

Gender Equality

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Authority and Application

Clause 28 of the *Victorian Public Service Enterprise Agreement 2020* (Agreement), applies to Victorian Public Service Departments and Agencies (Employers) and their Employees covered by the Agreement.

Overview

Clause 28 of the Agreement operationalises the Government's gender pay equity provision and provides the framework through which systemic gender equality issues raised by a class or group of Employees or the Community and Public Sector Union (CPSU) can be reviewed and resolved.

The nature of gender inequality and discrimination in the workplace means that it may not be readily apparent and may be reflective of gender inequality and discrimination present in broader society. Addressing gender inequality and discrimination in the workplace will require sustained effort to identify and unpack complex long standing historical structures and assumptions about how work is performed, who does that work, how work is organised, who has decision making control over that work and how existing structures and organisational practices can inadvertently perpetuate gender inequality and discrimination.

Employers are required to work collaboratively with Employees and the Union to identify, support and implement strategies designed to eradicate the gender pay gap, gender inequality and discrimination across the VPS.

Relevant provisions of the VPS Agreement

Clause 28 – Gender Equality

Supplementary Guidance Information

1. Relationship between the Agreement and the *Gender Equality Act 2020 (Vic)*

- 1.1. The *Gender Equality Act 2020 (Vic)* (Act), which commenced operation on 31 March 2021, requires certain State and Local Government organisations and universities (Defined Entities) to consider and promote gender equality within their organisations and to take necessary and proportionate action towards achieving gender equality.
- 1.2. The obligations in the Act are in addition to the obligations expressed in the Agreement.
- 1.3. All public sector organisations with 50 or more Employees (as at 30 June of the relevant reporting year) are Defined Entities for the purposes of the Act and must fulfil the obligations set out within the Act.
- 1.4. The Act confers a range of duties and implementation and reporting requirements on Defined Entities including:
 - 1.4.1. a duty to promote gender equality in developing policies, programs and in delivering services to the public (section 7 of the Act),
 - 1.4.2. a requirement to undertake gender impact assessments when developing or reviewing any policy of, or program or service provided by, the entity that has a direct and significant impact on the public (section 9 of the Act),
 - 1.4.3. a requirement to undertake workplace gender audits to assess the state and nature of gender inequality in the workplace (section 11 of the Act), and
 - 1.4.4. a requirement to develop a four yearly Gender Equality Action Plan based on the results of the workplace gender audit, identifying the strategies and measures for promoting gender equality in the workplace (section 10 of the Act) (see section 13 below for further guidance), and
 - 1.4.5. a requirement to provide progress reports to the Public Sector Gender Equality Commissioner (Commissioner) every second year after submitting a Gender Equality Action Plan (section 19 of the Act).

- 1.5. The Act sets out a range of key deadlines for Defined Entities to meet the above obligations. These deadlines commenced in 2021. For further information about the obligations for Defined Entities under the Act, see www.genderequalitycommission.vic.gov.au/what-are-my-obligations.

2. Public Sector Gender Equality Commissioner

- 2.1. The Act for the first time establishes the Commissioner, whose role includes:
 - 2.1.1. promoting and advancing the objectives of the Act,
 - 2.1.2. supporting Defined Entities to improve gender equality and comply with the Act,
 - 2.1.3. providing advice and education to Defined Entities to encourage best practice and facilitate compliance
 - 2.1.4. publishing and sharing Gender Equality Action Plans and progress reports,
 - 2.1.5. undertaking research into any matter related to the operation and objectives of the Act,
 - 2.1.6. enforcing compliance with the requirements of the Act, and
 - 2.1.7. assisting Designated Bodies (as defined by s38(1) of the Act) to resolve disputes about systemic gender equality issues where an enterprise agreement or workplace determination expressly provides for the Commissioner's involvement (see section 3 below).
- 2.2. Further information on the Commission for Gender Equality in the Public Sector can be found at www.genderequalitycommission.vic.gov.au/.

