



Support Workers (Pay Equity) Settlements Amendment Act 2020

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Commencement see section 2

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Schedule

10

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Support Workers (Pay Equity) Settlements Amendment Act 2020.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Act that was previously called the Care and Support Workers (Pay Equity) Settlement Act 2017 (the **principal Act**).

Part 1

Amendments to Care and Support Workers (Pay Equity) Settlement Act 2017

4 Title of principal Act changed

In section 1, replace “Care and Support Workers (Pay Equity) Settlement Act 2017” with “Support Workers (Pay Equity) Settlements Act 2017”.

5 Section 3 amended (Purpose)

- (1) In section 3(1)(a), replace “agreement” with “agreements”.
- (2) In section 3(1)(b),—
 - (a) replace “that agreement” with “those agreements”; and
 - (b) delete “care and”; and
 - (c) replace “the agreement” with “the agreements”.

- (3) Replace section 3(2) with:

- (2) The settlement agreements are—
 - (a) the agreement in respect of care and support workers 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; and
 - (b) the agreement in respect of vocational and disability support workers signed on 17 July 2017 by or on behalf of the Crown, E tū Incorporated, the New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi Incorporated, and the New Zealand Council of Trade Unions Te Kauae Kaimahi Incorporated; and
 - (c) the agreement in respect of mental health and addiction support workers signed on 25 July 2018 by or on behalf of the Crown, the 20 DHBs, Platform Charitable Trust, E tū Incorporated, the New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi Incorporated, and the New Zealand Council of Trade Unions Te Kauae Kaimahi Incorporated.

6 Section 4 amended (Overview)

- (1) In section 4, delete “care and” in each place.
- (2) In section 4(d), replace “Ministry of Health, DHBs, and ACC” with “funders”.

7 Section 5 amended (Interpretation)

- (1) In section 5, definition of **care and support services**,—
 - (a) in paragraph (a)(i), replace “funded” with “that are funded by the Ministry of Health, a DHB, or ACC”:
 - (b) replace paragraph (a)(i)(C) with:
 - (C) in respect of a person with an injury covered by the Accident Compensation Act 2001, supporting the person’s rehabilitation from the injury or supporting them to achieve and sustain their maximum level of participation in everyday life; and
 - (c) replace paragraph (b) with:

(b) does not include mental health and addiction support services, vocational and disability support services, or services provided by a health practitioner

(2) In section 5, definition of **continuous employment**, delete “care and”.

(3) In section 5, insert in their appropriate alphabetical order:

Department of Corrections means the department of the public service referred to by that name

health practitioner has the same meaning as in section 5(1) of the Health Practitioners Competence Assurance Act 2003

mental health and addiction support services—

(a) means services that are funded under a funding agreement and that are provided to—

(i) a person who has a mental health need or an addiction need for the purpose of assisting them to—

(A) continue to live in their home or in the community (such as personal care and household management services); or

(B) work or volunteer in the community; or

(C) participate in activities in, and contribute to, their community; or

(D) learn new skills to manage their lives and achieve overall well-being; or

(E) maintain and develop social and support networks; or

(ii) a person with a mental injury covered by the Accident Compensation Act 2001 for the purpose of—

(A) supporting their rehabilitation from the injury; or

(B) supporting them to achieve and sustain their maximum level of participation in everyday life; but

(b) does not include—

(i) care and support services; or

(ii) vocational and disability support services; or

(iii) services provided by a health practitioner; or

(iv) services provided at a location other than the following:

(A) the person’s home (including a residential care facility, a retirement village, and a rest home);

(B) the person’s workplace;

(C) an employer facility;

(D) a community facility

mental health and addiction support worker—

- (a) means a person—
 - (i) who is an employee of an employer; and
 - (ii) whose work for that employer primarily involves providing support services; and
 - (iii) who, of the support services that the person provides, primarily provides mental health and addiction support services; and
- (b) for the purposes of Part 2 of Schedule 1, includes a person—
 - (i) who was previously an employee of an employer; and
 - (ii) whose work for that employer primarily involved providing support services; and
 - (iii) who, of the support services that the person provided, primarily provided mental health and addiction support services

Ministry of Social Development means the department of the public service referred to by that name

Oranga Tamariki—Ministry for Children means the department of the public service referred to by that name

relevant date,—

- (a) in relation to a care and support worker, means 1 July 2017; and
- (b) in relation to all other support workers, means the date on which the Support Workers (Pay Equity) Settlements Amendment Act 2020 comes into force

support services means care and support services, mental health and addiction support services, or vocational and disability support services

support worker—

- (a) means an employee of an employer whose work for that employer primarily involves providing support services; and
- (b) for the purposes of section 8 and Part 2 of Schedule 1, includes a person who was previously an employee of an employer and whose work for that employer primarily involved providing support services

vocational and disability support services—

- (a) means services that are funded by the Ministry of Social Development or Oranga Tamariki—Ministry for Children under a funding agreement that are provided to a person with a disability for the purposes of assisting them to—
 - (i) continue to live in their home or in the community (such as personal care and household management services); or
 - (ii) work or volunteer in the community; or

