gap by 2022.¹⁰

A question therefore arises as to whether pay transparency measures similar to the one proposed by Iceland should be implemented in New Zealand. Could this potentially work in New Zealand, and what are the main differences and similarities which could enable pay transparency measures to be successful in closing the gender pay gap? Although there appears to be some factors about Iceland which make it the ideal candidate for pay transparency, there are also many advantages in implementing a similar measure which would outweigh any challenges if the same or similar model was applied in New Zealand.

II The Iceland Example

A Legislative reform in Iceland

Although legislating pay transparency may appear to sound forward thinking, Iceland has actually had equal pay laws for over half a century.¹¹ Similar, to New Zealand, its legislation required that women and men are paid fairly. In 2010 it introduced further legislation requiring companies with 50 employees or more to have both men and women on company boards and whether there are 3 or more board members, the percentage of either sex must not be less than 40%.¹² Iceland also developed and introduced its own voluntary Equal Pay Standard in 2012¹³. Despite these factors however there was still a gender pay gap and mounting pressure from the public to take further steps to guarantee equal pay.

On 24 October 2016 at 2.36pm (which is Iceland's national Women's Day Off), several women marched out of their jobs in the capital Reykjavik in protest of the gender pay gap.¹⁴ It was their view that due to the gender pay gap, for every 8 hour working day women were not paid for working from 2.36pm onwards.¹⁵ The protest was intended to send a strong message that further work had to be done in order to close the gap and that gender inequality was still very much a live issue regardless of Iceland's reputation for its low gender pay gap.

This had not been the first time that women had walked out of their jobs in this manner for women's rights in Iceland. Women's Day Off has been a national holiday since 1975 when

¹⁰ Ibid, at 9.

¹¹“Looking for information about Equal Pay in Iceland?” The Icelandic Women's Rights Association (10 March 2017) <<http://kvenrettindafelag.is/2017/looking-for-information-about-equal-pay-in-iceland/>>.

¹² Ibid, at 11.

¹³ Ibid, at 11.

¹⁴ Charlotte England “Iceland's Women Leave Work at 2.38pm to Protest Gender Pay Gap” The Independent (25 October 2016) <<http://www.independent.co.uk/news/world/europe/iceland-women-protest-strike-gender-pay-gap-leave-work-early-a7378801.html>>.

¹⁵ Ibid, at 14.

women first took to the streets to protest gender inequality by refusing to go to work that day.¹⁶ Since then it has further been utilised as an opportunity to advocate for women's' rights. A similar walk out at a specified time where it is thought that women work for free took place in Reykjavik previously in 2005 and again in 2008.¹⁷ It is evident that momentum had been building up over time and the views of some were that Iceland was supposed to have the most equal rights between men and women, however could not even eliminate the gender pay gap.

Fast forward to 2017, where earlier this year on 8 March 2017 the government announced a further step in its movement towards gender equality by introducing the Act on Equal Status and Equal Rights of Women and Men,¹⁸ which will make equal pay certification mandatory.¹⁹ This will apply from 1 January 2018 onwards and utilises the Equal Pay Standard, which had been introduced as a voluntary measure since 2012.²⁰

The requirement for public and private organisations to prove they are transparent and paying men and women equally is an impressive step towards gender equality. The rationale behind the legislation seems to indicate that unless laws are applied more forcefully than the gender pay may never close. It is evident that Iceland may have viewed the protest on 24 October 2016 as an opportunity to break down the last of the barriers preventing it from completely eliminating the gender pay gap and set a further example to the rest of the world.