3. Dispute resolution functions of the Public Sector Gender Equality Commissioner

- 3.1. The Act makes provision for the Commissioner to resolve disputes relating to a systemic gender equality issue arising in Designated Bodies, where their enterprise agreement or workplace determination expressly provides for such a dispute to be referred to the Commissioner (section 39 of the Act). Clause 28 of the Agreement provides for such express referral.
- 3.2. The Act empowers the Commissioner to deal with the dispute in any way the Commissioner considers appropriate. The Commissioner is unable to conduct arbitration or make any binding determinations.
- 3.3. Where a Claim is unable to be resolved by the Commissioner, clause 28.4(j) of the Agreement provides that either the Claimant or the Employer may refer the Claim to the Fair Work Commission (FWC) as a dispute of a collective character for resolution pursuant to clause 13.10 or 13.11 of the Agreement. Further information is provided in section 12 below.
- 3.4. The Agreement outlines the steps a Claimant must take before seeking to raise a dispute with the Commissioner.

4. Gender pay equity principles

- 4.1. Clause 28.1 of the Agreement sets out six gender pay equity principles which are to guide Employers in the operationalisation and implementation of the Agreement.
- 4.2. The gender pay equity principles reflect the Government's commitment to working towards a public service which is free from gender inequality, in which all Employees regardless of their gender can achieve their potential and be rewarded equally for their contribution.

- 4.3. The principles acknowledge that inequality has arisen as a result of deeply ingrained views, values and practices both in the workplace and broader society and that to eradicate the gender pay gap and its underlying causes requires genuine engagement between Employees, Employers and public sector unions.
- 4.4. The principles are intended to be practical guiding principles to direct Employers in their efforts to reduce and eventually eliminate gender inequalities.
- 4.5. These principles will work in conjunction with the formal process outlined in the Agreement to address systemic gender equality issues in the VPS and should guide Employers in their efforts to review operational practices, across the entire employee life cycle (including recruitment, remuneration, appointment salaries, career progression and flexible working, gender bias or sexual harassment within the workplace, amongst others), all of which contribute to the gender pay gap, gender inequality and discrimination across the VPS.
- 4.6. The principles also outline a commitment to ongoing collaboration between workers, unions and Employers to achieve mutually agreed outcomes. This principle has been enshrined throughout this policy through the way parties should work collaboratively to resolve gender equality disputes.

5. What is a systemic gender equality issue that may be raised with the Employer under clause 28 of the Agreement?

- 5.1. Under the Act a systemic gender equality issue means:

“an issue of a systemic nature within a designated body that— (a) relates to one or more workplace gender equality indicators; and (b) adversely affects a class or a group of employees of that body.”

- 5.2. The workplace gender equality indicators are also defined in the Act, and include:

- 5.2.1. gender composition of all levels of the workforce,
- 5.2.2. gender composition of governing bodies,
- 5.2.3. equal remuneration for work of equal or comparable value across all levels of the workforce, irrespective of gender,
- 5.2.4. sexual harassment in the workplace,
- 5.2.5. recruitment and promotion practices in the workplace,
- 5.2.6. availability and utilisation of terms, conditions and practices relating to family violence leave, flexible working arrangements and working arrangements supporting Employees with family or caring responsibilities,
- 5.2.7. gendered segregation within the workplace,
- 5.2.8. any other prescribed matters.

- 5.3. These indicators are reflected in clause 28.4(a) of the Agreement which sets out the workplace gender equality indicators in a VPS context.
- 5.4. Clause 28 of the Agreement provides the framework through which systemic gender equality issues adversely affecting a class or group of Employees can be reviewed and resolved.
- 5.5. Under clause 28 of the Agreement, the CPSU and/or the affected class or group of Employees (or individual within the affected class or group of Employees on behalf of the class) must

identify the existence (or potential existence) of a systemic gender equality issue and raise the issue with the Employer in the first instance.

