

## Cabinet Paper material

### Proactive release

Minister & portfolio Hon Chris Hipkins, Minister of Education  
Name of package Ministry of Education: Additional Contingency for the Settlement of the Administration Staff and Kaiārahi i te Reo Pay Equity Claims  
Date considered 30 May 2022  
Date of release 19 January 2023

#### These documents have been proactively released:

**Cabinet Minute: CAB-22-MIN-0193**

Date considered: 30 May 2022

Author: Cabinet Office

**Cabinet Minute: CBC-22-MIN-0029**

Date considered: 23 May 2022

Author: Cabinet Office

**Cabinet Paper: Ministry of Education: Additional Contingency for the Settlement of the Administration Staff and Kaiārahi i te Reo Pay Equity Claims**

Date considered: 30 May 2022

Author: Minister of Education

#### Material redacted

Some deletions have been made from the documents in line with withholding grounds under the Official Information Act 1982. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

The applicable withholding grounds under the Act are as follows:

Section 9(2)(f)(iv) to protect the confidentiality of advice tendered by Ministers of the Crown and officials

Section 9(2)(j) to avoid prejudice to negotiations

Some deletions have been made from the documents as the information withheld does not fall within scope of the Minister's portfolio responsibilities, and is not relevant to the proactive release of this material.

You can read the Official Information Act 1982 here:

<http://legislation.govt.nz/act/public/1982/0156/latest/DLM64785.html>



# Cabinet

## Minute of Decision

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

### Report of the Cabinet Business Committee: Period Ended 27 May 2022

On 30 May 2022, Cabinet made the following decisions on the work of the Cabinet Business Committee for the period ended 27 May 2022:

Out of scope

CBC-22-MIN-0029

**Ministry of Education: Additional Contingency  
for the Settlement of the Administration Staff and  
Kaiārahi i te Reo Pay Equity Claims**  
Portfolio: Education

CONFIRMED

Out of scope

Michael Webster  
Secretary of the Cabinet



# Cabinet Business Committee

## Minute of Decision

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### Ministry of Education: Additional Contingency for the Settlement of the Administration Staff and Kaiārahi i te Reo Pay Equity Claims

Portfolio Education

On 23 May 2022, the Cabinet Business Committee:

#### Background

- 1 **noted** that in November 2021, the Cabinet Government Administration and Expenditure Review Committee (GOV) agreed to several tagged operating contingencies:
  - 1.1 to enable the Ministry of Education to enter bargaining with the NZEI Te Riu Roa (NZEI) to settle the *Administration Staff Pay Equity Claim* (APEC) and the *Kaiārahi i te Reo Pay Equity Claim* (KPEC) totalling 9(2)(j) over five years (2021/22 – 2025/26);
  - 1.2 for operating costs associated with the implementation of these claims totalling 9(2)(j) over three years (2021/22 - 2023/24);

[GOV-21-MIN-0045]

- 2 9(2)(j)
- 3 **noted** that, following mediation on 13 April 2022 directed by the Employment Relations Authority, 9(2)(j)

#### Financial implications

- 4 **noted** that the cost of settlements for both the APEC and KPEC with an effective date of 20 August 2021 is estimated to be up to 9(2)(j)

- 5 **agreed** to 9(2)(i) [REDACTED] as follows, to conclude bargaining with the NZEI to settle the APEC and KPEC:

	\$m – increase/(decrease)					
Administration and Kaiārahi i te reo Pay Equity Claims contingency	2021/22 <sup>III</sup>	2022/23	2023/24	2024/25	2025/26 & Outyears	Total
Estimated Administration claim	9(2)(i) [REDACTED]					
Change effective date to August 2021						
Revised APEC contingency						
Estimated Kaiārahi i te reo claim						
Change effective date to August 2021						
Revised KPEC contingency						
Changes by year						
<b>Revised total contingency</b>						