B Act on Equal Status and Equal Rights of Women and Men No. 10/2008

The Act on Equal Status and Equal Rights of Women and Men²¹ will require companies to be annually audited using an Icelandic Standard, IST 85:2012,²² more commonly known as the Equal Pay Standard or Equal Pay Management System. Once they are assessed by an independent certifying body with having met the standard, they are provided with an equal pay certification, but must further obtain an “equal pay symbol”. The certification is sent to an external government agency with a report on the outcome of the audit.²³ A failure to obtain the certification status through this method could result in a fine.²⁴ In addition, companies with 25 or more employees will also be required to maintain an internal gender equality program, which

¹⁶ Kirstie Brewer “The Day Iceland’s Women Took the Day Off” BBC News (23 October 2015) <<http://www.bbc.com/news/magazine-34602822>>.

¹⁷ *Ibid*, at 14.

¹⁸ Act on Equal Status and Equal Rights of Women and Men No. 10/2008.

¹⁹ *Ibid*, at 9.

²⁰ Kimberly Lawson “Iceland Announces Plan to Enforce Equal Pay Across All Companies” Vice (13 March 2017) <https://www.vice.com/en_id/article/gv3jky/iceland-announces-plan-to-enforce-equal-pay-across-all-companies>.

²¹ *Ibid*, at 18.

²² Act on Equal Status and Equal Rights of Women and Men No. 10/2008, Article 19.

²³ Act on Equal Status and Equal Rights of Women and Men No. 10/2008, Article 18.

²⁴ *Ibid*, at 23.

will be reviewed by the external government agency every 3 years.²⁵

As part of the Ministry of Welfare, Iceland established the Center for Gender Equality in 2000²⁶, which is the government agency that reviews the gender equality programs and publicly maintains a register of certified companies. It also receives the certification and audit reports from the certifying bodies. The independent certifying body will submit a copy of the companies certification along with an audit report to the Center for Gender Equality every 3 years. Certification is confirmed with an award of an equal pay symbol by the Center for Gender Equality, which is only valid for 3 years.²⁷ This means that not only do the companies get audited by a third party, they also need to have their certification confirmed by a government agency that maintains a register of complying companies and has the authority to fine companies who are in breach of the law.

The annual audits of the company's equal pay system must comply with the Equal Pay Standard, which is a set of rules and guidelines which analyse the pay structure within a company to show whether or not men and women are paid equal wages for the same or equal value of work within the workplace.²⁸ Its purpose is to ensure male and female employees are being paid equally by specifying the requirements of an acceptable equal pay system.²⁹ Essentially, it specifies the main methodological criteria to be used to achieve equal pay and is used to assess all organisations.

An interesting note is that the standard is not limited to gender when assessing fair pay; it also addresses other forms of discrimination such as race, age, religion and disability.³⁰ Its broad application to other areas of discrimination makes it invaluable and is a reminder that all forms of discrimination should be addressed and no one area is more important than the other.

C Development of Equal Pay Standard

The standard was developed by Icelandic Standards, which is a non-governmental organisation that publishes Icelandic standards³¹, but also was written to conform to international standards and accepted practices. The International Organisation for Standardization (**ISO**) is an independent non-governmental organisation that publishes international standards which are

²⁵ Ibid, at 23.

²⁶ "Centre for Gender Equality" Ministry of Welfare <<https://eng.velferdarraduneyti.is/agencies/nr/1698>>.

²⁷ Ibid, at 23.

²⁸ "The Equal Pay Management System" Ministry of Welfare (2012) <http://www.kvenrettindafelag.is/wp-content/uploads/2015/03/The-Equal-Pay-Standard-%C3%8DST-85-www.vel_is_.pdf>.

²⁹ "IST 85:2012" Icelandic Standards <<http://www.stadlar.is/verslun/p-54558-st-852012-e.aspx>>.

³⁰ Ibid, at 28.

