

MSD and MVCOT (Care and Support Workers Pay Equity) Settlement Agreement

Parties¹

**Her Majesty the Queen in right of New Zealand,
acting by and through the Chief Executive of the
Ministry of Social Development**

(as funder of Employers)

**Her Majesty the Queen in right of New Zealand,
acting by and through the Chief Executive of the
Ministry for Vulnerable Children, Oranga Tamariki**

(as funder of Employers)

Employee Representatives –

**E tū Incorporated, and New Zealand Public Service
Association Te Pūkenga Here Tikanga Mahi
Incorporated**

(representing Employees)

Association –

**New Zealand Council of Trade Unions Te Kauae
Kaimahi Incorporated**

(interested party)

¹ The Parties acknowledge that while Employers have been represented in negotiations of the Settlement, they are not party to this Settlement Agreement. The employer representatives were New Zealand Disability Support Network Incorporated, and Inclusive NZ, Incorporated.

Background

- (a) In June 2015, Cabinet² 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

- (b) On 12 April 2017, a settlement was reached between Her Majesty the Queen in right of New Zealand, acting by and through the Director-General of Health, the Accident Compensation Corporation, District Health Boards, E tū Incorporated, the New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi Incorporated, and the New Zealand Nurses Organisation Incorporated (Settlement A);
- (c) On 18 April 2017, Cabinet³ approved Settlement A;
- (d) On 8 May 2017 a Settlement Agreement was signed, which recorded the main terms of Settlement A;
- (e) The Settlement Agreement for Settlement A contained the following provision:

“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.”

- (f) On 14 June 2017 the Care and Support Workers (Pay Equity) Settlement Act was enacted, which supported the terms of Settlement A;
- (g) Section 9 of the Care and Support Workers (Pay Equity) Settlement Act included, within the definition of “excluded services”, the following:

“services for which the employer receives funding from the Ministry of Social Development or the Ministry for Vulnerable Children, Oranga Tamariki”

- (h) In-principle agreement has been reached with the Employee Representatives on terms consistent with the terms of Settlement A applying to a settlement between MSD and MVCOT and the Employee Representatives as set out in the *Agreed Position of the Parties* (Settlement B);
- (i) On 10 July 2017, Cabinet approved the in-principle terms of agreement for Settlement B, and approved the parties negotiating detailed parameters;

² CAB Min (15) 18/8

³ CAB-17-MIN-0179; CAB -17-SUB-0179; SEC-17-MIN-0024; SEC-17-SUB-0024

- (j) On 13 July 2017, final terms of Settlement B was reached with Employee Representatives;
- (k) The Minister of Finance, Minister of Social Development, and Minister for Children have approved Settlement B;
- (l) This Settlement Agreement records the terms of Settlement B.

Purpose

1. The purpose of this Settlement Agreement is to:

- (a) address historical pay equity issues, for Crown funded 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 applying relevant pay equity principles,⁴ determining agreed Pay Rates and related conditions for recognition of experience and a qualification pathway to a more qualified workforce;
- (c) remove the rights 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;⁵
- (d) provide certainty for all the Parties (and all Employees) that this Settlement Agreement is in full and final settlement of all matters related to pay equity claims filed by Employees with the Employment Relations Authority or Employment Court:

in respect of the period before the Commencement Date, and from the Commencement Date to 30 June 2022.

Title

2. This is the MSD and MVCOT (Care and Support Workers Pay Equity) Settlement Agreement.

Commencement and expiry

3. This Settlement Agreement:

- (a) is effective from the Commencement Date; and
- (b) expires on 30 June 2022.⁶

⁴ *Principles for the Implementation of Equal Pay* - <http://www.ssc.govt.nz/sites/all/files/pay-equity-jwg-recommendations.pdf>

⁵ For the period 1 July 2017 to 30 June 2022

Obligation of Crown

4. Subject to the agreement of Crown Funded Employers, the Crown must vary the Funding Agreements, to the extent necessary to give effect to the Settlement recorded in the *Agreed Position of the Parties*, including enabling the Crown to:
 - (a) require Employers to provide employee information;⁷ and
 - (b) conduct audits of Employers.⁸
5. For the avoidance of doubt, the Crown's variation to the Funding Agreements will impose an obligation on Crown Funded Employer requiring the terms of this settlement agreement to be applied to all employees of an Employer whose work for that employer primarily involves providing Services.

