

# Care and Support Workers (Pay Equity) Settlement Agreement

## Parties<sup>1</sup>

**Her Majesty the Queen in right of New Zealand,  
acting by and through the Director-General of  
Health**

(as funder of District Health Boards, and Employers)

## **Accident Compensation Corporation<sup>2</sup>**

(as funder of Employers)

## **District Health Boards**

(as funders of Employers)

## **Employee Representatives –**

E tū Incorporated, New Zealand Public Service  
Association Te Pūkenga Here Tikanga Mahi  
Incorporated, New Zealand Nurses Organisation  
Incorporated

(representing Employees)

## **Association –**

New Zealand Council of Trade Unions Te Kauae  
Kaimahi Incorporated

(interested party)

**Effective - 1 July 2017**

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<sup>1</sup> The Parties acknowledge that while Employers have been represented in negotiations of the Settlement, they are not party to this Settlement Agreement. The Legislation will confer the benefit of the Funding and impose the obligations to pay their Employees the Pay Rates and support the training of Employees to achieve qualifications in the *Agreed Position of the Parties* to be entitled to increased rates of pay. The employer representatives were – New Zealand Aged Care Association, the Home and Community Health Association, and the New Zealand Disability Support Network Incorporated

<sup>2</sup> ACC is a party only for the purposes of the obligations relating to Funding

## Background

- (a) In 2012, proceedings under the Equal Pay Act 1972 were lodged by, or on behalf of, Kristine Bartlett with the Employment Relations Authority.<sup>3</sup> The proceedings claimed that, because support workers are predominantly women, a support worker is paid less than what would be paid to a man performing work involving the same, or substantially similar, degrees of skill, effort, and responsibility, and that the conditions of work are the same or substantially similar;
- (b) In 2013, related proceedings were lodged by the Service and Food Workers Union<sup>4</sup> with the Employment Court seeking a statement, pursuant to s 9 of the Equal Pay Act, of the general principles to be observed for the implementation of equal pay;
- (c) Preliminary questions of law relating to s 3(1)(b) of the Equal Pay Act, on both matters, were submitted to the Employment Court for determination;
- (d) In August 2013, the Employment Court<sup>5</sup> answered those questions (the questions and answers) were as follows:

*Question [1]* - In determining whether there is an element of differentiation in the rate of remuneration paid to a female employee for her work, based on her sex, do the criteria identified in s 3(1)(b) of the Equal Pay Act require the Court to:

(a) Identify the rate of remuneration that would be paid if the work were not work exclusively or predominantly performed by females, by comparing the actual rate paid with a notional rate that would be paid were it not for that fact; or

(b) Identify the rate that her employer would pay a male employee if it employed one to perform the work?

*Answer:* Section 3(1)(b) requires that equal pay for women for work predominantly or exclusively performed by women, is to be determined by reference to what men would be paid to do the same work abstracting from skills, responsibility, conditions and degrees of effort as well as from any systemic undervaluation of the work derived from current or historical or structural gender discrimination.

*Question [6]* - In considering the s 3(1)(b) issue of "...the rate of remuneration that would be paid to male employees with the same, or substantially similar, skills, responsibility, and service, performing the work under the same, or substantially similar, conditions and with the same or substantially similar, degrees of effort", is the Authority or Court entitled to have regard to what is paid to males in other industries?

*Answer:* They may be if those enquiries of other employees of the same employer or of other employers in the same or similar enterprise or industry or sector would be an inappropriate comparator group.

- (e) Terranova Homes and Care Limited (**Terranova**) appealed those findings to the Court of Appeal, in October 2014 the Court of Appeal<sup>6</sup> confirmed the answers of the Employment Court and dismissed the appeal;

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<sup>3</sup> *Bartlett v Terranova Homes and Care Ltd (Wellington)* [2012] NZERA 743

<sup>4</sup> Now E tū

<sup>5</sup> *Service and Food Workers Union Nga Ringa Tota Inc v Terranova Homes and Care Limited* [2013] NZEmpC 51

- (f) Terranova sought leave to appeal the findings to the Supreme Court,<sup>7</sup> in December 2014 the Supreme Court dismissed the application for leave to appeal;
- (g) In June 2015, Cabinet<sup>8</sup> approved the Crown entering into negotiations, limited to care and support workers in the aged and disability residential care and home and community support services sector to:
  - seek to resolve the Terranova case out of the courts to enable the government to better manage the process and outcomes
- (h) In November 2016, Cabinet<sup>9</sup> approved negotiating parameters, and negotiations have been ongoing since then with subsequent reports to Ministers;
- (i) On 12 April 2017, a Settlement<sup>10</sup> was reached with the Employee Representatives;<sup>11</sup>
- (j) On 18 April 2017, Cabinet<sup>12</sup> approved the Settlement;
- (k) This Settlement Agreement records the main terms of the Settlement, provisions that will be included in the Legislation, operational and related matters.