³¹ "IST: Iceland" <<https://www.iso.org/member/1788.html>>.

recognised worldwide.³² Although Icelandic Standards developed The Equal Pay Standard it was based on an internationally recognised standard by the ISO, being ISO 26000.³³

The focus ISO 26000 is much broad and was created in 2010 by experts from a range of fields. It is intended to be a guide for those who want to go beyond legal compliance and focus on social responsibility.³⁴ The standard was created on the premise that a positive link exists between gender parity and economic and social development.³⁵

A limitation an obvious limitation and perhaps the main reason the Equal Pay Standard was developed as a separate standard is that ISO 26000 is not a certification unlike many other ISO standards; it was only ever designed to act as a guide. The Equal Pay Standard goes even further to provide a methodological approach which can be followed, however one advantage is that the ISO standard is universal and could be customised by other countries who are interested in ways to reduce the gender pay gap. This is a good option to be aware of as New Zealand could always follow Iceland's steps and develop its own methodological approach based on ISO 26000.

III Issues and challenges

A Iceland v. New Zealand

There are several social, political, economical and cultural factors which could be relevant in ascertaining whether pay transparency would flourish in New Zealand. From a legislative perspective, Iceland and New Zealand both have equal pay legislation which requires men and women to be paid fairly and equally for the work that they do, so at the very least they have similar values in relation to equality.

However, in addition to equal pay legislation, Iceland also has legislation which requires women to be represented more fairly on company boards. As previously mentioned, it already has existing legislation that requires women meet a certain quota to sit on company boards³⁶, which is a requirement that New Zealand organisations still only utilise on a voluntary basis. The fact that Iceland already has these legislative measures could highlight it as the ideal candidate for pay transparency as there are already stepping stones for gender equality in place.

³² "All About ISO" [ISO <https://www.iso.org/standards.html>](https://www.iso.org/standards.html)

³³ The Center for Gender Equality Iceland *Gender Equality in Iceland: Information for Gender Equality Issues in Iceland* (March 2017) at 15.

³⁴ Maria Lazarte "A Place Where Women and Men are Equal" [ISO](https://www.iso.org/news/2014/03/Ref1827.html) (8 March 2014) <<https://www.iso.org/news/2014/03/Ref1827.html>>.

³⁵ *Ibid*, at 34.

³⁶ Act on Equal Status and Equal Rights of Women and Men No. 10/2008, Article 15.

Population wise, Iceland is also very small compared to New Zealand. To put that into context, it is approximately the size of Christchurch and as of 2017 has a population of 334,889.³⁷ From a data perspective, a smaller sample size could undermine the quality of results produced as it might not be viewed as too small to be representative. The legislation in Iceland applies from next year onwards, so there is no previous data to rely on in terms of knowing whether it will have any impact on the gender pay gap. This could mean that mandatory pay transparency could be potentially a gamble for New Zealand, although it is worth noting that Iceland has some pay transparency already and maintains itself as having the lowest gender pay gap in the world

In terms of pre-existing pay transparency, Iceland also has had a voluntary Equal Pay Standard as an initiative introduced by the government since 2012.³⁸ This means that organisations already implementing the standard will experience little change when they will be expected to be applying the standard to achieve equal pay certification and there will be an aspect of familiarity with the method of maintaining an equal pay system. Arguably, New Zealand's application of a mandatory equal pay standard could be a big change from the status quo and therefore face resistance. This could mean managed with a similar voluntary or pilot scheme to embed a culture of transparency within the workplace before any pay transparency measures become mandatory.

Another difference is that Iceland is arguably more progressive than New Zealand and therefore likely to be more receptive to the social reform which pay transparency welcomes. To provide some context, Iceland introduced civil unions in 1996³⁹ (New Zealand was 2005⁴⁰), legalised gay marriage in 2010⁴¹ (New Zealand was 2013⁴²) and has the first known openly gay Prime Minister.⁴³ It also has a centre-right government, unlike New Zealand which is now a newly formed Labour-New Zealand First government, and the stronger presence of unions in Iceland could arguably be owed the credit for pressuring Iceland's government to make pay transparency a legal requirement. New Zealand on the other hand is also progressive, only following behind by a small margin with the social reforms above but still leads in other areas such as giving women the vote and being the first country to have a female Prime Minister, however perhaps not yet as progressive as Iceland.

