# **Pay equity milestone questions to guide oversight of pay equity claims**

**Document purpose**

This document is designed for the parties who are providing oversight of the pay equity claim process. For each milestone there is a brief summary as well as key questions to ensure that the pay equity process being undertaken is in line with the Equal Pay Act 1972 and that any outcomes are based on sound evidence and analysis. These summaries and questions also provide a reference for employers/agencies undertaking a pay equity claim to refer to when putting information/paperwork together for their oversight group to ensure all aspects of each milestone are covered.

| Milestone | Summary | Key Questions | Additional Questions | Overarching Questions for all Milestones |
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| Milestone 1Appropriate application of the light touch arguable assessment | Milestone 1 tests whether the appropriate light touch response has been applied in responding to whether the claim is worthy of investigation or not. Agreeing to proceed with a pay equity claim does not in and of itself predetermine a pay equity outcome. The arguable threshold is very low and requires a light touch assessment of the information provided to demonstrate undervaluation. Not all the questions and criteria listed need to be addressed, they are indicators of what may be covered. | Has the employer provided clear information on what workforce/s are potentially in scope of the claim? **Is or was the claimant work predominantly performed by women?*** The principles require as a mandatory minimum that the workforce is female dominated
* The Equal Pay Act (The Act) defines this as a workforce that is or was approximately 60% or more female (s 13F(2))

**Is it arguable that the work is or has been historically undervalued?**The Act (s 13F(3)) states that factors that ***may be*** used to show that the work is currently or has been historically undervalued, including: 1. Any relevant origins and history of the work and the wage setting for it
2. Any social, cultural or historical factors
3. Characterisation of the work as “women’s work”
4. That the nature of the work requires an employee to use skills or qualities that have been generally associated with women and regarded as not requiring monetary compensation
5. Any sex-based systemic undervaluation of the work as a result of any of the following factors:
	1. a dominant source of funding across the relevant market, industry, sector, or occupation
	2. a lack of effective bargaining in the relevant market, industry, sector, or occupation
	3. occupational segregation or occupational segmentation in respect of the work
	4. the failure by the parties to properly assess or consider the remuneration that should have been paid to properly account for the nature of the work, the levels of responsibility associated with the work, the conditions under which the work is performed, and the degree of effort required to perform the work
	5. any other feature of the relevant market, industry, sector, or occupation.
 |  | **Does the process meet the requirements of the Act?****Are the parties to the claim in agreement regarding the material at hand? (or able to highlight any areas of disagreement and possible approaches to resolution?)****Does the process meet the requirements of the Act?****Are the parties to the claim in agreement regarding the material at hand? (or able to highlight any areas of disagreement and possible approaches to resolution?)****Does the process meet the requirements of the Act?****Are the parties to the claim in agreement regarding the material at hand? (or able to highlight any areas of disagreement and possible approaches to resolution?)** |
| Milestone 2The employers’ initial bargaining strategy is supported by the available evidence and the agreed Terms of Reference (ToR) | Milestone 2 is the point where the employer sets out how they intend to proceed with the claim, the estimated timelines, the proposed gender-neutral work assessment method and the proposed criteria for the selection of potential comparators. | **Is the employer’s proposed initial bargaining strategy supported by the available evidence and information, such as:*** the pay equity claim and evidence provided upon raising
* the assessment of whether the claim was arguable
* any TOR agreed with the claimant(s) or draft if still in negotiation
* information the employer holds about the current work and remuneration of the claimant workforce
* information the employer holds about the history of the work and remuneration of the claimant workforce
* any understanding the employer has about the issues the claimant is likely to raise during the claim process?

**Is the methodology proposed to assess the work of the claimant and comparators:*** free from assumptions based on gender
* able to fully recognise skills responsibilities, effort and conditions of work that are commonly overlooked and undervalued
* able to ensure that all aspects of remuneration impacted by sex-based undervaluation are considered
* cognisant of any features of remuneration which may not be sex based, ie regional variation?