## Purpose

### 1. The purpose of this Settlement Agreement is to:

- (a) address historical pay equity issues, for care and support workers, that have occurred as a direct consequence of the predominantly female workforce resulting in lower hourly pay rates than would have been paid if the workforce was predominantly male;
- (b) record the agreed outcome of settlement negotiations over a period of nearly 2 years applying relevant pay equity principles,<sup>13</sup> determining agreed Pay Rates and related conditions for recognition of experience and a qualification pathway to a more qualified workforce;
- (c) extinguish the Proceedings (and any associated awards of compensation) and the right of Employees to make future pay equity claims, by providing for a forward-looking agreed structure of Pay Rates for Employees over a period of 5 years;<sup>14</sup>

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<sup>6</sup> *Terranova Homes & Care Limited v Service and Food Workers Union Nga Ringa Tota Incorporated* [2014] NZCA 516

<sup>7</sup> *Terranova Homes v Services and Food Workers Union* [2014] NZSC 196

<sup>8</sup> CAB Min (15) 18/8

<sup>9</sup> CAB-16-MIN-0602

<sup>10</sup> *Agreed Position of the Parties*

<sup>11</sup> Subject to ratification by Employees, or deemed ratification (date this Settlement Agreement is signed) if not ratified by Employees by 24 May 2017

<sup>12</sup> CAB-17-MIN-0179; CAB -17-SUB-0179; SEC-17-MIN-0024; SEC-17-SUB-0024

<sup>13</sup> *Principles for the Implementation of Equal Pay* - <http://www.ssc.govt.nz/sites/all/files/pay-equity-jwg-recommendations.pdf>

<sup>14</sup> For the period 1 July 2017 to 30 June 2022

- (d) provide for statutory certainty of Employer obligations and Employee rights, the lawful payment of Funding, and related matters through Legislation;
- (e) provide certainty for all the Parties (and all Employees) that this Settlement Agreement is in full and final settlement of:
  - (i) all pay equity issues related to the Proceedings;
  - (ii) all matters related to pay equity claims filed by Employees with the Employment Relations Authority or Employment Court:from the Commencement Date to 30 June 2022.

### **Title**

- 2. This is the Care and Support Workers (Pay Equity) Settlement Agreement.<sup>15</sup>

### **Conditions precedent**

- 3. This Settlement Agreement is:
  - (a) conditional on:
    - (i) Cabinet approval of the Settlement;<sup>16</sup>
    - (ii) the enactment of Legislation;
  - (b) null and void if both conditions precedent are not satisfied.

### **Commencement and expiry**

- 4. This Settlement Agreement:
  - (a) is effective from the Commencement Date;
  - (b) expires on 30 June 2022.<sup>17</sup>

### **Obligation of Crown, ACC, and DHBs to fund Employers**

- 5. The Funding must be paid to the Employers as follows:
  - (a) the Crown must pay each DHB and Crown Funded Employer;
  - (b) ACC must pay each ACC Funded Employer;

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<sup>15</sup> The Parties acknowledge that the title may differ from the title of the Legislation

<sup>16</sup> Cabinet approved the Settlement on 18 April 2017

<sup>17</sup> The intent is that the Pay Rates and the Funding are fixed for 5 years so that there will be no increase in those rates or Funding relating to the Settlement except as provided in the *Agreed Position of the Parties* (Maintaining Currency of Rates)



(c) DHBs must pay each Crown Funded Employer.

### **Legislation for parts of this Agreement**

6. For statutory certainty,<sup>18</sup> and to enable the Funding to be lawfully paid, Legislation will be enacted for parts of this Settlement Agreement.
7. Subject to Executive and Parliamentary processes,<sup>19</sup> the Parties acknowledge that the Legislation will cover the following matters:
  - (a) an obligation on Employers to pay the Pay Rates to Employees;
  - (b) an obligation on Employers to provide support for training for Employees;<sup>20</sup>
  - (c) extinguish retrospective claims by Current Employees against Employers;<sup>21</sup>
  - (d) prevent prospective claims by Employees against Employers;<sup>22</sup>
  - (e) provide that no Employee will be paid less than the appropriate Pay Rate after 1 July 2017;
  - (f) provide that no Current Employee will be paid less than the rate of pay they were receiving on the Commencement Date;
  - (g) provide for deemed variations to Funding Agreements, to the extent necessary to give effect to the provisions relating to Funding, to:
    - (i) enable the lawful payment of the Funding;<sup>23</sup>

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<sup>18</sup> Particularly matters relating to Employers