- 5.6. Illustrative examples are provided in the table below to assist Employees to better understand the types of issues which may become the subject of the process outlined in clause 28 of the Agreement:

Examples of Systemic Gender Equality Issues

**Example 1:
Representation in
senior leadership
positions**

Department A has an overall gender composition of 75% to 25% women to men ratio. However, at a senior leadership level, this ratio flips to a 10% to 90% women to men ratio. A senior leadership cohort which is not broadly reflective of the cohort of Employees within that organisation may reflect a systemic gender equality issue.

**Example 2:
Undervaluation of
traditionally women
dominated work within
a single organisation**

Entity A has two enterprise agreements covering its Employees, one covering its maintenance and building trades Employees and the other covering its office-based functions. The maintenance and building trades Employees are overwhelmingly men, whereas the office-based workforce is overwhelmingly women. An entry level position with a similar level of required qualifications and duties in the maintenance and building trades enterprise agreement is \$55,000 per annum compared to \$45,000 in the enterprise agreement covering the office-based workforce. Disparity in salaries for roles of equal or comparable value may reflect a systemic gender equality issue.

**Example 3:
Undervaluation of
traditionally women
dominated work within
multiple organisations**

Cohort A perform a role which has traditionally had a disproportionate concentration of women within the industry. Cohort B perform a role which has a traditionally disproportionate concentration of men within the industry. The cohorts work for different public service departments but are covered by the same enterprise agreement. While their roles are different, they perform roles, tasks and functions which may be broadly comparable in value. Salaries in Cohort B's classification structure, which has been traditionally dominated by men, are on average 5% higher than for similarly experienced roles in Cohort A's classification structure. Disparity in salaries for roles of equal or comparable value may reflect a systemic gender equality issue.

**Example 4: Sexual
harassment in the
workplace**

Sam has made an allegation of sexual harassment against her manager. The Employer conducted an initial review into the allegation but opted not to proceed with an investigation under the Employer's sexual harassment policy. Sam is aware of other allegations of sexual harassment or instances of inappropriate workplace behaviour by the same manager. These allegations have also not progressed to the investigation phase. Systemic sexual harassment in the workplace or a culture which promotes or does not properly investigate allegations of sexual harassment or inappropriate workplace behaviours may reflect a systemic gender equality issue.

Note: Individual allegations of sexual harassment or inappropriate workplace behaviours by another employee or manager would not constitute a systemic gender equality issue. Individual allegations should first be reported to the Employer for potential investigation under Clause 25 (Management of Misconduct). Individual complaints of sexual harassment may also be made to the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) or the Victorian Civil and Administrative Tribunal (VCAT).

**Example 5:
Substantive
differences in starting
salaries between
genders**

Employer A has a recruitment policy which allows for the delegate to approve starting salaries above the base of the classification level in certain circumstances, for example, to match remuneration provided by the current Employer, to adopt market rates or through negotiation with the successful candidate. In reviewing its gender audit data, Employer A revealed the starting salaries for men candidates are consistently 2-5% above women and non-binary

Examples of Systemic Gender Equality Issues

candidates for similar roles. The existence of substantive differences between the starting salaries of men, women and non-binary Employees for roles of comparable value may reflect a systemic gender equality issue.

Example 6: Gender imbalance in senior leadership positions

Employer B has a leadership group which on raw numbers is broadly reflective of their workforce. However, examination of the composition of leadership positions shows that senior leadership roles are dominated by Employees who are men and executive roles filled by women are clustered around the lower or mid-levels of management. Recruitment data shows that within this organisation for every ten senior roles advertised eight have resulted in existing Employees who are men being promoted compared with only two Employees who are women. The clustering of one gender in more senior roles than others may reflect a systemic gender equality issue.