- (iii) participate in activities in, and contribute to, their community; or
- (iv) learn new skills to manage their lives and achieve overall well-being; or
- (v) maintain and develop social and support networks; but
- (b) does not include care and support services, mental health and addiction support services, or services provided by a health practitioner

vocational and disability support worker—

- (a) means a person—
 - (i) who is an employee of an employer; and
 - (ii) whose work for that employer primarily involves providing support services; and
 - (iii) who, of the support services that the person provides, primarily provides vocational and disability support services; and
 - (b) for the purposes of Part 2 of Schedule 1, includes a person—
 - (i) who was previously an employee of an employer; and
 - (ii) whose work for that employer primarily involved providing support services; and
 - (iii) who, of the support services that the person provided, primarily provided vocational and disability support services.
- (4) In section 5, definition of **employer**,—
- (a) replace paragraph (a)(i) with:
 - (i) a person, trust, or partnership that receives funding from a funder to provide support services; and
 - (b) in paragraph (a)(iii), delete “care and”.
- (5) In section 5, replace the definition of **funder** with:
- funder** means the Department of Corrections, the Ministry of Health, the Ministry of Social Development, Oranga Tamariki—Ministry for Children, a DHB, or ACC
- (6) In section 5, definition of **funding agreement**, paragraph (a),—
- (a) replace “the Ministry of Health or a DHB” with “a funder other than ACC”;
 - (b) replace “between a funder” with “between the funder”;
 - (c) delete “care and”.
- (7) In section 5, definition of **ordinary hourly wage**, delete “care and”.

8 Part 2 heading amended

In the Part 2 heading, replace “Care and support” with “Support”.

9 Cross-heading above section 8 amended

In the cross-heading above section 8, delete “*care and*”.

10 Section 8 amended (Existing claims extinguished and potential claims barred)

(1) Replace section 8(1)(a) with:

(a) any claim by or on behalf of a support worker under the Equal Pay Act 1972 relating to the provision of support services that was lodged but not determined before the relevant date; and

(2) In section 8(1)(b) and (3)(a) and (b), delete “care and” in each place.

11 Section 9 amended (Minimum hourly wage rates)

(1) In section 9(1), delete “care and”.

(2) In section 9(1)(b), replace “commencement of this Act” with “relevant date”.

(3) In section 9(3), definition of **excluded services**, repeal paragraphs (a) and (c).

(4) In section 9(3), repeal the definitions of **Ministry for Vulnerable Children**, **Oranga Tamariki** and **Ministry of Social Development**.

12 New section 9A inserted (Minimum hourly wage rates for mental health and addiction support services provided to individual clients)

After section 9, insert:

9A Minimum hourly wage rates for mental health and addiction support services provided to individual clients

(1) This section applies to a person (an **individually funded client**) who—

- (a) receives funding directly from a funder towards the cost of mental health and addiction support services for that person; and
- (b) employs a person (a **worker**) to provide the services.

(2) The individually funded client must pay the worker, for the provision of the services, no less than the greater of—

- (a) the applicable hourly wage set out in Schedule 2; and
- (b) the ordinary hourly wage that the client was required to pay the worker under the terms and conditions of employment in place between the client and the worker immediately before the commencement of the Support Workers (Pay Equity) Settlements Amendment Act 2020.

(3) This section does not apply if the funding received by the individually funded client is paid under a family care policy within the meaning of that term in section 70B(1) of the New Zealand Public Health and Disability Act 2000.

(4) This section does not apply in respect of a period of time spent by a worker overnight during which the worker, under the terms of the worker’s employment agreement, is—

- (a) required to be at the worker's workplace; and
- (b) allowed to sleep at the workplace while on duty; and
- (c) required to be available to attend to the worker's duties during the course of the night as necessary.

13 Section 10 amended (Weekend and night penal rates)

- (1) In section 10(1)(a) and (2), replace "commencement of this Act" with "relevant date" in each place.
- (2) In section 10(1)(b), delete "care and".

14 Section 11 amended (Previous agreements that require allowances for service or qualifications unenforceable)

- (1) In section 11(1)(a), replace "commencement of this Act" with "relevant date".
- (2) In section 11(1)(b), delete "care and".

15 Section 12 amended (Employers must ensure care and support workers are able to gain qualifications)

- (1) In the heading to section 12, delete "care and".
- (2) In section 12(1) and (2), delete "care and".

16 Section 14 amended (Care and support worker may recover unpaid or underpaid wages)

- (1) In the heading to section 14, replace "Care and support" with "Support".
- (2) In section 14, delete "care and".

17 Section 16 amended (This Act overrides terms and conditions of employment agreements)

- (1) In section 16(1) and (2), delete "care and".
- (2) In section 16(1)(a) and (2), replace "commencement of this Act" with "relevant date".

18 Section 17 amended (Employer and care and support worker may negotiate more favourable terms and conditions)

- (1) In the heading to section 17, delete "care and".
- (2) In section 17, delete "care and".

19 Section 18 amended (Funding amounts increased)

Replace section 18(4) with:

- (4) This section applies only in respect of funding agreements entered into before,—

- (a) in relation to care and support services and vocational and disability support services, 1 July 2017; and
- (b) in relation to mental health and addiction support services, 1 July 2018.