<sup>19</sup> Including drafting practices of the Parliamentary Counsel Office

<sup>20</sup> The intention (as indicated in the *Agreed Position of the Parties*) is that Employers create the right incentives for Employees to achieve the NZQA qualifications within the timeframes specified; support for training is covered by the definition of Pay Rates, the obligation to provide support for training is a significant requirement over a sustained period of years to warrant a statutory obligation on Employers; much of the training is 'on the job', however the Settlement includes a financial contribution, by the Crown, to that training support of 2 days' pay per Employee per year

<sup>21</sup> Equal Pay Act 1972 (section 3(1)(b)); approximately 6,000 existing claims filed before 1 July 2017

<sup>22</sup> The intent is to prevent any claim by any care and support worker, who is an Employee, for pay equity being filed after 1 July 2017 for the period of 5 years ie 1 July 2017 to 30 June 2022 (or such other dates as specified in the Legislation); nothing in this Settlement Agreement prevents pay equity claims after 30 June 2022 for work performed after that date (but not for work performed before that date)

<sup>23</sup> The Crown, ACC, and DHBs acknowledge that 4,000 contracts recording payments of the Funding to Employers are required to be specifically varied. As Employers are not party to this Settlement Agreement their Funding Agreements cannot (for Privity reasons) be varied through a deemed variation through this Settlement Agreement. Accordingly, the Legislation will provide for deemed variations to those Funding Agreements. Deemed variations are also required due to the limited timeframe to ensure that the operational processes for the payment of the Funding, and timely payments, can be made. That may not occur, or may not be able to be guaranteed, if contracts were required to be varied and signed before payments were made. Accordingly, the deemed variation to funding agreements is primarily for the benefit of the Employers and Employees

- (ii) enable the Crown, ACC, and DHBs to require Employers to provide Employee information;<sup>24</sup>
- (iii) enable the Crown, ACC, and DHBs to conduct audits of Employers;<sup>25</sup>
- (iv) ensure that it is clear that the deemed variations apply from the Commencement date to 30 June 2022;<sup>26</sup>
- (h) provide for deemed variations of collective agreements and individual employment agreements, between Employers and Employees, to provide for the payment of the Pay Rates;<sup>27</sup>
- (i) ensure that it is clear that Employees can recover arrears of wages<sup>28</sup> for non-compliance by Employers with the Legislation;
- (j) ensure that it is clear that Employees can take a personal grievance claim against their Employer for failure to support their training to achieve the qualifications in the *Agreed Position of the Parties*;<sup>29</sup>
- (k) acknowledge that it is intended that the Legislation will be repealed 5 years after the date of its commencement;<sup>30</sup>

<sup>24</sup> The purpose of the reporting requirement is to capture relevant and actual Employee information for the payment of accurate Funding; the information *includes* Employee names, addresses, individual IDs, qualification levels, employment status (permanent full-time, part-time, or temporary), roles and working hours; the purpose is also to enable monitoring of changes to the workforce

<sup>25</sup> The purpose of the audits is to ensure that the appropriate level of Funding is being paid to Employers by reconciling that Funding with the payment of the Pay Rates by Employers to their Employees. The intent is that payments will be based (at least for a limited time) on actual costs therefore audits are required to reconcile Funding claims with actual costs; audits will not be for the purpose of checking that Employers are complying with their obligation to pay the Employees the appropriate Pay Rates; the Parties acknowledge that compliance for that purpose will be a statutory requirement with enforcement through Employees being entitled to take personal grievances or recovery of wages; audits can be random, targeted, or responding to a complaint

<sup>26</sup> The intention is that the deemed variations apply only once for the period of 5 years; no other variation (during that period) to the Funding Agreements is intended to be deemed

<sup>27</sup> There are approximately 55,000 Employees employed under several collective agreements and many under individual employment agreements. All such agreements are required to be in writing to comply with the Employment Relations Act 2000 (section 54, Form and content of collective agreements; and section 65, Form and content of individual employment agreements). As Employers are not party to this Settlement Agreement, the Legislation will make it clear that the terms and conditions of all employment contracts are to be treated as varied to give effect to this Settlement Agreement. These deemed variations will record the Employers obligation to pay the Pay Rates, and support Employees training to achieve the qualifications in the *Agreed Position of the Parties*, and the right of Employees to receive the Pay Rates and training; for clarity, the collective agreements and individual employment agreements will be varied (by deemed variations) for the purpose of maintaining currency of Pay Rates, under the *Agreed Position of the Parties*, from 1 July 2021

<sup>28</sup> Under section 131 of the Employment Relations Act 2000

<sup>29</sup> Under section 103 of the Employment Relations Act 2000; the intent is that this promotes the good employer principle and is for the sole benefit of Employees to have every opportunity to reach the maximum Level 4 Certificate on the New Zealand Qualifications Framework