- 6 **noted** that the pay equity settlements will be offered to all Administration staff and Kaiārahi i te reo employed by school boards, regardless of union membership;
- 7 **invited** the Minister of Education to report back to GOV following the final settlement of the claims through endorsement by affected employees, to drawdown the required funding, subject to:
- 7.1 the settlement terms and conditions being supported by and linked to a complete set of evidence on the existence and extent of sex-based undervaluation in the school Administration workforce;
  - 7.2 the settlement terms and conditions being supported by and linked to a complete set of evidence on the existence and extent of sex-based undervaluation in the Kaiārahi i te reo workforce;
  - 7.3 provision of options for baseline reprioritisation and/or business operating model changes to partially offset the fiscal impact of any settlement;

8 9(2)(f)(iv) [REDACTED]

Janine Harvey  
Committee Secretary

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**Present:**

Hon Grant Robertson (Chair)  
Hon Kelvin Davis  
Hon Dr Megan Woods  
Hon Chris Hipkins  
Hon Carmel Sepuloni  
Hon David Parker  
Hon Nanaia Mahuta  
Hon Stuart Nash  
Hon Jan Tinetti

**Officials present from:**

Office of the Prime Minister  
Department of the Prime Minister and Cabinet

Proactively Released

Sensitive : Commercial

Office of the Minister of Education

Chair, Cabinet Business Committee

## Ministry of Education – Additional Contingency for the Settlement of the Administration Staff and Kaiārahi i te Reo Pay Equity Claims

### Proposal

- 1 This paper seeks agreement to 9(2)(j) [redacted]  
[redacted]  
[redacted] This reflects recent discussions with the NZEI Te Riu Roa (NZEI) on potential terms of settlement.

### Relationship to government priorities

- 2 This proposal delivers on government commitments to improve access to pay equity. These settlements will be a significant acknowledgement that women's contribution to society and economy is often poorly recognised and undervalued.
- 3 This government also has an enduring focus on improving outcomes for wāhine. The settlement of the KPEC directly affects a predominantly Māori female workforce and acknowledges its cultural contribution to upholding Te Tiriti o Waitangi in schools.

### Executive Summary

- 4 On 25 November 2021, Cabinet agreed tagged operating contingencies to enable the Ministry to enter bargaining with the NZEI to settle the APEC and the KPEC, totalling \$390.556 million over five years (2021/22 – 2025/26) [GOV-21-MIN-0045].
- 5 9(2)(j) [redacted]  
[redacted]  
Following mediation on 13 April directed by the Employment Relations Authority, 9(2)(j) [redacted]  
[redacted] This was the date the parties concluded the pay equity assessment and the evidence of sex-based undervaluation was agreed.
- 6 The cost of settlements for both the APEC and KPEC with an effective date of 20 August 2021 is estimated to be up to 9(2)(j) [redacted]  
[redacted]
- 7 9(2)(j) [redacted]  
[redacted] is therefore sought to conclude bargaining with the NZEI to settle the APEC and KPEC.

## Background

- 8 In September 2018, the NZEI notified the Ministry of Education (the Ministry) of pay equity claims for Administration staff and Kaiārahi i te reo staff. Between June 2020 and August 2021, the parties jointly conducted an assessment of the extent of sex-based undervaluation within the school Administration and Kaiārahi i te reo workforces, in accordance with the Equal Pay Act 1972 (the Act).
- 9 At the conclusion of the investigation on 20 August 2021, the parties agreed evidence to conclude that the work of both Administration staff and Kaiārahi i te reo has been undervalued due to historic and systemic sex-based differentiation.
- 10 On 25 November 2021, Cabinet agreed a tagged operating contingency of 9(2)(j) over five years to enable the Ministry to enter bargaining with the NZEI to settle the claims [GOV-21-MIN-0045].
- 11 The Ministry and the NZEI began bargaining to settle APEC and KPEC in December 2021. Bargaining was constructive and 9(2)(j)
- 12 9(2)(j)
- 13 On 4 March 2022, the NZEI lodged proceedings in the Employment Relations Authority (the Authority), 9(2)(j)
- 14 A hearing in the Authority was scheduled for 18-20 May and parties were directed to mediation, which occurred on 13 April 2022. 9(2)(j)
- 15 9(2)(j)