Example 7: Gender imbalance in particular classifications

Employer C performs a range of service delivery, policy and corporate roles. The organisation's workforce gender composition is made up of approximately 60% women and 40% men Employees. The service delivery function has historically been performed by Employees who are women, with the gender composition for service delivery roles increasing to 80% women and 20% men. Of the 20%, almost all are VPS 4, 5 & 6 classified roles as compared to only 15% of the women Employees. The clustering of one gender in higher classified positions as compared to another gender may reflect a systemic gender equality issue.

Example 8: Inability to access to flexible working arrangements

The Agreement lists a number of flexible working arrangements available to Employees to request from their Employer. Mary has requested a flexible working arrangement to assist her to manage her childcare arrangements. The Employer considers the requests but rejects the request on operational grounds. Mary suggests an alternative arrangement, which attempts to address the operational concerns of the Employer but this request is also rejected by her Employer. Subsequently Mary discovers that many of her colleagues have also had requests for flexible working arrangements rejected. A widespread inability of Employees to access flexible working arrangements may reflect a systemic gender equality issue.

Note: Individual grievances regarding a decision to reject a request for flexible work arrangements is not in and of itself a systemic gender equality issue. Individual grievances should be dealt with through the Review of Actions Policy and clause 13 (Resolution of Disputes).

Example 9: Gender disparity in forms of employment

The workplace gender audit of Employer D shows that 85% of fixed term positions are filled by Employees who are women. Conversely, the audit showed that for similar positions 80% of ongoing roles are filled by Employees who are men. A gender imbalance in access to more secure forms of employment may reflect a systemic gender equality issue.

Example 10: Organisational culture which excludes Employees based on gender because of their caring responsibilities

Entity A has a culture where Employees, including managers and executives, regularly attend the pub for Friday night drinks to socialise outside of work. Ayak has recently returned from parental leave, and due to her caring responsibilities, does not attend Friday night drinks.

Since returning, Ayak has noticed that she has been overlooked for career development opportunities and is not selected to join project teams, even where those projects suit her skills and experience. When she raises this with some of her colleagues, she finds that other women with caring responsibilities are being treated the same way and she is told that there is a culture in the entity that those decisions are discussed and made at the pub on Friday night and if Ayak wants to be considered for such opportunities she should be a team player and

Examples of Systemic Gender Equality Issues

join the Friday night drinks.

A culture of gendered discrimination and exclusion meaning women with caring responsibilities are not given access to promotional or development opportunities may constitute a systemic gender equality issue.

Note: Individual allegations of bullying, exclusion or inappropriate workplace behaviours by another employee or manager would not constitute a systemic gender equality issue. Individual allegations should first be reported to the Employer for potential investigation under Clause 25 (Management of Misconduct).

Example 11: Informal decision-making processes that exclude Employee's based on gender

As part of their regular catch ups, Employee A who is a part-time Employee meets with their manager to discuss an opportunity to work on a new project which would allow Employee A to work on an interesting project that is aligned to the Employee's career development goals. Employee A's manager recognises that Employee A would be a suitable fit for the project opportunity and that Employee A's performance of their current duties demonstrates their potential to undertake the more challenging project role. Employee A's manager decides that amongst the employees who have expressed interest in the opportunity that Employee A is the most suitable candidate for the opportunity and advises Employee A they will be part of the project team.

Two weeks later, Employee A's manager requests a meeting with Employee A and informs the Employee that they will no longer be part of the project team following a review from a senior manager who was not involved in the day-to-day management of the project or team. Employee A seeks further information as to the reason for the changed approach but is advised by their manager and colleagues not to push for a review because "*that's the way things are done around here*" and it will give the Employee a "*bad reputation*". Employee A hears that the other part-time Employees in their area, who for the most part are all women or non-binary, have also faced this situation or have not been supported in their learning or career development opportunities, whilst the full-time staff have all been accepted into the project team.

An informal decision-making process that is inconsistent with the Agreement or other VPS employment principles may be reflective of a systemic gender equality issue where it is disproportionately affecting Employees based on gender.