<sup>30</sup> If the Legislation commences on its intended date of 1 July 2017, the intended repeal date for most provisions of the Legislation will be 30 June 2022; however, provisions relating to the extinguishing or preventing of claims by Employees will be repealed 1 year later. The intent is to prevent claims that arose before the commencement of the Legislation from being made after the date it commences up to 30 June 2023. Claims by Employees for non-compliance by Employers with the Legislation can be made within a period of 6 years from the date that the cause of action arose, this is intended to align with the time period for

- (l) provisions directly incidental to paragraphs (a) to (k).<sup>31</sup>

### **Settlement payment to Kristine Bartlett and related legal costs**

8. The Crown will:

- (a) agree with Kristine Bartlett's employer and E tū the amount of settlement payment to be paid by the Crown in consideration for extinguishing Kristine Bartlett's proceedings;<sup>32</sup>
- (b) pay to Kristine Bartlett's employer (for on-payment to Kristine Bartlett) a sum equivalent to the settlement payment;<sup>33</sup>
- (c) record the settlement payment in a confidential separate settlement agreement;<sup>34</sup>
- (d) pay to E tū the reasonable legal costs of the Kristine Bartlett proceedings;<sup>35</sup>
- (e) record the payment of reasonable legal costs in a confidential separate settlement agreement.<sup>36</sup>

### **Full and final settlement**

9. This Settlement Agreement is in full and final settlement of:

- (a) all pay equity issues relating to the Proceedings (as at the Commencement Date);
  - (b) all matters related to the pay equity claims filed by Employees with the Employment Relations Authority or Employment Court (as at the Commencement Date);
- for the period ending on 30 June 2022.<sup>37</sup>

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Employees to make claims under section 142 of the Employment Relations Act 2000, and sections 17 to 19 of the Interpretation Act 1999 (which relate to repeals of enactments generally and the effect on enforcement of persons' existing rights and prior breaches)

<sup>31</sup> The Parties acknowledge that other provisions may be proposed for inclusion in the Bill during the Parliamentary process; nothing in this Settlement Agreement is intended to restrict that process

<sup>32</sup> This clause applies only to Kristine Bartlett and E tū

<sup>33</sup> The intent is that payment will be made between 16 June 2017 and 1 July 2017 (in accordance with a separate settlement agreement) acknowledging that the claim is extinguished on the commencement of the Legislation; the separate settlement agreement will also record that the Employer must on-pay that payment to Ms Bartlett as soon as practicable and without deduction

<sup>34</sup> The parties are the Crown, Kristine Bartlett, Terranova, and E tū

<sup>35</sup> *Bartlett v Terranova Homes and Care Ltd (Wellington)* [2012] NZERA 743

<sup>36</sup> The parties are the Crown and E tū

<sup>37</sup> The intention is that the Settlement and this Settlement Agreement addresses all matters related to pay equity claims filed by Employees with the Employment Relations Authority or Employment Court (as at the Commencement Date), and that no pay equity claim may be filed by an Employee before 30 June 2022; nothing in this Settlement Agreement is intended to prevent any employee from filing a pay equity claim after that date

## **Good faith**

10. The Parties will deal with each other in good faith<sup>38</sup> on all matters under, or associated with, this Settlement Agreement.

## **Ratification by members**

11. The Employee Representatives confirm that:

- (a) they represent their members;
- (b) they have the authority to sign this Settlement Agreement and bind their members;
- (c) if ratification by their members is not obtained by 24 May 2017, it is deemed from the date.<sup>39</sup>

## **Settlement Agreement applies to all Employees**

12. This Settlement Agreement applies to all care and support workers who are Employees, whether or not they are represented by the Employee Representatives.<sup>40</sup>

## **No disputes**

13. No Party may raise a dispute<sup>41</sup> against any other Party in relation to the matters covered by this Settlement Agreement.

## **Employers may not enforce Settlement Agreement**

14. Despite the conditions precedent, for the purpose of section 4 of the Contracts (Privity) Act 1982, this Settlement Agreement is not intended to create an obligation on the Crown, ACC, and DHBs enforceable at the suit of Employers.<sup>42</sup>

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<sup>38</sup> The intent is that good faith has a similar meaning to section 4 of the Employment Relations Act 2000

<sup>39</sup> The intent is to ensure that this Settlement Agreement is unconditional (regarding ratification) from 24 May 2017; this is because time is of the essence for the Legislation

<sup>40</sup> The intent is that all 55,000 (approximately) care and support workers, working for 1,000 Employers (approximately) will receive the benefits of this settlement even though they may not be a member of one of the unions represented in the settlement negotiations

<sup>41</sup> *Dispute* has the narrow meaning as decided by the Supreme Court in *Zurich Australian Insurance Limited T/A Zurich New Zealand v Cognition Education Limited* [2014] NZSC 188 (the party asserting there is a dispute must be acting bona fide, or there must be a dispute in reality); *dispute* does not include a claim by an Employee that is a personal grievance or for recovery of arrears of wages; the intent is that this Settlement Agreement is full and final of all pay equity issues relating to the Proceedings, and pay equity claims filed by Employees with the Employment relations Authority or Employment Court (as at the Commencement Date) and is also supported by the Legislation, it would therefore be inconsistent to enable disputes to be taken