³⁷ "Iceland Population" Country Meters (25 October 2017) <<http://countrymeters.info/en/Iceland>>.

³⁸ *Ibid*, at 20.

³⁹ Pamela Duncan "A History of Same-Sex Unions in Europe" The Guardian (24 January 2016) <<https://www.theguardian.com/news/datablog/2016/jan/24/a-history-of-same-sex-unions-in-europe>>.

⁴⁰ "Marriages, Civil Unions, and Divorces" Statistics NZ <http://m.stats.govt.nz/browse_for_stats/people_and_communities/marriages-civil-unions-and-divorces.aspx>.

⁴¹ "Iceland Passes Gay Marriage Law in Unanimous Vote" Reuters (12 June 2010) <<https://www.reuters.com/article/us-iceland-gaymarriage/iceland-passes-gay-marriage-law-in-unanimous-vote-idUSTRE65A3V020100611>>.

⁴² "Same-sex Marriage Legalised" Newshub (17 April 2013) <<http://www.newshub.co.nz/politics/samesex-marriage-legalised-2013041721>>.

⁴³ *Ibid*, at 41.

Overall, it could also be viewed that pay transparency was the next logical step for Iceland and this could be due to its embedding of a voluntary Equal Pay Standard among other things. New Zealand on the other hand could face some opposition given the difference in the social, political and cultural environment. On analysis it also appears that in a lot of ways Iceland is quite progressive and perhaps this may be a prerequisite for a successful pay transparency model but it does not rule out any form of pay transparency measures (whether it be voluntary) from being promoted or encouraged in New Zealand.

B New Zealand's main concern

There is also a question as to whether a mandatory equal pay standard will address New Zealand's most recent concern about the gender pay gap. New Zealand's "gender gap issue" burst into the public domain following the Court of Appeal case in 2015, *Terranova Homes and Care Ltd v Service and Food Workers Union Nga Ringa Tota Inc* [2015] 2 NZLR 437 (CA); whereas Iceland's legislative context for their gender gap issue appears to have been organically embedded over time.

*Terranova*⁴⁴ is the case which sparked legislative reform in New Zealand. It concerned the fact that most caregivers in the aged care industry are predominantly female. In this case the employee brought a claim against her employer alleging that employees were paid a much lower rate of pay compared to similar work carried out predominantly by men. Essentially the reasoning for the imbalance was viewed to be structural gender discrimination. The employee sought that the Court review the pay rates for caregivers and compare this to similar work carried out by males in other industries.

The case concerned the preliminary issue of deciding whether the Equal Pay Act 1972 had scope to make such a comparison and how this could be carried out. In summary, the Court of Appeal ruled that the Act allowed for a comparison outside of an industry, however the guiding principles as to how this should be done and the substance of the case has yet to be heard.

What is notable in the *Terranova*⁴⁵ case was that it was specifically about women being paid less in women dominated industries in comparison to men in male dominated industries. Essentially it was about a lack of equal pay for work of equal value. In comparison, Iceland's gender gap issue broadly recognised a need to ensure men and women were paid more equally for the same type of work they do, regardless of whether they are in male or female dominated industries.

In that sense, Iceland's pay transparency model may not address the specific concern New Zealand has about equal pay, however it does not mean that it is not relevant to New Zealand.

⁴⁴ Ibid, at 1

⁴⁵ Ibid, at 1.

Although a potential weakness is that a pay transparency model may not target the specific issues raised in the *Terranova*⁴⁶ case, taking steps to achieve gender equality may be the first obvious step to resolving *Terranova*⁴⁷ by addressing the overall inequity then filtering into the other specific issues within the principles of pay inequity.