6. What is not a systemic gender equality issue?

6.1. The following are examples of issues which are not systemic gender equality issues and cannot be pursued under clause 28 of the Agreement,

- 6.1.1. individual differences in ordinary rates of pay based on experience, performance and progression, classification or duties,
- 6.1.2. disputes of an individual nature about the correct application of the Agreement,
- 6.1.3. application of pro-rata entitlements for part-time Employees (consistent with clause 18.4(a) of the Agreement) or casual Employees (consistent with clause 17.6(d) of the Agreement),
- 6.1.4. individual allegations of sexual harassment, misconduct or inappropriate workplace behaviours,
- 6.1.5. individual disputes about a recruitment process,
- 6.1.6. individual grievances about decisions made by the Employer,

6.1.7. individual disparity between starting salaries between Employees of different genders for Employees performing non-comparable roles or with different qualifications, experience and role expectations.

6.2. For assistance with an issue or individual employment matter which is not a systemic gender equality issue, an Employee may wish to raise the matter with their immediate manager, People and Culture or HR area (however described) or CPSU for further advice.

7. Who can raise a systemic gender equality issue with the Employer?

7.1. Consistent with clause 28.4(b) of the Agreement, a systemic gender equality issue may be raised with the Employer by:

7.1.1. A class or group of Employees adversely affected by the systemic gender equality issue (or an individual within the affected class or group of Employees on the behalf of that class or group of Employees), or

7.1.2. The CPSU, which is covered by the Agreement.

7.2. Individual Employees cannot raise matters specific to their own individual employment or terms and conditions of employment through clause 28 of the Agreement unless it relates to a systemic gender equality issue. Employees with concerns about their individual employment matters should raise the matter with their immediate manager, People and Culture or HR area (however described) or CPSU for further advice.

7.3. A group of claimants may choose to be represented at any stage throughout the dispute process.

8. How to raise a matter with the Employer?

8.1. A class or group of Employees or the CPSU may seek resolution of a dispute relating to a systemic gender equality issue using the processes set out in clause 28.4(b) to (n) of the Agreement.

8.2. The first step is to advise the Employer(s) of the claim in writing, providing sufficient detail for the Employer(s) to make a reasonable assessment of the claim, identify impacted Employees and any proposals to resolve the claim. Employees can use the Internal Resolution Form developed by the Commission for Gender Equality in the Public Sector to assist Claimants in developing their claim for lodgement with their Employer. A copy of the form can be downloaded [here](#).

8.3. Depending on the nature of the claim, sufficient detail to enable the Employer(s) to make a reasonable assessment might include details such as the:

8.3.1. members of the class or group of Employees who are the subject of the Claim,

8.3.2. adverse effect upon the class or group on which the Claim is based,

8.3.3. systemic gender equality issue or issues to which the Claim relates,

8.3.4. factual basis for the Claim, and

8.3.5. proposed resolution of the Claim.

9. Assessment of a claim of a systemic gender equality issue

9.1. Upon receiving a claim, the Employer(s) must formally acknowledge in writing receipt of a claim to all Claimant(s). Within 14 days of receiving the claim, the Employer must also provide a copy of the complaint to Industrial Relations Victoria (IRV).

9.2. To support the parties to undertake their assessment of the claim, a facilitator will be appointed by IRV and provided with a copy of the Claim. The role of the facilitator will be to oversee the Assessment Process and support Employers and Claimants through the Assessment Process in accordance with the terms of the Agreement. Further details on the role of the appointed facilitator can be found in section 9.5.1 below.

9.3. Where the CPSU is not a Claimant or their representative, IRV will first seek the consent of the Employer and Claimant to provide a copy of their claim to the CPSU. Where consent is given, IRV will formally notify the CPSU that a claim has been made and will provide the CPSU with a copy of the written claim. Where consent is not provided by either the Claimant or Employer the issue will be referred to the appointed facilitator for further consideration and discussion (see section 9.4.5 below).