<sup>42</sup> The intent is for clarity dealing with 2 matters – the absolute nature of the conditions precedent (that this Settlement Agreement is null and void if Cabinet does not approve the Settlement and that Legislation must be passed), and also that despite Employers not being a party to this Settlement Agreement, they will be getting the benefit of the Funding from the Crown, ACC and DHBs to meet their statutory obligation to pay the Pay

## **Settlement Agreement not to be varied except with Cabinet approval**

15. This Settlement Agreement:

- (a) must not be varied:
  - (i) except with the prior approval of Cabinet;
  - (ii) beyond the scope of any such Cabinet approval;
- (b) must only be varied (following any such Cabinet approval):
  - (i) in writing;
  - (ii) signed by the Parties;
- (c) does not create any legitimate expectation that Cabinet will approve a variation.

## **One original Settlement Agreement**

16. This Settlement Agreement:

- (a) is signed by the Parties in 1 original;<sup>43</sup>
- (b) must be retained by the Crown;
- (c) must be published by the Crown on its website, and as soon as reasonably practicable after it is signed by the Parties;<sup>44</sup>
- (d) may be published by any other Party on its website, or shared website, or by way of a hyperlink provided to the Crown's website.

## **Definitions and Construction**

17. In this Agreement, unless the context otherwise requires:

### *Definitions*

**ACC** – means the Accident Compensation Corporation continued by section 259 of the Accident Compensation Act 2001;

**ACC Funded Employer** – means an entity that receives Funding from ACC, to provide the Services, under a Funding Agreement;

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Rates to the Employees; however they will not be able to enforce (in court or tribunal) that benefit under the Settlement Agreement as permitted by section 4 of the Contracts (Privity) Act 1982

<sup>43</sup> There are no counterparts

<sup>44</sup> The intention is to publish this Settlement Agreement as soon as practicable after it is signed, however acknowledging it is still subject to ratification by the Employees or deemed ratification until 24 May 2017; Ministry of Health website - <https://www.health.govt.nz/news-media/news-items/care-and-support-workers-pay-equity-settlement-agreement>

**Agreed Position of the Parties** – means the *Agreed Position of the Parties* as at 12 April 2017 in the **Appendix**, providing for the agreed Pay Rates, support for training, and other matters for the benefit of Employees;

**Commencement Date** – means 1 July 2017;<sup>45</sup>

**Crown** – means Her Majesty the Queen in right of New Zealand, acting by and through the Director-General of Health

**Crown Funded Employer** – means an entity that receives Funding from the Crown or a DHB, to provide the Services, under a Funding Agreement;

**Current Employee** – means an Employee who is employed by an Employer as at the Commencement Date;

**DHBs** – means each DHB specified in Schedule 1 of the New Zealand Public Health and Disability Act 2000;

**Employee** –

(a) means an employee of an Employer<sup>46</sup> who performs<sup>47</sup> the Services;

(b) does not include employees who do not perform the Services;<sup>48</sup>

**Employer** – means:

(a) a Crown Funded Employer; or

(b) an ACC Funded Employer;

**Funding** – means the appropriate funding (within the total funding approved by Cabinet), received by a Crown Funded Employer or ACC Funded Employer;

**Funding Agreements** – means the following funding agreements for, or including, the Services:

(a) the Crown funding agreement<sup>49</sup> between the Crown and DHBs;

(b) the direct funding agreement between the Crown and Crown Funded Employers;

(c) the respective funding agreements between DHBs and Crown Funded Employers;

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<sup>45</sup> The intention is that the Settlement Agreement commences on 1 July 2017 to reflect the *Agreed Position of the Parties*; If the Legislation is not enacted by that date it is nevertheless intended to apply from that date

<sup>46</sup> Including home support workers (not paid as health care assistants) employed by the following District Health Boards – Canterbury, Hutt, Waikato, Wairarapa, and West Coast; and disability support workers (not paid as health care assistants) employed by Nelson Marlborough District Health Board

<sup>47</sup> Where an Employee performs Services and also services that are excluded, the primary purpose of their work must be considered as to whether or not they are an Employee

<sup>48</sup> Any health practitioner registered under and in accordance with the Health Practitioners Competence Assurance Act 2003; and supervisors, cleaners, cooks, and office workers - this list is not exhaustive and is intended to exclude any Employee whose primary work purpose is not care and support even if care and support is incidental to their primary work

<sup>49</sup> Section 10 of the New Zealand Public Health and Disability Act 2000

(a) the formal contracts between ACC and ACC Funded Employers entitled:

- (i) Home and Community Support Services;
- (ii) Individual Residential Support Services;
- (iii) Residential Support Services;

