

House of Representatives

Supplementary Order Paper

Thursday, 8 June 2017

Care and Support Worker (Pay Equity) Settlement Bill

Proposed amendments for the consideration of the Committee of the whole House

Key:

- **this is inserted text**
- **~~this is deleted text~~**

Note: This Supplementary Order Paper shows amendments to the Bill that are being proposed by the Minister for the purposes of consideration in Committee of the whole House. This document does—

- **NOT have official status in terms of unamended text**
- **NOT have the status of an as-reported version of the Bill.**

Explanatory note

This Supplementary Order Paper amends the Care and Support Worker (Pay Equity) Settlement Bill. In summary, the amendments—

- amend the title of the Bill to match the title of the settlement agreement that the Bill implements:
- move material from *clause 3* (the purpose clause) to *new clause 3A* to create an overview clause that describes how the Bill achieves its purposes. *New clause 3A* also refers to employers' obligations relating to training:
- amend the definition of care and support services in *clause 4* to refer to funding agreements and to include long-term residential care in a hospital or rest home:
- extend the definition of employee in *clause 4* to include homeworkers:
- clarify that whether an overseas qualification is equivalent to a New Zealand Certificate in Health and Wellbeing is to be determined by the relevant industry training organisation:
- insert *new clause 7(3)* to emphasise that the Bill has no effect on pay equity claims that are not related to the settlement agreement that the Bill implements:
- insert *new clause 8(2) and (3)* to clarify that an employer is not required to pay the hourly wage rates set by the Bill for—
 - time spent by a care and support worker in providing services that were specifically excluded from the settlement agreement that the Bill implements:
 - time spent by a care and support worker in activities that are the subject of previous settlement agreements:
- amend *clauses 9 and 10* to limit their application to work for which the hourly wage rates under the Bill are payable. The modifications to terms and conditions of employment agreements contained in *clauses 9 and 10* will not apply in respect of other work:
- modify *clause 11* to require an employer to take all reasonably practicable steps to ensure a care and support worker can attain a qualification, rather than all reasonable steps:
- move the definitions in *clause 17* to *clause 4*:
- make minor typographical corrections.

Departmental disclosure statement

The Ministry of Health considers that a departmental disclosure statement is not required to be prepared for this Supplementary Order Paper.

The Honourable Dr Jonathan Coleman, in Committee, to propose the amendments shown in the following document.

Hon Dr Jonathan Coleman

Care and Support Workers (Pay Equity) Settlement Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Care and Support Workers (Pay Equity) Settlement Act **2017**.

2 Commencement

This Act comes into force on **1 July 2017**.

Part 1

Preliminary provisions

3 Purpose

(1) The purpose of this Act is—

- (a) to implement the settlement agreement described in **subsection (3)**;
- and

- (b) to apply the terms of that agreement to employers and care and support workers who were not party to the agreement.
- (2) ~~To that end, this Act—~~
- (a) ~~extinguishes existing claims and bars future claims by care and support workers under the Equal Pay Act 1972; and~~
 - (b) ~~specifies minimum wage rates payable by employers to care and support workers for work performed during the period starting on 1 July 2017 and ending on 30 June 2022; and~~
 - (e) ~~provides for the Ministry of Health, DHBs, and ACC to pay additional funding to employers towards the cost of employers' obligations under this Act.~~
- (3) The settlement agreement was signed on 2 May 2017 by or on behalf of the Crown, ACC, the 20 DHBs, E tū Incorporated, the New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi Incorporated, the New Zealand Nurses Organisation Incorporated, and the New Zealand Council of Trade Unions Te Kauae Kaimahi Incorporated. The agreement relates to pay equity issues for care and support workers.

3A Overview

To achieve its purpose, this Act—

- (a) extinguishes existing claims and bars future claims by care and support workers under the Equal Pay Act 1972; and
- (b) specifies minimum hourly wage rates payable by employers to care and support workers for work performed during the period starting on 1 July 2017 and ending on 30 June 2022; and
- (c) requires employers to provide support for care and support workers to attain qualifications; and
- (d) provides for the Ministry of Health, DHBs, and ACC to pay additional funding to employers towards the cost of employers' obligations under this Act.