C Measures already in place

It is arguable there is already some transparency in place and that further transparency will be unwelcomed. Pay transparency is not a new concept in New Zealand and has already been considered recently. Earlier attempts have been made previously to introduce it into mainstream legislation. Green MP Jan Logie attempted to introduce a pay equity Bill in Parliament in 2017⁴⁸ but was unsuccessful in receiving the required support to progress to the further stages of the legislative process.⁴⁹ It was swiftly voted against in Parliament and in doing so removed one significant initiative in removing barriers to pay inequity: pay transparency. The Bill aimed to require employers to provide salary information to employees in the same position with the purpose of removing discrimination based on gender. The Bill's failure was perhaps a step backwards for New Zealand in terms of eliminating the gender pay gap and demonstrates the importance of a political climate that supports the best interests of women as a prerequisite.

However, in terms of the status quo in New Zealand, there are examples of some forms transparency of pay in New Zealand in the public sector. The State Services Commission conducts an annual survey of remuneration of Public Service and State sector chief executives and the 2015/2016 report lists the salary band for all Chief Executives of government departments.⁵⁰ This type of pay transparency relates to good governance broadly as oppose to any direct correlation to gender equality, especially given a quick search reveals that women are a minority in holding the Chief Executive positions outlined in the report.

The fact that there is some pay transparency in place is a good start. It is disappointing that the report itself does not explicitly provide a gender category given it does not take much research to identify the Chief Executive of each government department to ascertain the gender balance. Despite this factor, the State Services Commission has already conducted research internally and concluded that there is an average gender pay gap of 39% between men and women within

⁴⁶ Ibid, at 1.

⁴⁷ Ibid, at 1.

⁴⁸ Audrey Young "Bill for Greater Transparency in women's pay discrimination voted down" NZ Herald (10 May 2017) <http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11853340>.

⁴⁹ Ibid, at 48.

⁵⁰ "Senior Pay Report" State Services Commission (13 December 2016) <<http://www.ssc.govt.nz/senior-pay-report>>.

government departments.⁵¹ The findings are alarming and reflect a clear contradiction that the fight for pay equality is far from over, and if anything, moving at an extraordinarily slow pace since the introduction of the Equal Pay Act 1972. The fact that the findings of 39% fare much higher than the overall average gap in New Zealand warrants some discussion as to whether the crux of the issue is concentrated with the public sector, any why that figure is so high.

It is also important to note from the above findings that using salary data to confirm a gender pay gap obviously does not put any legal obligation on those government departments to reduce an extreme gap. For that reason, legislating a mandatory pay transparency standard could be a proactive way forward to ensure that organisations are not only being auditing to ensure they are paying employees fairly, but also taking active steps to eliminate any unexplained discrimination. Logically, it seems sensible that the two activities go hand in hand as no equality can be achieved by simply acknowledging a gender pay gap but failing to take any steps in response to the findings.

On a more positive note, the recently elected Labour-NZ First government announced that one of its areas of focus will be to eliminate the gender pay gap within the core public sector.⁵² This could be a positive step towards gender equality and an opportunity to revisit applying a mandatory pay transparency standard in New Zealand. At the very least, government departments could be utilising a voluntary pay measure in the interim to address the 39% pay gap.

D Legislative reform in New Zealand

New Zealand is arguably already addressing the gender pay gap with the introduction of the Employment (Pay Equity and Equal Pay) Bill.⁵³ In response to *Terranova*⁵⁴ the Government established the Joint Working Group to recommend principles to the government in implementing pay equity.⁵⁵ A key recommendation made by the Joint Working Group was the need for a remuneration comparator across other industries, as opposed to a comparison within one industry only.⁵⁶ The purpose of the group was to revisit the measures available to eliminate the gender pay gap.

⁵¹ Sam Sachevda “State Services Department Reveals Gender Pay Gap in Public Sector” *Stuff* (22 January 2016) <<http://www.stuff.co.nz/national/politics/76151018/State-Services-Commission-reveals-gender-pay-gap-in-public-sector>>.