**Legislation** – means the Care and Support Workers (Pay Equity) Settlement Act 2017 (or legislation by any other name), implementing parts of this Settlement Agreement;

**Parties** – means collectively all the Parties to this Settlement Agreement (as described on the front page);

**Pay Rates** – means the minimum rates<sup>50</sup> of pay payable by Employers to Employees and all other matters in the Agreed Position of the Parties for the benefit of the Employees;<sup>51</sup>

**Proceedings** – means all Court proceedings referred to in the Background;

**Services** –

(a) means services:<sup>52</sup>

- (i) performed in a person's home,<sup>53</sup> or home like setting,<sup>54</sup> or residential care facility,<sup>55</sup> or workplace, to assist the person with care and support<sup>56</sup> to enable them to continue to live or work in that place, or in their community; or
- (ii) performed in a person's home, or home like setting, or residential care facility, or workplace, to support a client's rehabilitation from an injury covered by the Accident Compensation Act 2001 and to achieve and sustain the client's maximum level of participation in everyday life;

(b) does not include:

- (i) other services;<sup>57</sup>

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<sup>50</sup> For clarity, the other matters are - support for training, transition and progression for existing care and support workers, progression for employees (other than Current Employees), maintenance of currency of rates, weekend and night penal rates, and one-off payment for Employees to attend ratification meetings

<sup>51</sup> For clarity, the Pay Rates do not include the rates of pay payable under section 22 of the Sleepovers Wages (Settlement) Act 2011 [expired on 18 October 2016], or section 17 of the Home and Community Support (Payment for Travel Between Clients) Settlement Act 2016; the intent is that the rates of pay for sleepovers and for in-between travel remain at the minimum amounts prescribed in or by those Acts

<sup>52</sup> The Services are generally known in the disability and support sector as - age related residential care, day programmes, day services, home and community-based support, residential services (for disability support), facility-based respite, supported living, and choices in community living; this list of Services is not exhaustive

<sup>53</sup> Including home and community support services for persons living at home (including residents who are in an independent living setting in a retirement village) following a needs based assessment

<sup>54</sup> For high and complex needs for up to 24 hours a day, including residents in a hospital, dementia or short term care facility in a retirement home (but excluding independent living in a retirement village)

<sup>55</sup> Including aged residential care facility, rest home, or hospital

<sup>56</sup> Such as personal care, household management, other home support, or community support

<sup>57</sup> Behavioural support services, caregiver support, child development services, environmental support, funded family care



- (ii) Services provided directly by Employees of DHBs under a Crown Funding Agreement;<sup>58</sup>
- (iii) mental health services;
- (iv) vocational services<sup>59</sup> provided by vocational support workers funded by the Ministry of Social Development, or Ministry for Vulnerable Children Oranga Tamariki;
- (v) private services to a client, by a person whether or not they are performing those services as an Employee;<sup>60</sup>

**Settlement** means the settlement recorded in the *Agreed Position of the Parties*;

**Settlement Agreement** -- means this Care and Support Workers (Pay Equity) Settlement Agreement.

#### *Construction*

- (a) parts of this Settlement Agreement are called:
  - (i) clauses (eg 1, 2, and 3);
  - (ii) paragraphs (eg (a), (b), and (c));
  - (iii) subparagraphs (eg (i); (ii); and (iii));
- (b) for simplicity and clarity, the phrases 'of this Settlement Agreement', 'under this Settlement Agreement', 'for the purposes of this Settlement Agreement', or 'in accordance with this Settlement Agreement' have not been expressly used in most places, and are implied;
- (c) there are no cross references to other clauses, it is intended that the Agreement be read as a whole;
- (d) the singular includes the plural, and vice versa;
- (e) footnotes are part of this Settlement Agreement, and are intended to assist in the explanation of a specific matter in the text;
- (f) definitions apply to the footnotes;
- (g) any term not defined has its ordinary meaning, or the meaning in the Legislation, or Employment Relations Act 2000, or any legislation consequentially amended by the Legislation, where appropriate and according to the context;
- (h) if any matter arises requiring the interpretation of this Settlement Agreement, the purpose must be taken into account;

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<sup>58</sup> Section 10 of the New Zealand Public Health and Disability Act 2000; however as previously noted, a small number of DHB employees are covered by this Settlement Agreement

<sup>59</sup> Including - supported employment services, vocational training/business enterprises, and community participation programmes

<sup>60</sup> The intent is that a client who engages a person directly to perform disability care and support services, and pays for those services privately without any source of funding from the Crown, ACC, or DHB, are not Services within the meaning of this Settlement Agreement



- (i) this Settlement Agreement is a contract for the purpose of interpretation; the common law principles of contract interpretation apply.<sup>61</sup>