4 Interpretation

In this Act, unless the context otherwise requires,—

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

care and support services—

- (a) ~~means services that are performed in a person's home (including residential care facilities, retirement villages, and rest homes) or workplace for the purpose of—~~

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- ~~(i) assisting the person to continue to live in the person's home or in the community (such as personal care and household management services); or~~
 - ~~(ii) assisting a person who has a disability to work in the community; or~~
 - ~~(iii) supporting the person's rehabilitation from an injury covered by the Accident Compensation Act 2001 and to achieve and sustain the person's maximum level of participation in everyday life; but~~
- (b) does not include mental health services

care and support services—

(a) means—

- (i) services funded under a funding agreement that are performed in a person's home (including residential care facilities, retirement villages, and rest homes) or workplace for the purpose of—
 - (A) assisting the person to continue to live in the person's home or in the community (such as personal care and household management services); or
 - (B) assisting a person who has a disability to work in the community; or
 - (C) supporting the person's rehabilitation from an injury covered by the Accident Compensation Act 2001 and to achieve and sustain the person's maximum level of participation in everyday life; and
- (ii) long-term residential care in a hospital or a rest home that is assessed as required under section 137 of the Social Security Act 1964; but

(b) does not include mental health services

care and support worker—

(a) means a person—

- (i) who is an employee of an employer; and
- (ii) whose work for that employer primarily involves providing care and support services; and

(b) for the purposes of **section 7**, includes a person—

- (i) who was previously an employee of an employer; and
- (ii) whose work for that employer primarily involved providing care and support services

continuous employment, in relation to a care and support worker,—

(a) includes any period during which the worker is—

- (i) on paid holidays or leave under the Holidays Act 2003; or
 - (ii) on parental leave under the Parental Leave and Employment Protection Act 1987; or
 - (iii) on volunteers leave (within the meaning of that term in section 2(1) of the Volunteers Employment Protection Act 1973); or
 - (iv) receiving weekly compensation under the Accident Compensation Act 2001 as well as, or instead of, payment from the employer; or
 - (v) on unpaid sick leave or unpaid bereavement leave; or
 - (vi) on unpaid leave for any other reason for a period of no more than 1 week; or
 - (vii) continuously employed by a previous employer, if—
 - (A) the worker transferred from the previous employer to the current employer; and
 - (B) the transfer was a result of restructuring (within the meaning of that term in section 69B of the Employment Relations Act 2000); but
- (b) unless otherwise agreed between the worker and the worker's employer, does not include unpaid leave that is not referred to in **paragraph (a)(v) or (vi)**

DHB means an organisation established as a DHB (District Health Board) by or under section 19 of the New Zealand Public Health and Disability Act 2000

employee means a person who is an employee within the meaning of that term in section 6(1)(a) or (b)(i) of the Employment Relations Act 2000

employer—

- (a) means—
 - (i) a person, trust, or partnership that receives funding from the Ministry of Health, ACC, or a DHB to provide care and support services; and
 - (ii) the person or persons who have the legal authority to make decisions on behalf of an employer to which **subparagraph (i)** applies, if the employer does not itself have separate legal personality; and
 - (iii) a person, trust, or partnership that provides care and support services on behalf of an employer to which **subparagraph (i)** applies as a subsidiary or a subcontractor; and
 - (iv) Canterbury DHB, Hutt DHB, Nelson Marlborough DHB, Waikato DHB, Wairarapa DHB, and West Coast DHB (each established by section 19 of the New Zealand Public Health and Disability Act 2000); but

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- (b) does not include a natural person who receives funding directly from the Ministry of Health, ACC, or a DHB towards the cost of care and support services for the person or a family member of the person (for example, under a family care policy within the meaning of that term in section 70B of the New Zealand Public Health and Disability Act 2000)

funder means the Ministry of Health, a DHB, or ACC

funding agreement means,—

- (a) in relation to funding agreements to which the Ministry of Health or a DHB is a party, an agreement between a funder and an employer for the employer to provide care and support services in exchange for payments from the funder; and
- (b) in relation to funding agreements to which ACC is a party, an agreement between ACC and an employer that is titled—
- (i) Home and Community Support Services; or
 - (ii) Individual Residential Support Services; or
 - (iii) Residential Support Services

level 2 qualification means—

- (a) a level 2 New Zealand Certificate in Health and Wellbeing issued by NZQA; or
- (b) a qualification (whether from New Zealand or overseas) that is recognised by the relevant industry training organisation (within the meaning of that term in section 2 of the Industry Training and Apprenticeships Act 1992) as being equivalent to the qualification described in **paragraph (a)**; ~~or~~
- (e) ~~an overseas qualification that is equivalent to a qualification described in **paragraph (a) or (b)**~~

level 3 qualification means—

- (a) a level 3 New Zealand Certificate in Health and Wellbeing issued by NZQA; or
- (b) a qualification (whether from New Zealand or overseas) that is recognised by the relevant industry training organisation (within the meaning of that term in section 2 of the Industry Training and Apprenticeships Act 1992) as being equivalent to the qualification described in **paragraph (a)**; ~~or~~
- (e) ~~an overseas qualification that is equivalent to a qualification described in **paragraph (a) or (b)**~~

level 4 qualification means—

- (a) a level 4 New Zealand Certificate in Health and Wellbeing issued by NZQA; or