9.4. Initial Assessment of claim by appointed facilitator

9.4.1. On receipt of a claim, the appointed facilitator will make an initial assessment to confirm:

- a) by reference to clause 28.4 of the Agreement and any other matter prescribed as a workplace gender equality indicator under the *Act* (or any successor legislation), the subject of the claim is a matter capable of being considered under clause 28 of the Agreement,
- b) the Claimant has provided sufficient detail for the Employer to make a reasonable assessment of the nature of the claim, and
- c) the claim identifies the Employees impacted by the claim and any proposals to resolve the claim.

9.4.2. The appointed facilitator will not take an overly technical approach to meeting the sufficient detail threshold outlined in clause 28.4(d) of the Agreement for making a claim.

9.4.3. Where insufficient detail is provided in the claim for the Employer to make a reasonable assessment, but the claim may otherwise indicate a systemic gender equality issue could exist, the appointed facilitator may suggest the Employer(s) work collaboratively with the Claimant(s), to identify what further detail would assist the Employer to be in a position to make an initial reasonable assessment of the claim.

9.4.4. Where the initial assessment of the appointed facilitator determines the nature of the claim is capable of being considered and otherwise meets the requirements under clause 28 of the Agreement, the appointed facilitator will convene an initial conference involving the Employer(s), the Claimant, IRV and the CPSU (where the CPSU is not otherwise a party and has been separately provided with a copy of the Claim under section 9.3 above). The purpose of this initial conference is to seek the agreement of the parties on the most expeditious way to assess the Claim.

9.4.5. Where the Claimant or Employer has withheld their consent to provide a copy of the Claim to the CPSU (where they are not otherwise a party to the claim), the appointed facilitator, will also make an assessment as to whether they believe the nature of the claim has VPS wide implications on which the CPSU would likely have relevant views which should be considered in resolving the claim and as part of the initial conference:

- a) explore with the parties the nature of their objections to sharing the claim with the CPSU, and
- b) where, in the view of the appointed facilitator, there are valid privacy or confidentiality concerns, determine other ways to engage with the CPSU in a deidentified manner on the nature of the claim.

9.5. Assessment Process

9.5.1. Following this initial conference, the appointed facilitator will convene and facilitate the Assessment Process. The role of the appointed facilitator during the Assessment Process will be to:

- a) decide, giving consideration to the views of the Employer, IRV, Claimant (and CPSU where they are not a Claimant), how the assessment of the claim should be conducted,
- b) guide and support the parties in the assessment of the claim,
- c) guide and support the Parties in utilising subject matter experts,
- d) ensure the Assessment Process has regard to the Gender Pay Equity Principles outlined in clause 28.1 of the Agreement, as well as to the Gender equality principles under the *Act*,
- e) assist the parties to identify further information which might aide the assessment of the claim,
- f) make non-binding recommendations or express views and opinions on the claim, its assessment, or possible resolutions,
- g) work with the parties to identify areas of potential gender bias,
- h) convene meetings of the parties to ensure Employers and claimants meet to discuss the claim and possible resolution prior to a formal response to the claim by the Employer,
- i) ensure assessment processes are open, transparent, non-adversarial and undertaken with appropriate confidentiality and privacy,
- j) ensure assessment processes acknowledge that issues of systemic gender inequality and discrimination may have caused harm or injury and that investigative processes are to be handled with appropriate sensitivity,
- k) to support the parties in giving due consideration to how any similar claims in the VPS have been resolved,
- l) support the parties to ensure that any proposed outcomes consider current or historical gender-based discrimination and do not further promote systemic undervaluation or inequity, and
- m) ensure assessments are undertaken within a reasonable timeframe having consideration for the nature and complexity of the claim.

9.5.2. It is not the role of the appointed facilitator to arbitrate the dispute or make binding determinations. Their role is to support the parties in the expeditious review of the claim.