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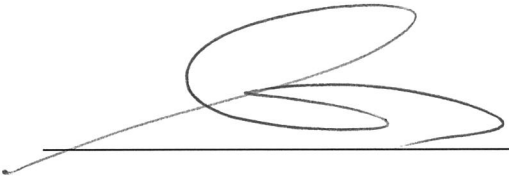
<sup>61</sup> Particularly the matrix of fact approach to establish the intention of the parties - *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1997] UKHL 28 (House of Lords, UK), and *Vector Gas Limited v BOPE Limited* [2010] 2 NZLR 444 (Supreme Court, NZ)

**Dated** at Wellington 2 May 2017

**Signed:**

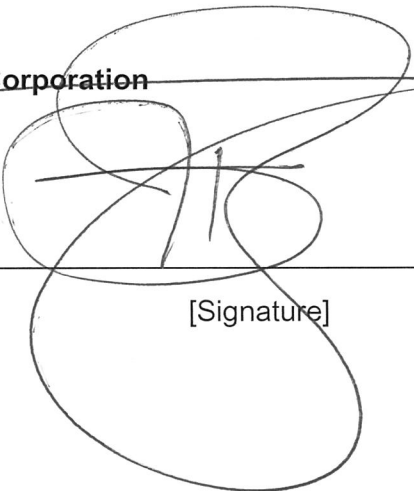
For and on behalf of **Her Majesty the Queen in right of New Zealand, acting by and through the Director-General of Health**

by

CHAI CHUAN   
[Name] [Signature]

On behalf of the **Accident Compensation Corporation**

by

Scott Pickering   
[Name] [Signature]

On behalf of all **20 District Health Boards**

by

Chris Fleming   
[Name] [Signature]

On behalf of **E tū Incorporated**

John Ryan  
[Name]

[Signature]  
[Signature]

On behalf of the **New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi Incorporated**

by

Kerry Davies  
[Name]

[Signature]  
[Signature]

On behalf of **New Zealand Nurses Organisation Incorporated**

by

Cee Payne  
[Name]

[Signature]  
[Signature]

On behalf of the **New Zealand Council of Trade Unions Te Kauae Kaimahi Incorporated**

by

Sam Haggard  
[Name]

[Signature]  
[Signature]

## **Appendix**

### **Agreed Position of the Parties**

# **Care and Support Equal Pay Negotiations Agreed Position of the Parties 12 April 2017**

This document reflects the final agreed position of the Government and Union negotiators.

### **Nature of Settlement**

Both parties are agreed that this settlement is an historic step forward for women workers in the elimination of systemic undervaluation of care and support work. As such, it is a significant step in addressing gender based inequality in New Zealand.

The parties agree that the settlement will extinguish all pay equity claims made prior to 1 July 2017 for the employees covered by this settlement.

The settlement addresses historic issues of systemic gender discrimination and by its nature involves a change in wage relativities. Consequently, the parties agree that this settlement will not be used as a precedent for other occupational groups.

### **Scope of Settlement**

The unions generally accept the provisions in the Scope of Settlement from the Crown proposal of 8 March 2017.

For the avoidance of doubt,

- (i) home support workers employed by the following District Health Boards, who are not paid as healthcare assistants, are covered by this settlement: Waikato DHB, Wairarapa DHB, Hutt Valley DHB, Canterbury DHB and West Coast DHB; and,
- (ii) disability support workers employed by Nelson Marlborough DHB, who are not paid as healthcare assistants, are covered by this settlement.

Consistent with the statement under “Nature of Settlement” above, the parties agree that the inclusion of these workers will not be used as a precedent for other DHB occupational groups.

## **Vocational Disability Support Workers**

The Ministry of Social Development (MSD) and the Ministry for Vulnerable Children Oranga Tamariki (MVCOT) are not a party to this agreement but agree in principle that vocational disability support workers should be covered by a separate settlement consistent with the terms of this agreement. MSD and MVCOT are committed to engaging with unions and employers to give effect to this intention and to arrive at a settlement within the next two months.

## **Support for Training**

The unions and Government absolutely support care and support workers gaining formal qualifications and wish to create the right incentives for employers to allow this to happen. To this end, the contracts between funders and providers (employers) will require employers to provide the necessary systems and support to enable workers covered by the settlement to reach the following NZ Qualifications Authority Health and Wellbeing Certificate (or their relevant equivalent) qualifications within the following time periods:

- Level 2 NZ Certificate – within 12 months of commencement of employment
- Level 3 NZ Certificate – within 3 years of commencement of employment
- Level 4 NZ Certificate – within 6 years of commencement of employment

The Settlement Act will state that if an employer fails or omits to take reasonable and appropriate steps to ensure that an employee is supported and enabled to reach levels of qualification required to achieve the wage levels provided in this Settlement Act, such employee may challenge such failure or omission by way of personal grievance under s103(1)(b) of the Employment Relations Act 2000.