## Risks and mitigations for settlement

- 17 Unions are likely to view any settlement which includes an effective date earlier than the date the settlement is agreed, as setting a precedent for backpay for future claims. The risk of this is high. The Ministry will mitigate this risk through its communications with the NZEI and employees that the effective date of 20 August 2021 is not backpay. Rather,

it is an effective date agreed in the particular circumstances of APEC and KPEC based on the evidence from the joint and gender-neutral assessment process.

- 18 Another risk is that the proposed settlements are not endorsed by employees. The likelihood of this occurring is low, because the proposed settlements are founded on solid evidence and a joint assessment process, and the final offer has been reached via mediated negotiations with the NZEI. The risk will be mitigated by the opportunity to explain the proposed settlements to affected employees through the endorsement process, which will be supported by clear and comprehensive information being developed by the Ministry and NZEI.

### Recommended course of action

#### *Next steps*

- 19 The Ministry and the NZEI will finalise the text of the settlement agreements, pending Cabinet's agreement to 9(2)(j) [REDACTED].
- 20 The NZEI will then seek endorsement of the settlement agreements from all affected Administration staff and Kaiārahi i te reo working in schools and kura<sup>1</sup>. If the settlements are endorsed by a majority of employees, the Ministry will return to Cabinet to seek agreement to drawdown funds to enable payment of the new rates, including funding to implement the settlements.

#### *Communications*

- 21 Due to the high level of interest and the sensitivities around pay equity, the Ministry will work with the Te Kawa Mataaho Public Service Commission on strategic communications. The Ministry will also seek to jointly agree communications to schools and affected employees with the NZEI and the NZ School Trustees Association. External communications by the Ministry will not be progressed until bargaining is complete.

### Financial Implications

- 22 The estimated cost to settle APEC and KPEC with an effective date of 20 August 2021 is 9(2)(j) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- 23 A separate contingency of 9(2)(j) [REDACTED] over three years for implementation of the claims, that was also agreed by Cabinet at that time, remains unchanged.
- 24 The final amount of funding required for the APEC and KPEC settlements will be confirmed following the conclusion of the bargaining process and endorsement of the settlements by affected employees. The exact funding will be sought in a future drawdown paper for Cabinet consideration, based on the conditions that the proposed

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<sup>1</sup> The Act defines affected employees as all people performing the same or substantially similar work as described in the claim and includes union and non-union members.



settlements are grounded in a complete set of evidence of undervaluation, and agreement between employers and employees based on that evidence.

- 25 The APEC and KPEC settlements will be offered to all other Administration staff and Kaiārahi i te reo employed by school boards, regardless of union membership (under section 13ZL of the Act). The tagged contingency outlined in this paper reflects this coverage.
- 26 The APEC and KPEC have been lodged against state and state-integrated schools and kura. This means that any settlement will not apply to Administration staff and Kaiārahi i te reo employed by private schools or non-government organisations that provide contracted services to schools.

### **Legislative Implications**

- 27 There are no legislative implications arising from this paper.

### **Regulatory Impact Analysis**

- 28 A regulatory impact analysis does not apply to the proposals in this paper.

### **Climate Implications**

- 29 There are no known climate implications associated with the proposals in this paper.

### **Gender Implications**

- 30 The gender implications of the APEC and KPEC and proposed settlements are positive; identifying and correcting sex-based undervaluation of a female dominated workforce and introducing a rate of remuneration that reflects the skills, responsibilities, working conditions and degrees of effort of their work.

### **Disability Perspective**

- 31 This proposal does not directly address the New Zealand Disability Strategy, but it does address inequities for a workforce that, in many instances, directly supports greater inclusivity in education.

### **Population Implications**

- 32 No significant population implications arise from the proposal to set aside a tagged contingency for APEC and KPEC.