- (b) a qualification (whether from New Zealand or overseas) that is recognised by the relevant industry training organisation (within the meaning of that term in section 2 of the Industry Training and Apprenticeships Act 1992) as being equivalent to the qualification described in **paragraph (a)**; ~~or~~
- (e) ~~an overseas qualification that is equivalent to a qualification described in~~ **paragraph (a) or (b)**

Ministry of Health means the department of the Public Service referred to by that name

NZQA means the New Zealand Qualifications Authority established under Part 20 of the Education Act 1989

ordinary hourly wage, in relation to a care and support worker,—

- (a) means the worker's wage for an hour's work in the worker's substantive position; and
- (b) does not include any other amounts paid, including an amount paid for working overtime, for working at night or on a weekend, or for acting in a position for which there is a higher hourly wage.

5 Transitional, savings, and related provisions

The transitional, savings, and related provisions (if any) set out in **Schedule 1** have effect according to their terms.

6 Act binds the Crown

This Act binds the Crown.

Part 2

Care and support worker entitlements and employer obligations

Extinguishing and barring claims under Equal Pay Act 1972 by care and support workers

7 Existing claims extinguished and potential claims barred

- (1) This section applies to—
 - (a) any claim by or on behalf of a care and support worker under the Equal Pay Act 1972 relating to the provision of care and support services that was lodged but not determined before the commencement of this Act; and
 - (b) any potential claim by or on behalf of a care and support worker under the Equal Pay Act 1972 relating to the provision of care and support services during the period starting on 1 July 2011 and ending on 30 June 2022 (or any part of that period).

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- (2) The claim or potential claim cannot be pursued and must be treated as if it had been withdrawn or is incapable of being lodged.
- (3) To avoid doubt, this section does not affect—
- (a) any claim or potential claim under the Equal Pay Act 1972 relating to the provision of care and support services after 30 June 2022; or
 - (b) any claim or potential claim under the Equal Pay Act 1972 that does not relate to the provision of care and support services.

Wage rates

8 Minimum hourly wage rates

- (1) An employer must pay a care and support worker no less than the greater of—
- (a) the applicable hourly wage set out in **Schedule 2**; and
 - (b) the ordinary hourly wage that the employer was required to pay the worker under the terms ~~of~~ and conditions of employment in place between the employer and the worker immediately before the commencement of this Act.
- (2) This section does not apply in respect of—
- (a) time spent by the worker in providing excluded services; or
 - (b) time spent by the worker in travel between clients within the meaning of that term in section 4 of the Home and Community Support (Payment for Travel Between Clients) Settlement Act 2016; or
 - (c) a period of time spent by a worker overnight during which the worker, under the terms of the worker’s employment agreement, is—
 - (i) required to be at the worker’s workplace; and
 - (ii) allowed to sleep at the workplace while on duty; and
 - (iii) required to be available to attend to the worker’s duties during the course of the night as necessary.
- (3) In this section,—
- excluded services** means—
- (a) mental health services; and
 - (b) services for which the employer receives funding from a funder other than funding under a funding agreement or under **clause 18**; and
 - (c) services for which the employer receives funding from the Ministry of Social Development or the Ministry for Vulnerable Children, Oranga Tamariki

Ministry of Social Development means the department of the Public Service referred to by that name

Ministry for Vulnerable Children, Oranga Tamariki means the department of the Public Service referred to by that name

workplace has the same meaning as in section 5 of the Employment Relations Act 2000.

9 Weekend and night penal rates

- (1) This section applies to a term or condition of an employment agreement that—
 - (a) was agreed before the commencement of this Act; and
 - (b) requires an employer to pay a care and support worker an allowance, based on the worker's hourly wage, for working on a Saturday or a Sunday, or after 5 pm on any day.
- (2) For work to which **section 8** applies performed on or after the commencement of this Act, the term or condition must be read as requiring the employer to pay the allowance at the same dollar value, per hour, as would be required to be paid based on the worker's ordinary hourly wage immediately before the commencement of this Act.

Example

Before the commencement of this Act, Alice is a care and support worker whose employment agreement provides that her wage is \$18 an hour and that she will be paid an extra 50% of her hourly wage for work she performs on a Sunday (an additional \$9 an hour).

On and from the commencement of this Act, Alice's wage is \$21 an hour. Alice's employer must pay Alice an allowance of \$9 an hour for work she performs on a Sunday. This is the same dollar value as the allowance Alice was entitled to before the commencement of this Act, rather than 50% of Alice's new hourly wage rate.