The Government will fund employers for two days per employee per year (via on costs) as its contribution to education and training.

The goal is to have an industry wide workforce which is trained to meet current and future service needs.

## **Care and Support Workers, Minimum Pay Rates and the Qualification Path**

The minimum rates and progression for care and support workers employed after 1/7/17 will be the following:

	1 July 2017 Year 1	1 July 2018 Year 2	1 July 2019 Years 3/4	1 July 2021 Year 5
L0	\$19.00	\$19.80	\$20.50	\$21.50
L2*	\$20.00	\$21.00	\$21.50	\$23.00
L3*	\$21.00	\$22.50	\$23.00	\$25.00

L4*	\$23.50	\$24.50	\$25.50	\$27.00
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\*"Qualifications" are those recognised by NZQA

### **Maintaining Currency of Rates**

If the All Industries Labour Cost Index by 30 June 2021 (for the period 1 July 2017 to 30 June 2021) moves on average by more than 1.7% annually then the figures in the above tables applying from 1 July 2021 will be adjusted accordingly.

### **Weekend and Night Penal Rates**

Should any care and support worker employment agreement have a night or weekend penal rate (as opposed to a weekend or night shift allowance) calculated as a percentage of the base rate such penal rates for care and support workers covered by this settlement shall be converted into an allowance based on the employment agreement wage scales as at 30 June 2017.

If there is any dispute as to the transition of these penal rates into allowances any party to an employment agreement (as set out above) may seeking a final and binding decision on this matter by a Labour Inspector.

### **Extinguishing of Allowances**

The unions accept that this settlement will from 1 July 2017 extinguish any separate ongoing service allowance or qualifications allowance for care and support workers within the scope of this Agreement that is contained in any employment agreement.

### **Transition for Existing Care and Support Workers**

The Government and the unions recognise the historic nature of this agreement in addressing systemic gender inequality. The agreed transition and progression process for existing care and support workers from 1 July 2017 reflects the fact that many long-serving and experienced care and support workers have never had their skills and experiences recognised through formal qualifications.

All existing care and support workers on 1 July 2017 will move on to the following scale either at the step that recognises their current qualifications or their service with their current employer, whichever is the most advantageous.

	1 July 2017 Year 1	1 July 2018 Year 2	1 July 2019 Year 3/4	1 July 2021 Year 5
L0 or <3 years service	\$19.00	\$19.80	\$20.50	\$21.50
L2* or 3+ years	\$20.00	\$21.00	\$21.50	\$23.00

service				
L3* or 8+ years service	\$21.00	\$22.50	\$23.00	\$25.00
L4* or 12+ years service	\$23.50	\$24.50	\$25.50	\$27.00

\*"Qualifications" are those recognised by NZQA

### **Pay Rate Progression for Existing Care and Support Workers**

All existing care and support workers on 1 July 2017 will increase their pay rates under this scale on the basis of either service or qualifications, whichever is the most advantageous to them as set out below:

- Progression to Level 2 will be on attainment of the Level 2 qualification or after the completion of 3 years current continuous service with their employer as of 1 July 2017
- Progression to Level 3 will be on the attainment of the Level 3 qualification, or after 8 years current continuous service with their employer as of 1 July 2017.
- Progression to Level 4 will be on the attainment of the Level 4 qualification.

All existing care and support workers who reach 12 years current continuous service with their employer after 1 July 2017 and who have not achieved a Level 4 Certificate will move on to the following rates unless there are genuine reasons based on reasonable grounds that the employee's employer did not provide the support necessary for the employee to achieve the Level 4 qualification, in which case the employee will be entitled to move to the Level 4 step above. Any dispute about the provision of the necessary support will be dealt with through the normal dispute resolution processes.

After 1 July 2017	On or after 1 July 2018	On or after 1 July 2019	On or after 1 July 2021
\$22.50	\$23.50	\$24.50	\$26.00

"Current continuous service" includes service recognised as continuous for the purposes of transferring workers.

### **Other Matters**

#### *Kristine Bartlett Settlement*

There is a separate agreement.

### *Ratification Process*

The union proposal for the ratification meetings<sup>62</sup> for care and support workers within the scope of this settlement is also agreed by Government on the grounds that it is consistent with earlier precedents involving legislation and provides a mandate for subsequent legislation that removes back-pay, phases in new rates and extinguishes claims. The parties recognise that the ability of all employees (union members and non-union members) to have the opportunity to vote in the ratification process for this agreement is fundamental to this settlement. The MOH will support the implementation of the ratification process and in good faith encourage all employers to comply with this process.

The Government will fund employers at the rate of \$25.00 per care and support worker who are verified by the union and the employer as having attended a ratification meeting.

### *Consequent Legislation*

The settlement will be legislated in a way that is consistent with the signed settlement document.

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<sup>62</sup> This is a separate document