⁵² “Revealed: Labour-NZ First Coalition Agreement” *NZ Herald* (24 October 2017) <http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11936177>.

⁵³ “Government Accepts Recommendations on Pay Equity” *The Beehive* (24 November 2016) <<https://www.beehive.govt.nz/release/govt-accepts-recommendations-pay-equity-0>>.

⁵⁴ *Ibid*, at 1.

⁵⁵ “Joint Working Group on Pay Equity Principles” *State Services Commission* (24 May 2016) <<http://www.ssc.govt.nz/pay-equity-working-group>>.

⁵⁶ *Ibid*, at 50.

Since then the Government has released a Bill⁵⁷ to amend the Act and Employment Relations Act 2000. It is noticeable that while the Bill contains prescribed processes for raising pay inequity claims there is no mention of a comparator, despite the recommendations made by the Joint Working Group. This omission in the Bill is significant as it is the very reason why the matter came before the courts in the first instance.

The next stage is for the Bill to go through to the Select Committee and it will be interesting to note if any changes are made after that. There will be major difficulties in reducing the gender pay gap unless the Bill is subject to change during the legislative process. As it stands, its value could be marginal as it places the onus on applicants to prove they are being discriminated against as opposed to ensuring employers are not discriminating employees in the first place.

Green MP Jan Logie's failed attempt with the Equal Pay Amendment Bill 2017 (251-1) could have done some good, as a mandatory pay transparency approach could have forced employers to relook at their wage structures with gender equality at the forefront of their minds. It could also prompt employers to consider whether there may be any unconscious bias in their pay decisions without relying on the Courts to remove discrimination from the workplace on a case by case basis (assuming employees will use this avenue). These are arguably outcomes which the Employment (Pay Equity and Equal Pay) Bill 2017 will not produce.

IV Advantages of a pay transparency standard

The application of a mandatory pay transparency model in New Zealand may not be without flaws. Apart from the issues and challenges discussed above, it could prove to be a regulatory burden on small to medium enterprises and relying on a third party to audit could open the process to abuse or inconsistency. Enforcement and resources to police those who refuse or fail to apply the standard could be burdensome and New Zealand may have to establish a separate agency just for the purposes of monitoring and compliance.

However, the data on the gender pay gap strongly suggests that men have a certain level of privilege, and upon examining the vested interests for society of eliminating discrimination against women, surely that social good outweighs any regulatory burden. Already businesses are subject to many administrative burdens as part of their day-to-day business (such as paying GST, filing tax returns, etc) so one more administrative task once a year may not be too far of a stretch.

⁵⁷ Employment (Pay Equity and Equal Pay) Bill 2017 (284-1).

At the very least, New Zealand could benefit from a voluntary pay transparency standard resulting in an equal pay certification which could serve as a pilot for a potential legislative measure at a later stage. There is certainly an appetite for change from not-for-profit groups advocating to level the playing field. Initiatives such as the Women’s Empowerment Principles⁵⁸ see unlimited value in promoting the empowerment of women in all aspects of life and have had some influence within the corporate sphere. These could be the types of organisations to offer insight and promotion of a government funded voluntary pay standard.

There is also the National Council of Women and the Champions for Change by Global Women who have released useful research on gender equality⁵⁹ and the Step it Up Initiative by the UN Women to encourage government departments to take steps to close the equality gap.⁶⁰ These organisations all reflect a willingness to contribute to the elimination of the gender pay gap and it seems unjust to rely on private actors to bear the burden of leveling the playing field when there is such an obvious need in the community.