10 Previous agreements that require allowances for service or qualifications unenforceable

- (1) This section applies to a term or condition of an employment agreement that—
 - (a) was agreed before the commencement of this Act; and
 - (b) requires an employer to pay a care and support worker an allowance to recognise the worker's length of service or level of qualifications.
- (2) To the extent that the term or condition applies to work to which **section 8** applies, the ~~The~~ term or condition has no effect and is not enforceable.

Support for training

11 Employers must ensure care and support workers are able to gain qualifications

- (1) An employer must take all ~~reasonable~~ reasonably practicable steps to ensure that a care and support worker is able to attain—

- (a) a level 2 qualification within the first 12 months of the worker’s continuous employment with the employer; and
 - (b) a level 3 qualification within the first 36 months of the worker’s continuous employment with the employer; and
 - (c) a level 4 qualification within the first 72 months of the worker’s continuous employment with the employer.
- (2) If a care and support worker is not able to attain a qualification within the time required by **subsection (1)**, the employer must take all ~~reasonable~~ reasonably practicable steps to ensure that the worker is able to attain the qualification as soon as is reasonably practicable.

Enforcement

12 Compliance dispute is employment relationship problem

A dispute about whether an employer is complying, or has complied, with this Act—

- (a) is an employment relationship problem within the meaning of that term in section 5 of the Employment Relations Act 2000; and
- (b) must be resolved in accordance with that Act.

13 Care and support worker may recover unpaid or underpaid wages

An employer’s failure to pay a care and support worker an amount required by this Act, either in whole or in part, constitutes payment of wages or other money at a rate lower than that legally payable for the purposes of section 131 of the Employment Relations Act 2000.

14 Failure to comply with training obligations constitutes grounds for personal grievance

An employer’s failure to comply with **section 11** constitutes grounds for a personal grievance under section 103(1)(b) of the Employment Relations Act 2000.

Relationship between this Act and employment agreements

15 This Act overrides terms and conditions of employment agreements

- (1) An employment agreement that contains a term or condition that excludes, restricts, or reduces a care and support worker’s entitlements under this Act—
- (a) has no effect to the extent that it does so, regardless of whether the term or condition was agreed before or after the commencement of this Act; but
 - (b) is not an illegal contract under the Illegal Contracts Act 1970 or the Contract and Commercial Law Act 2017.

- (2) Each employment agreement between an employer and a care and support worker that was agreed before the commencement of this Act is deemed to be varied in accordance with **sections 8 to 11**.

16 Employer and care and support worker may negotiate more favourable terms and conditions

Nothing in this Act prevents an employer and a care and support worker from agreeing to a term or condition in an employment agreement that requires the employer to—

- (a) pay the worker more than is required under this Act; or
- (b) provide more support for the worker to gain a qualification than is required by this Act.

Part 3

Funding of employers and miscellaneous provisions

Subpart 1—Funding of employers

17 Interpretation

In this Part, unless the context otherwise requires,—

funder means the Ministry of Health, a DHB, or ACC

funding agreement means,—

- (a) ~~in relation to funding agreements to which the Ministry of Health or a DHB is a party, an agreement between a funder and an employer for the employer to provide care and support services in exchange for payments from the funder; and~~
- (b) ~~in relation to funding agreements to which ACC is a party, an agreement between ACC and an employer that is titled—~~
 - (i) Home and Community Support Services; or
 - (ii) Individual Residential Support Services; or
 - (iii) Residential Support Services.

18 Funding amounts increased

- (1) A funder must pay an employer with whom the funder has a funding agreement additional amounts over and above the amounts required by the funding agreement towards offsetting the additional costs faced by the employer as a result of this Act.
- (2) The funder must determine the additional amounts, taking into account—
 - (a) the increased wage costs faced by the employer as a result of this Act; and

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- (b) the increased training costs faced by the employer as a result of this Act; and
- (c) any other matter that the funder considers appropriate.
- (3) The funder’s determination of the additional amounts is final.
- (4) This section applies only in respect of funding agreements entered into before the commencement of this Act.

19 Records to support additional funding

- (1) An employer must keep a record, for each care and support worker employed by the employer, of—
 - (a) the qualifications, if any, held by the worker; and
 - (b) the length of time that the worker has been continuously employed by the employer.
- (2) An employer must, on the request of a funder with whom the employer has a funding agreement, provide to the funder—
 - (a) the records kept under **subsection (1)**; and
 - (b) the wages and time record kept by the employer for each care and support worker under section 130 of the Employment Relations Act 2000.
- (3) An employer who fails to comply with **subsection (1) or (2)(a)** is liable to a penalty imposed by the Employment Relations Authority under the Employment Relations Act 2000.