Limitation of claims by Employees

6. Subject to the Crown and Crown Funded Employers agreeing to vary the Funding Agreements as set out in clause 4, Employees shall not bring any pay equity claims against Crown Funded Employers:
 - (a) in respect of the period before the Commencement Date; or
 - (b) in respect of the period from the Commencement Date to 30 June 2022.⁹

Full and final settlement

7. This Settlement Agreement is in full and final settlement of all matters related to the Settlement for the period ending on 30 June 2022.

Good faith

8. The Parties will deal with each other in good faith¹⁰ on all matters under, or associated with, this Settlement Agreement.

⁷ The purpose of the reporting requirement is to capture relevant and actual Employee information for the payment of accurate Funding; the purpose is also to enable monitoring of changes to the workforce

⁸ 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; audits can be random, targeted, or responding to a complaint

⁹ 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; 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)

Ratification by members

9. 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 21 July 2017, it is deemed to have occurred from that date.¹¹

Settlement Agreement applies to all Employees

10. This Settlement Agreement applies to all care and support workers who are Employees, who are represented by the Employee Representatives.

No disputes

11. No Party may raise a dispute¹² against any other Party in relation to the matters covered by this Settlement Agreement.

Employers may not enforce certain obligations of Settlement Agreement

12. For the purpose of section 4 of the Contracts (Privity) Act 1982, clause 6 of this Settlement Agreement is intended to be for the benefit of Crown Funded Employers and enforceable by them against Employees.
13. Despite the conditions precedent, for the purpose of section 4 of the Contracts (Privity) Act 1982, nothing in this Settlement Agreement is intended to create an obligation on the Crown enforceable at the suit of Crown Funded Employers.¹³

¹⁰ The intent is that good faith has a similar meaning to section 4 of the Employment Relations Act 2000

¹¹ The intent is that from 21 July 2017 the Crown will begin to make offers to vary Funding Contracts

¹² *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 Settlement, and pay equity claims filed by Employees with the Employment relations Authority or Employment Court (as at the Commencement Date), it would therefore be inconsistent to enable disputes to be taken

¹³ 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 the Minister of Finance, Minister of Social Development and Minister for Children do not approve the Settlement), 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 to meet their statutory obligation to pay the Pay 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

Settlement Agreement not to be varied except with Cabinet approval

14. 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

15. This Settlement Agreement:

- (a) is signed by the Parties in 1 original;¹⁴
- (b) must be retained by the Crown;
- (c) must be published by the Crown on its website as soon as reasonably practicable after it is signed by the Parties;
- (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

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

Definitions

Agreed Position of the Parties – means the *Agreed Position of the Parties* as at 13 July 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;¹⁵

Crown – means Her Majesty the Queen in right of New Zealand, acting by and through the Chief Executive of the Ministry of Social Development or the Chief Executive of the Ministry for Vulnerable Children, Oranga Tamariki

Crown Funded Employer – means an entity that receives Funding from the Crown under a Funding Agreement;

¹⁴ There are no counterparts

¹⁵ While the Settlement Agreement will not be in place by that date it is nevertheless intended to apply from that date

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

Employee – means a person

- (a) means an employee of an Employer;
- (b) who is represented by the Employee Representatives; and
- (c) whose work for that employer primarily involves providing Services¹⁶

Employer – means a Crown Funded Employer;

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

Funding Agreements – means the direct funding agreement between the Crown and Crown Funded Employers for, or including, the Services;

MSD – means Her Majesty the Queen in right of New Zealand, acting by and through the Chief Executive of the Ministry of Social Development

MVCOT – means Her Majesty the Queen in right of New Zealand, acting by and through the Chief Executive of the Ministry for Vulnerable Children, Oranga Tamariki

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

Pay Rates – means the minimum rates¹⁷ of pay payable by Employers to Employees and all other matters in the *Agreed Position of the Parties* for the benefit of the Employees;

Services –

- (a) means services¹⁸ performed in a person's home, or home like setting, or residential care facility, or workplace, or provider facility, or community facility, to assist the person with care and support¹⁹ to enable them to continue to live and to participate and/or work in that place, or in their community; or

¹⁶ It 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

¹⁷ 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

¹⁸ The Services will provide individually-tailored support to people to enable them to:

- participate in activities in their communities of interest to them
- contribute to their communities in ways valued by them and their communities
- learn new skills to help them manage their lives and overall well-being, and to participate and work in their communities
- maintain and develop social and support networks.

and are generally known in the disability and support sector as Community Participation, Very High Needs, Transition, Supported Employment, day programmes, day services; this list of Services is not exhaustive.