A Alignment with New Zealand’s international obligations

One factor to note is that New Zealand still has international obligations to ensure fair pay for women and should act accordingly to honour its obligations. Internationally ratified conventions under the International Labour Organisation (**ILO**) and the Convention on the Elimination of (All Forms of) Discrimination against Women (**CEDAW**) cannot be ignored and highlight the importance of changing from the status quo when addressing pay inequity. New Zealand ratified the ILO’s Convention on Equal Remuneration and Discrimination in 1983⁶¹ and the Convention on the Elimination of Discrimination Against Women in 1985⁶² so it is a surprise that the process towards closing the gender pay gap is so slow. These conventions clearly mandate equal pay principles, including equal pay for work of equal value⁶³.

While these obligations do state that New Zealand must implement a pay transparency standard, it does mean that New Zealand cannot simply do nothing given the lack of progress in eliminating the gender pay gap over the past 20 years. Implementing a pay transparency model could be a useful method of fulfilling those obligations.

⁵⁸ “Overview” **Women’s Empowerment Principles** <<http://www.weprinciples.org/>>.

⁵⁹ “Enabling women’s potential: the social, economic and ethical imperative” **National Council of Women of New Zealand** <<https://www.ncwnz.org.nz/what-we-do/enabling-womens-potential-the-social-economic-and-ethical-imperative/>>.

⁶⁰ “Get Involved: Step It Up” **UN Women** <<http://www.unwomen.org/en/get-involved/step-it-up>>.

⁶¹ “Ratifications of New Zealand” **International Labour Organisation** <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102775>.

⁶² “Convention on the Elimination of All Forms of Discrimination against Women” **Ministry of Justice** <<https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/human-rights/international-human-rights/cedaw/>>.

⁶³ Prue Hyman “Equal Pay - The Case for Action Now” **NZ Herald** (9 February 2016) <http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11586184>.

B Actively challenges outdated wage structures

Another advantage implementing a pay transparency standard is that it can directly challenge outdated wage structures. Pay transparency could be used to provide a much easier avenue for female employees to find out whether they are being paid less than their male colleague for the same work. It will also provide much more accurate information for employers to track the causes of gender pay inequity and pressure employers to revisit their wage structures by considering whether there may be unconscious bias in their pay decisions.

There is a large body of research and plentiful resources easily available⁶⁴ to assist businesses to identify, recognise and remove unconscious bias. This could easily be incorporated in a pay transparency model to actively eliminate any presence of unconscious bias and address diversity issues. Over the past ten years there has been growing research on the impact of unconscious bias in the workplace⁶⁵ so the information to consider in formulating an equal wage structure should not be too difficult.

Importantly, unconscious bias, as the name suggests, could also be difficult to recognise unless its existence is explicitly brought to the attention of an employer, which a pay transparency standard could seek to do. This in return encourages employers to be aware of unconscious bias before or when decisions or policies are made. It could also be used as a reason to adjust any discriminative policies already in place, or improve on pre-existing policies. This in return could be invaluable in promoting gender equality.

C It is good for business

There are also several studies which support the view that sharing salaries across an organisation creates benefits for the employee and employer.⁶⁶ Companies which have voluntarily disclosed salary information to employees often say it attracts the right employees to the workplace because of the shared values around equality. This is a more confronting model of pay transparency where employers openly share the salary information of other employees throughout the organisation, as opposed to using auditing to achieve an equal pay certification.

Previous social experiments by other businesses has shown that a pay transparency model, even

⁶⁴ “Unconscious Bias Resources” Office of Diversity and Research
<<https://diversity.ucsf.edu/resources/unconscious-bias-resources>>.

⁶⁵ Ibid, at 64.

⁶⁶ Tanza Loudonback “Pay transparency started with Whole Foods in the 80s, but it's found new life with tech companies who want to woo talent and improve morale” Business Insider Australia (3 May 2017)
<<https://www.businessinsider.com.au/why-companies-have-open-salaries-and-pay-transparency-2017-4?r=US&IR=T>>.

on a voluntary basis, could provide a clear competitive advantage for businesses and keeps up the pace with the way the world is moving forward. The fact that a pay transparency model could be a tool to promote corporate social responsibility could be viewed as advantageous for both the employee and employer. Corporate social responsibility in itself is a growing global trend so some organisations may already be receptive to a symbol to utilise within their business such as an equal pay certification.