9.6. At the conclusion of the assessment of the claim, the appointed facilitator will support the parties to develop a written record of the inquiry. The written record will include:

9.6.1. the nature of the claim,

9.6.2. how the claim was assessed and investigated, including any formal processes implemented to assess the claim (e.g. an equal pay review),

- 9.6.3. the agreed (and if relevant the non-agreed) relevant facts and information,
- 9.6.4. any agreed conclusions and dissenting views,
- 9.6.5. any agreed outcomes reached with the parties during the inquiry, and
- 9.6.6. any steps that will be taken to identify evaluate and monitor processes to ensure any agreed outcomes are implemented, maintained and effective.

If the parties and the Commissioner agree, and where the Claim remains unresolved at the end of the Employer's Assessment Process, this record of inquiry may be provided to the Commissioner to aide their assessment of the Claim.

- 9.7. Consistent with clause 28.4(f) of the Agreement, the Employer must also formally respond to the claim in writing at the conclusion of the Assessment Process. The written response must include sufficient detail for the Claimant to understand whether, after the Employer's assessment, the Employer accepts or rejects each element of the claim, and the reasons for doing so. In general, the information that an Employer's written response might contain would be:

- 9.7.1. Confirmation that the Employer has undertaken an assessment of the claim consistent with clause 28 of the Agreement
- 9.7.2. Whether the Employer accepts or rejects the elements of the claim and the reasons for doing so,
- 9.7.3. Whether the Employer accepts or rejects the Claimant's proposed resolution. If the Employer rejects the Claimants proposed solution the response must detail the Employer's proposed resolution, and
- 9.7.4. Any other matter relevant to the Employer's assessment of the Claim.

9.8. Review of Assessment Process

A review of the Assessment Process outlined in this policy will be undertaken by 31 December 2024. The purpose of the review will be to, with the hindsight of completed real life cases, to consider the effectiveness of the Assessment Process and ways which may improve its effectiveness and timeliness. The review will be undertaken by IRV in consultation with the CPSU.

9.9. Identification of Individual instances of inappropriate workplace behaviour during the Assessment Process

If in completing the assessment, individual instances of inappropriate workplace behaviour which may constitute misconduct are identified (for example, instances of sexual harassment), these matters will be referred to the Employer for potential investigation under Clause 25 of the Agreement (Management of Misconduct).

10. Pay Equity Claims – Guidance on the indicators of pay inequity

- 10.1. Where a Claim relates to the alleged undervaluation of one type of work as compared to another type of work because of gender, the following factors may be used to assess whether undervaluation exists:

- 10.1.1. whether the work has been characterised by gendered roles usually assigned to men or women.

- 10.1.2. whether the skills of workers have been undervalued because of systemic social, historical or cultural stereotypes/factors associated with a specific gender
 - 10.1.3. whether there has been undervaluation due to an overrepresentation of one gender in lower-paid areas of an industry or occupation
 - 10.1.4. whether features of the industry or occupation have influenced the value of the work (including occupation segregation, high rates of part-time or casual work and an overrepresentation of one gender in those positions, low rates of unionisation, ability of workers to bargain with their Employer)
 - 10.1.5. whether sufficient weight has been placed on the typical work, skills and responsibilities exercised, working conditions and other relevant work features
 - 10.1.6. the history of the industrial instruments applying to Employees in the VPS, such as enterpriser agreements and relevant awards; and
 - 10.1.7. any other reasonable factors relevant to explore potential undervaluation.
- 10.2. In making an assessment of the claim, there is no requirement to demonstrate gender discrimination or partake in binary, gender-based comparisons to support a claim of undervaluation (i.e. making direct comparisons between a worker who identifies as a women and worker who identifies as a man). A comparator may be one of many tools utilised when investigating a pay equity claim, but it is not required and should not be a definitive factor in whether a claim is supported or not. For example, a comparator may assist to ascertain appropriate remuneration where undervaluation has been found to exist.