### **Human Rights**

- 33 This proposal complies with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

### **Consultation**

- 34 The Treasury, Te Kawa Mataaho Public Service Commission and the Department of the Prime Minister and Cabinet were consulted on this paper.

*Central Agency Pay Equity Governance Group comment*

- 35 The Governance Group has been involved in providing governance and oversight of both the APEC and KPEC claims since they were first raised. The claims have reported to the Governance Group at every milestone, from assessing whether they were arguable, through to the development of their settlement bargaining strategy. The Governance Group have endorsed the work undertaken by the parties at each milestone as being thorough, comprehensive and in line with the Equal Pay Act. The Ministry of Education has continued to work closely with the CE system lead pay equity and chair of the Governance Group throughout the mediation process. The Governance Group are satisfied the outcome of mediation is not inconsistent with the Equal Pay Act and allows the settlement to proceed to ratification.

**Proactive Release**

- 36 I do not intend to proactively release this paper at this time to enable the Ministry to continue, without prejudice or disadvantage, bargaining to settle the APEC and KPEC.

**Recommendations**

The Minister for Education recommends that the Committee:

*Background*

- 1 **note** that on 25 November 2021, Cabinet agreed several tagged operating contingencies [GOV-21-MIN-0045]:
- 1.1 to enable the Ministry to enter bargaining with the NZEI Te Riu Roa (NZEI) to settle the *Administration Staff Pay Equity Claim* (APEC) and the *Kaiārahi i te Reo Pay Equity Claim* (KPEC) totalling 9(2)(j) over five years (2021/22 – 2025/26);
- 1.2 for operating costs associated with the implementation of these claims totalling 9(2)(j) over three years (2021/22 - 2023/24).

- 2 9(2)(j)

- 3 **note** that following mediation on 13 April directed by the Employment Relations Authority, 9(2)(j)

*Financial Implications*

- 4 **note** that the cost of settlements for both the APEC and KPEC with an effective date of 20 August 2021 is estimated to be up to 9(2)(j)

- 5 agree to 9(2)(j) as follows, to conclude bargaining with the NZEI to settle the APEC and KPEC:

	\$m – increase/(decrease)					
Administration and Kaiārahi i te reo Pay Equity Claims contingency	2021/22 <sup>[1]</sup>	2022/23	2023/24	2024/25	2025/26 & Outyears	Total
Estimated Administration claim	9(2)(j)					
Change effective date to August 2021						
<u>Revised APEC contingency</u>						
Estimated Kaiārahi i te reo claim						
Change effective date to August 2021						
<u>Revised KPEC contingency</u>						
<u>Changes by year</u>						
<b>Revised total contingency</b>						

- 6 **note** that the pay equity settlements will be offered to all Administration staff and Kaiārahi i te reo employed by school boards, regardless of union membership.
- 7 **invite** the Minister of Education to report back to Cabinet following the final settlement of the claims through endorsement by affected employees, to drawdown the required funding, subject to:
- 7.1 the settlement terms and conditions being supported by and linked to a complete set of evidence on the existence and extent of sex-based undervaluation in the school Administration workforce;
  - 7.2 the settlement terms and conditions being supported by and linked to a complete set of evidence on the existence and extent of sex-based undervaluation in the Kaiārahi i te reo workforce;
  - 7.3 provision of options for baseline reprioritisation and/or business operating model changes to partially offset the fiscal impact of any settlement.

- 8 9(2)(f)(iv)

<sup>[1]</sup> Pro-rated cost of 4 months (from 1 March 2022 – 30 June 2022)

9 9(2)(f) [REDACTED]  
(iv) [REDACTED]  
[REDACTED].

*Proactive release*

- 10 **note** that, at this time, this paper should not be proactively released to enable the Ministry to continue without prejudice or disadvantage, bargaining to settle the APEC and KPEC.

Authorised for lodgement

Hon Chris Hipkins  
Minister of Education