**In considering criteria for selecting potential comparators has the employer ensured consistency with the principles by considering:*** male comparators that perform work that is the same or substantially similar to the work of the claimant
* male comparators that perform work that is different to the work of the claimant, but which involves one or more of the following: comparable skills and experience, responsibilities, working conditions, and degrees of effort
* any other useful and relevant comparators, including those that have been the subject of a pay equity settlement
* comparators whose work is not historically or currently undervalued on the basis of sex
* comparators whose renumeration is not itself distorted by systemic undervaluation of “women’s work”?
 | If the criteria proposed results in too many potential comparators being identified and this must be narrowed down for feasibility purposes, how will the employer record the thinking and rationale on this? Has the employer considered practical factors when it comes to comparator selection such as:* is there is a reasonable sample size?
* is the role is covered by a collective agreement or data about remuneration is accessible
* is information about the work of the comparator is accessible
* are there similar qualifications and/or skills level grouping between claimant and comparator
* are there similar entry criteria for roles?
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| Milestone 3: The work assessment is representative and gender neutralThe employer’s rationale for potential comparator(s) is supported by sound evidence and analysis | Milestone 3 tests the outcomes of the work assessments and the selection of potential comparators. | Did the work assessment methodology thoroughly assess the skills, responsibilities, conditions of work, degree of effort, level of experience and any other relevant work features? (ie entry criteria)**Were the work assessments:*** objective and free of assumptions based on gender
* able to identify and fully recognise the importance of the skills, responsibilities, effort and conditions that are commonly overlooked or undervalued in female dominated work, eg social and communication skills, responsibility for the wellbeing of others, cultural knowledge and sensitivity?
 | Were the potential comparators selected and agreed in accordance with the Principles and agreed selection criteria?Was rationale for selection recorded? If so, is it logical and consistent?Have an appropriate number of comparators been selected? |
| Milestone 4:The conclusions drawn on the existence and extent of sex-based undervaluation are supported by thorough comparison of work assessment information, the assessment of terms and conditions and the remuneration assessment | Milestone 4 is the point where the evidence gathered in all of the assessments to date are collated and initial conclusions are reached on the existence and extent of sex-based undervaluation. | **Part A – process to date:**What methodology was used to assess the remuneration of the claimant and comparator(s)?Have the terms and condition of employment been fully assessed?**Was the remuneration assessment:*** objective and free of assumptions based on gender
* able to identify and fully recognise the importance of the skills, responsibilities, effort and conditions that are commonly overlooked or undervalued in female dominated work, eg social and communication skills, responsibility for the wellbeing of others, cultural knowledge and sensitivity?

Have the parties agreed that sex-based undervaluation exists?Have the parties agreed on the extent of the undervaluation? Are conclusions about sex- based undervaluation grounded in all remuneration information, the work assessment and any historical or structural gender-based differentiation?**Part B – looking ahead:**What do the initial conclusions about the extent of sex-based undervaluation mean for the approach the employer will take to agreeing a pay equity correction that does not differentiate between male and female employees? Has the agency considered how complex the implementation of settlement is likely to be? Based on the information available, has consideration been given to the issues that may impact an efficient settlement process?What preliminary testing and cost modelling has the agency done to inform their next steps? | **Part A:**Has the employer obtained and considered complete information that may impact remuneration for claimant and comparator groups such as:* superannuation
* leave
* allowances
* penal rates
* pay progression
* security of work

**Part B:**In considering next steps to ensure efficient progression, has the agency:* Considered whether they have the appropriate people resources required to progress to the bargaining stage of the claim? If not, how will this be addressed?
* Established a bargaining timeline and confirmed initial bargaining dates?
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| Milestone 5:The employer’s settlement bargaining strategy is supported by sound evidence and analysis | Milestone 5 is where the employer has prepared their settlement bargaining strategy or plan for the settlement phase of the pay equity process, ensuring their approach is based on a complete analysis of all the evidence gathered throughout the assessment phase. | Will the proposed settlement bargaining strategy enable a settlement that is supported by the evidence gathered and conclusions reached during the assessment phases? Do the proposed pay equity rate(s) and any potential enhancements to other terms and conditions reflect the work and remuneration assessments undertaken?If the proposed approach to settlement includes addressing factors beyond correcting for sex-based undervaluation, is this transparent and identifiable?What approach is the employer proposing to take to implementing a corrected pay rate?How is the employer thinking about the process for review process of terms and conditions, including remuneration, to ensure that pay equity is maintained? |  |
| Milestone 6:The proposed settlement is supported by sound evidence and analysis and reflects agreement between the parties | Milestone 6 tests that the proposed settlement is robust, continues to be supported by sound and complete evidence fully corrects any sex-based undervaluation. | Does the proposed settlement provide a pay equity rate that is free from any systemic sex-based undervaluation, that is, undervaluation derived from the effects of current, historical or structural gender-based differentiation?Is the proposed settlement supported by the evidence gathered and conclusions reached during the assessment phases? | Does the proposed settlement include a process for review of terms and conditions, including remuneration, to ensure that pay equity is maintained? How will this review process work? Does the employer consider this will be acceptable to the claimant/union? |