11. What are the possible outcomes?

- 11.1. The Agreement does not impose particular outcomes or limit the type of actions that may result from a Claim and the outcome that is appropriate in the circumstances will depend on the facts in each case and the systemic gender equality issue which is the subject of the Claim. Examples of possible outcomes might include:
- 11.1.1. Changes to operational practices or policies, and/or
 - 11.1.2. Proactive strategies to promote gender balance, eradicate the gender pay gap, gender inequality or discrimination, and/or
 - 11.1.3. Changes to pay and conditions of the class or group of Employees subject to the claim, and/or
 - 11.1.4. Changes to recruitment and appointment practices, and/or
 - 11.1.5. Any other resolution considered reasonable in the circumstances and relevant to the identified systemic gender equality issue.

In developing any outcomes for a claim, the Employer must have regard to the Gender Pay Equity Principles at clause 28.1 of the Agreement.

- 11.2. Where a Claim of systemic gender equality issue is not supported by the assessment process it is also possible the outcome of the Claim will be that no change to current practices be made.
- 11.3. If following the assessment process and discussion with the claimant, the claim is unable to be resolved, either the Claimant or the Employer may refer the matter to the Commissioner to deal with. Clause 28.4(i) of the Agreement outlines the powers of the Commissioner in dealing with a Claim.

- 11.4. A claimant or Employer cannot refer a matter to the Commissioner, without first following the process outlined in clause 28.4(a) to 28.4(g) of the Agreement. The obligations in the Agreement are to be given effect by the Assessment Process outlined in this policy.
- 11.5. For further information on the role of the Commissioner and their dispute resolution function can be found at www.genderequalitycommission.vic.gov.au/what-disputes-can-commissioner-resolve.
- 12. What if the Commissioner is unable to resolve a dispute which was referred to the Commission?**
- 12.1. If a claim referred to the Commissioner is unable to be resolved by the Commissioner, either the Claimant or Employer may refer the Claim to the FWC as a dispute of a collective character consistent with clause 13.10 of the Agreement.
- 12.2. In such circumstances, the matter will be dealt with in accordance with dispute resolution procedure outlined in clause 13 of the Agreement, which may include conciliation or arbitration of the Claim overseen by the FWC.

13. Gender Equality Action Plans

- 13.1. The Act requires that all Defined Entities, which includes all Victorian public service Employers with 50 or more Employees (as at 30 June of the relevant year) prepare a Gender Equality Action Plan (GEAP) every four years.
- 13.2. The GEAP must take into account the gender equality principles in the GE Act and be prepared in consultation with the governing body of the entity, the Employees, the CPSU and any other relevant persons.
- 13.3. Consultative mechanisms established under the Agreement and other legislation (e.g. the *Occupational Health and Safety Act 2004*), should be utilised in their GEAP consultation process.
- 13.4. At least two rounds of consultation will be required to develop the GEAP. Prior to the development of strategies and measures, an initial round of consultation will allow for the sharing of the results of the workplace gender audit with the workforce and seek ideas for how the organisation can address any workplace gender equality issues it has identified. This information will assist with understanding the workforce's perspectives on priorities for improvement and should inform the potential strategies and measures to include in the organisation's GEAP. Further consultation will facilitate feedback about proposed strategies and measures to be included in your GEAP. Defined Entities are encouraged to engage in regular consultation with Employees and representatives throughout the development of their GEAP.
- 13.5. Further information about how to prepare the GEAP, including undertaking meaningful consultation can be found at www.genderequalitycommission.vic.gov.au/gender-equality-action-plans.

Further Information

Employees should refer to their Department or Agency's intranet for information on procedural requirements, systems and approval delegations.

For further information and advice please contact your local Human Resources or People and Culture Unit (or equivalent).

For further information on the obligations in the *Gender Equality Act 2020 (Vic)*, see www.genderequalitycommission.vic.gov.au/.

Related policies or documents

Nil

Authorised by Industrial Relations Victoria:

Key Details	Date
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Date	April 2023

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