Subpart 2—Consequential amendments and repeal of this Act

20 Amendments to Employment Relations Act 2000

- (1) This section amends the Employment Relations Act 2000.
- (2) In section 148A(3), replace “or the Home and Community Support (Payment for Travel Between Clients) Settlement Act 2016” with “the Home and Community Support (Payment for Travel Between Clients) Settlement Act 2016, or the Care and Support Worker (Pay Equity) Settlement Act **2017**”.
- (3) After section 161(1)(m)(ii), insert:
 - (iia) under the Care and Support Worker (Pay Equity) Settlement Act **2017**:
- (4) After section 223(1)(a), insert:
 - (ab) the Care and Support Worker (Pay Equity) Settlement Act **2017**; and
- (5) After section 236(4)(b), insert:
 - (ba) the Care and Support Worker (Pay Equity) Settlement Act **2017**:

21 Repeal of this Act

- (1) **Sections 8 to 20 and Schedule 2** are repealed on 1 July 2022.

- (2) The remainder of this Act is repealed on 1 July 2028.

**Schedule 1
Transitional, savings, and related provisions**

s 5

**Part 1
Provisions relating to this Act as enacted**

There are no transitional, savings, or related provisions relating to this Act as enacted.

Schedule 2

Minimum hourly wages

s 8

1 Hourly wage rates for workers employed before 1 July 2017

- (1) The hourly wage for a care and support worker who is employed by an employer immediately before 1 July 2017 is the greater of the worker’s hourly wage under **clause 2** and the applicable amount in the following table:

Worker’s length of service with employer	1 July 2017 to 30 June 2018	1 July 2018 to 30 June 2019	1 July 2019 to 30 June 2021	1 July 2021 to 30 June 2022
Less than 3 years	\$19.00	\$19.80	\$20.50	\$21.50
3 years or more but less than 8 years	\$20.00	\$21.00	\$21.50	\$23.00
8 years or more but less than 12 years	\$21.00	\$22.50	\$23.00	\$25.00
12 years or more, if subclause (2) applies	\$22.50	\$23.50	\$24.50	\$26.00
12 years or more, if subclause (2) does not apply	\$23.50	\$24.50	\$25.50	\$27.00

- (2) This subclause applies to a care and support worker if—
- (a) the worker commenced employment with the employer on or after 1 July 2005; and
 - (b) the worker has not attained a level 4 qualification; and
 - (c) the worker’s employer has provided the support necessary for the worker to attain a level 4 qualification.
- (3) In this clause, a care and support worker’s **length of service** is the length of time that the worker has been continuously employed by the worker’s current employer (but, if **paragraph (a)(vii)** of the definition of continuous employment in **section 4** applies, includes the length of time that the worker was continuously employed by the worker’s previous employer).

2 Hourly wages rates for workers employed on or after 1 July 2017

The hourly wage for a care and support worker who commences employment with an employer on or after 1 July 2017 is the applicable amount in the following table:

Worker's level of qualification	1 July 2017 to 30 June 2018	1 July 2018 to 30 June 2019	1 July 2019 to 30 June 2021	1 July 2021 to 30 June 2022
No relevant qualification	\$19.00	\$19.80	\$20.50	\$21.50
Level 2 qualification	\$20.00	\$21.00	\$21.50	\$23.00
Level 3 qualification	\$21.00	\$22.50	\$23.00	\$25.00
Level 4 qualification	\$23.50	\$24.50	\$25.50	\$27.00

3 Adjustment for year ending 30 June 2022

- (1) This clause applies if the compound annual growth rate for the Labour Cost Index for the period starting on 1 July 2017 and ending on 30 June 2021 is more than 1.7%, in which case the result of the following formula will be greater than 0.017:

$$(a \div b)^{0.25} - 1$$

where—

- a is the Labour Cost Index at ~~31~~30 June 2021
 b is the Labour Cost Index at ~~31~~30 June 2017.

- (2) If this clause applies, the hourly wage for a care and support worker for the period beginning on 1 July 2021 and ending on 30 June 2022 is calculated as follows:

$$a \times (((b - c) \div c) + 1)$$

where—

- a is the worker's hourly wage under **clause 1 or 2**
 b is the Labour Cost Index at ~~31~~30 June 2021
 c is the Labour Cost Index at ~~31~~30 June 2017.

- (3) In this clause, **Labour Cost Index** means the Labour Cost Index (all sectors, salary and wage rates, including overtime) published by Statistics New Zealand.