20 Section 19 amended (Records to support additional funding)

In section 19(1) and (2)(b), delete “care and”.

21 Schedule 1 amended

In Schedule 1, after Part 1, insert the Part 2 set out in the Schedule of this Act.

22 Schedule 2 amended

- (1) In Schedule 2, delete “care and” in each place.
- (2) In Schedule 2, clause 3(2), replace the formula with:

$$a \times (((b \div c) - 1.017^4) + 1)$$

Part 2**Consequential amendments to other Acts****23 Amendments to Employment Relations Act 2000**

- (1) This section amends the Employment Relations Act 2000.
- (2) In the following provisions, replace “Care and Support Workers (Pay Equity) Settlement Act 2017” with “Support Workers (Pay Equity) Settlements Act 2017”:

 - (a) section 148A(3); and
 - (b) section 161(1)(m)(ia); and
 - (c) section 223(1)(ab); and
 - (d) section 236(4)(ba).

24 Amendment to Equal Pay Amendment Act 2020

- (1) This section amends the Equal Pay Amendment Act 2020.
- (2) In Schedule 1, new Schedule 1, Part 1, clause 5(b), replace “Care and Support Workers (Pay Equity) Settlement Act 2017” with “Support Workers (Pay Equity) Settlements Act 2017”.

Schedule
New Part 2 inserted into Schedule 1

s 21

Part 2
**Provisions relating to Support Workers (Pay Equity) Settlements
Amendment Act 2020**

1 References to previous Title

Every reference in any enactment and in any document to the Care and Support Workers (Pay Equity) Settlement Act 2017 must, unless the context provides otherwise, be read as a reference to the Support Workers (Pay Equity) Settlements Act 2017.

2 Employers to pay back pay

(1) This clause applies if—

- (a) a support worker other than a care and support worker provided support services during the applicable period; and
- (b) the worker's employer paid the worker for those services at a rate that is less than the rate that the employer would have been required to pay if the Support Workers (Pay Equity) Settlements Amendment Act 2020 had applied in respect of the worker during the applicable period.

(2) The employer must, on the commencement of the Support Workers (Pay Equity) Settlements Amendment Act 2020, pay the worker an amount calculated as follows:

$$a - b$$

where—

- a is the amount that the employer would have been required to pay the worker for the provision of support services if the Support Workers (Pay Equity) Settlements Amendment Act 2020 had applied in respect of the worker during the applicable period
 - b is the amount that the employer actually paid the worker for the provision of support services during the applicable period.
- (3) The calculation must take into account all applicable entitlements and deductions required by law, those specified in the worker's employment agreement, and any other term or condition otherwise agreed to between the worker and their employer.
- (4) In this clause, **applicable period** means the period starting on 1 July 2017 and ending on the day before the date on which the Support Workers (Pay Equity) Settlements Amendment Act 2020 comes into force.

3 Individually funded clients to pay back pay for mental health and addiction support services

- (1) This clause applies if—
- (a) a person (an **individually funded client**) received funding directly from a funder towards the cost of mental health and addiction support services for that person during the applicable period; and
 - (b) the individually funded client employed a person (a **worker**) to provide the services; and
 - (c) the individually funded client paid the worker for those services at a rate that is less than the rate that the client would have been required to pay if the Support Workers (Pay Equity) Settlements Amendment Act 2020 had applied in respect of the worker during the applicable period.

- (2) The individually funded client must, on the commencement of the Support Workers (Pay Equity) Settlements Amendment Act 2020, pay the worker an amount calculated as follows:

$$a - b$$

where—

- a is the amount that the individually funded client would have been required to pay the worker for the provision of the services if the Support Workers (Pay Equity) Settlements Amendment Act 2020 had applied in respect of the worker during the applicable period
 - b is the amount that the individually funded client actually paid the worker for the provision of the services during the applicable period.
- (3) The calculation must take into account all applicable entitlements and deductions required by law, those specified in the worker's employment agreement, and any other term or condition otherwise agreed to between the worker and the individually funded client.
- (4) In this clause, **applicable period** means the period starting on 1 July 2017 and ending on the day before the date on which the Support Workers (Pay Equity) Settlements Amendment Act 2020 comes into force.

4 Continuous employment for mental health and addiction support workers

- (1) This clause applies to a mental health and addiction support worker who was employed by an employer—
- (a) immediately before and on 1 July 2017; and
 - (b) on 1 July 2018.
- (2) For the purpose of clause 1 of Schedule 2 of this Act, the worker's length of service includes the time, during the period beginning on 1 July 2017 and ending on 30 June 2018, that the worker was—
- (a) employed by any employer and was providing support services; or

- (b) employed by any employer but was not providing support services; or
- (c) employed outside of the support services sector.

Legislative history

15 May 2019	Introduction (Bill 137–1)
29 May 2019	First reading and referral to Health Committee
1 October 2019	Reported from Health Committee (Bill 137–2)
21 July 2020	Second reading
22 July 2020	Committee of the whole House, third reading
6 August 2020	Royal assent

This Act is administered by the Ministry of Health.