D Softer alternative to gender equality

A different way of viewing a pay transparency standard may be to compare it to more extreme measures which are considered to be the norm overseas. In Norway, personal tax information has been made publically available since the 1800's.⁶⁷ It is only in the last 3 years that you get a email notification if someone views another individual's income information.⁶⁸ This appears rather radical when in comparison to the societal etiquette of most New Zealanders, who would be likely offended if asked about their personal tax affairs.

Obviously, pay transparency does not carry that level of extremity however it is interesting to observe other Western cultures who have an embedded culture of openness and also happen to have a very low gender pay gap. Perhaps the closing of the gender pay gap could be accelerated by adopting or normalising a culture of openness.

E Addresses other areas of discrimination

Lastly, the use of an equal pay standard could assist in reducing any discrimination when approach wage structures. The use of Iceland's Equal Pay Standard has a multitude of uses, as the standard applies to discrimination based on race, national origin, religion, disability, age and gender identity.

This would ensure that no single area of discrimination takes precedence over others and ensures that not only are men and women paid equally, other minorities who are just as vulnerable are also able to benefit from the standard. This itself is a social good and could further enshrine New Zealand's Bill of Rights Act and Human Rights Act and ensure that New Zealand is adhering to both its domestic and international obligations in the best way possible.

V Conclusion

⁶⁷ Patrick Collinson "Norway, the Country Where You Can See Everyone's Tax Returns" *The Guardian* (11 April 2016) <<https://www.theguardian.com/money/blog/2016/apr/11/when-it-comes-to-tax-transparency-norway-leads-the-field>>.

⁶⁸ *Ibid*, at 67.

Over the past 20 years there has been an insignificant change in the gender pay gap in New Zealand, despite its perceived position as a country ahead of its time for equality. Proactive measures must take place if New Zealand wants to eliminate the gender pay gap and maintain that reputation as a country that is at the forefront of social change. At the very least a voluntary, a publicly available pay transparency standard in an equal pay certification could be welcomed given the growing trend towards corporate social responsibility. In addition, an existing framework for an Equal Pay Standard which has been used since 2012 by Iceland is readily available, or alternatively, New Zealand could customise ISO 26000 to suit its own needs, which could take into account the need for a comparator.

An initial voluntary approach but endorsing and making available freely to New Zealand private and public organisations could be an excellent way to phase in pay transparency. Even if the link between the voluntary use of the Equal Pay Standard in Iceland and their low gender pay gap is not certain there is still some public good which could be derived from the principles of pay transparency achieving outcomes such as continuing the dialogue about eliminating the gender pay gap. Given that 80% of the gender pay gap is caused by “unknown” factors and the gender pay gap within the public sector is so high, this may be the best alternative to essentially doing nothing.

Already there are organisations that reflect a willingness to contribute to the elimination of the gender pay gap. However this is not a conversation which should be voiced only by one sector as it impacts all employees who are either consciously or unconsciously being discriminated within the workplace. An equal pay standard could allow employers to consider the reasons for any large unexplainable gaps and question their reasons for the differences. It could also be used to rule out other forms of discrimination such as race or religion.

While it may take time to embed a culture of openness in New Zealand, the end result of gender equality outweighs this concern. There are also several benefits which could be derived through the process, including allowing New Zealand to improve its commitment with its international obligations and domestic legislation in promoting equality, forcibly remove outdated wage structures, provide a platform for businesses to be socially responsible and eliminate other forms of discrimination which are just as important.

In summary, the gender pay gap informs society that men have a certain level of privilege, and upon examining the vested interests for society of eliminating discrimination against women, surely that social good outweighs any issues or challenges which may arise. Finally, it is worthy to note that while pay transparency may not immediately deliver pay equality, it remains an important step forward for equality.

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