¹⁹ Such as personal care, household management, other home support, community support, assistance with personal care routines (such as advice about hygiene, appropriate dress, medication), personal job coaching (such as providing systematic task breakdowns, working with the person to ensure the person knows how to get to work, supporting the persons induction into the workplace), coaching people on how to manage anxiety, working with the person to manage personal and family issues, helping the person set up natural supports

(b) does not include:

- (i) other services;²⁰
- (ii) mental health services;
- (iii) private services to a client, by a person whether or not they are performing those services as an Employee;²¹

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) the singular includes the plural, and vice versa;
- (d) footnotes are part of this Settlement Agreement, and are intended to assist in the explanation of a specific matter in the text;
- (e) definitions apply to the footnotes;
- (f) any term not defined has its ordinary meaning, or the meaning in Employment Relations Act 2000, where appropriate and according to the context;
- (g) if any matter arises requiring the interpretation of this Settlement Agreement, the purpose must be taken into account;

²⁰ Behavioural support services, caregiver support, child development services, environmental support, funded family care, business enterprises, supporting employment where the services primarily involve management, supervision, marketing, finance, negotiating/find a job on behalf of a person or people and general job search, finding jobs, networking with employers, negotiating a placement with employers or labour market research

²¹ 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 are not Services within the meaning of this Settlement Agreement

(h) this Settlement Agreement is a contract for the purpose of interpretation; the common law principles of contract interpretation apply.²²

Dated at Wellington

17 July 2017

[insert date last party signs]

Signed:

For and on behalf of **Her Majesty the Queen in right of New Zealand, acting by and through the Chief Executive of the Ministry of Social Development**

by

Brenda Boyle [Signature]
[Name] [Signature]

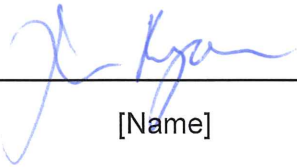
For and on behalf of **Her Majesty the Queen in right of New Zealand, acting by and through the Chief Executive of the Ministry for Vulnerable Children, Oranga Tamariki**

by

GRAINNE U MOSS [Signature]
[Name] [Signature]

²² 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)

On behalf of **E tū Incorporated**



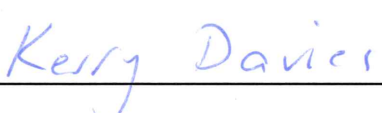
[Name]




[Signature]

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

by




[Name]



[Signature]

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

by



[Name]



[Signature]

Appendix

Agreed Position of the Parties

Care and Support Equal Pay Negotiations Agreed Position of the Parties 13 July 2017

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

Nature of Settlement

2. 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.
3. The parties agree that the settlement will settle all pay equity claims made prior to 1 July 2017 for the employees covered by this settlement.
4. 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

5. For the avoidance of doubt, this settlement covers Employees who are:
 - (i) care and support workers employed in services funded by MSD known as: Community Participation, Transition, Very High Needs; and,
 - (ii) disability care and support workers whose primary role is providing direct care and support to individual disabled persons that are employed in services funded by MSD known as supported employment,
 - (iii) Vocational and Disability support workers employed in services funded by the Ministry for Vulnerable Children, Oranga Tamariki that deliver one or more specialised caregiver services and wraparound services for children and young people with disabilities.

Ratification Process

6. The union proposal for the ratification meetings²³ 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. MSD and MVCOT will support the implementation of the ratification process and in good faith encourage all employers to comply with this process.
7. 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.

Variation to Funding Agreements

8. Subject to the agreement of Crown Funded Employers, the Crown will vary the Funding Agreements (including, for the avoidance of doubt, requiring Crown Funded Employers to vary the terms of employment agreements) to the extent necessary to give effect to the changes outlined below, in the areas of:
 - Support for Training
 - Care and Support Workers, Minimum Pay Rates and the Qualification Path
 - Maintaining Currency of Rates
 - Weekend and Night Penal Rates
 - Extinguishing of Allowances
 - Transition for Existing Care and Support Workers
 - Pay Rate Progression for Existing Care and Support Workers

Support for Training

9. 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.
10. 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

²³ This is a separate document

- Level 4 NZ Certificate – within 6 years of commencement of employment

11. The Government will fund employers for two days wages per employee per year (via on costs) as its contribution to education and training.
12. 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

13. 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

*"Qualifications" are those recognised by NZQA

Maintaining Currency of Rates

14. 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

15. 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.
16. 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

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

Transition for Existing Care and Support Workers

18. 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.
19. 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 service	\$20.00	\$21.00	\$21.50	\$23.00
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

20. 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.

21. 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

22. “Current continuous service” includes service recognised as continuous for the purposes of transferring workers.

