

# Care and Support Worker (Pay Equity) Settlement Bill

Government Bill

## Explanatory note

### General policy statement

This Bill gives effect to elements of the Care and Support Worker (Pay Equity) Settlement Agreement. As part of that settlement, the parties agreed that certain matters would be provided for in legislation. The agreement is publicly available on the Ministry of Health website <http://www.health.govt.nz/new-zealand-health-system/care-and-support-workers-pay-equity-settlement>.

The settlement agreement followed a pay equity claim in the Employment Court that care and support workers were systematically underpaid because the work is predominately performed by women.

Care and support workers provide services, funded by the Ministry of Health, the Accident Compensation Corporation (ACC), and district health boards (DHBs), that help people to continue living in their own homes, and in residential care units once they are no longer able to live at home. They include both aged care and disability support services.

A settlement was agreed between the Crown, Crown agencies, and relevant unions in April 2017. The agreement establishes a matrix of pay rates, linked to qualifications, to be phased in over the 5-year term of the agreement. The parties to the settlement agreed that elements of it would be legislated.

The primary purpose of the settlement is to address historical inequities and achieve pay equity in the care and support sector.

In accordance with the agreement, the Bill provides for—

- care and support workers to receive the agreed pay rates and for training to be facilitated:
- employers to receive additional funding towards offsetting the additional costs imposed by the legislation:

- the terms of the agreement to apply to all care and support workers, regardless of whether they are union members;
- current pay equity claims to be extinguished and future proceedings barred for the term of the agreement.

### **Departmental disclosure statement**

The Ministry of Health is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2017&no=267>

### **Regulatory impact statement**

The Ministry of Health produced a regulatory impact statement on 12 May 2017 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <http://www.health.govt.nz/new-zealand-health-system/care-and-support-workers-pay-equity-settlement>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

### **Clause by clause analysis**

*Clause 1* is the Title clause.

*Clause 2* states that the Bill comes into force on 1 July 2017.

## **Part 1**

### **Preliminary provisions**

*Clause 3* sets out the purposes of the Bill. The Bill implements a settlement agreement reached by the funders of care and support services (the Crown, ACC, and DHBs) and unions representing care and support workers. The Bill also applies the terms of the settlement agreement to employers and to workers who are not members of a union.

*Clause 4* defines terms used in the Bill. Important terms defined in this clause include care and support worker, care and support services, and employer.

*Clause 5* states that any transitional, savings, and related provisions in *Schedule 1* have effect according to their terms. There are no such transitional, savings, or related provisions at the time that the Bill is introduced.

*Clause 6* states that the 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*

*Clause 7* extinguishes claims by care and support workers under the Equal Pay Act 1972 relating to the provision of care and support services and prevents future claims of that nature. This clause prevents claims relating to work performed before 1 July 2022. This reflects the settlement agreement that the Bill implements.

#### *Wage rates*

*Clause 8* requires an employer to pay a care and support worker no less than the greater of the applicable hourly wage set out in *Schedule 2* and the worker's hourly wage before the commencement of the Bill. The wage rates set out in *Schedule 2* are based on the worker's level of qualification and, for workers who commenced employment with the employer before the commencement of the Bill, the worker's length of service with the employer.

*Clause 9* overrides existing terms or conditions of employment agreements that require an employer to pay a care and support worker an allowance based on the worker's hourly wage for working at night or on a weekend. The employer must still pay the allowance, but the allowance will be carried forward at the same dollar amount as was required to be paid immediately before the commencement of the Bill, rather than being adjusted to reflect the worker's new hourly wage.

*Clause 10* overrides existing terms or conditions of employment agreements that require an employer to pay a care and support worker an allowance to recognise the worker's length of service or level of qualifications. The employer is no longer required to pay the allowance.

#### *Support for training*

*Clause 11* requires an employer to take all reasonable steps to ensure that a care and support worker is able to attain qualifications within certain time limits. If it is not possible for the worker to attain the qualification within the time limit (for example, because the worker has been employed by the employer for longer than the time limit when the Bill commences), the employer must take all reasonable steps to ensure that the worker can attain the qualification as soon as is reasonably practicable.

#### *Enforcement*

*Clause 12* provides that a dispute about an employer's compliance with the Bill is an employment relationship problem and must be resolved in accordance with the Employment Relations Act 2000.

*Clause 13* provides that a care and support worker may recover unpaid money under this Bill by an action commenced in the Employment Relations Authority.

*Clause 14* provides that an employer's failure to comply with the obligation to provide support for training is grounds for a personal grievance under the Employment Relations Act 2000.

#### *Relationship between this Act and employment agreements*

*Clause 15* provides that a care and support worker's entitlements under this Bill cannot be contracted out of. The clause also deems existing employment agreements to be varied to include the entitlements created and obligations imposed under *clauses 8 to 11*.

*Clause 16* provides that a care and support worker and an employer may negotiate more favourable terms and conditions relating to wages and support for training. Any such agreement has full effect and is enforceable.

### **Part 3**

#### **Funding of employers and miscellaneous provisions**

##### Subpart 1—Funding of employers

*Clause 17* defines funder and funding agreement, which are terms used in *clauses 18 and 19*.

*Clause 18* requires funders to pay, in addition to what is required under their funding agreements, amounts to employers towards offsetting the additional costs faced by employers as a result of the Bill.

*Clause 19* requires an employer to keep a record, for each care and support worker employed by the employer, of the worker's qualifications and the length of time that the worker has been employed by the employer. The employers must provide those records on request to a funder with whom the employer has a funding agreement. The employer must also provide the wages and time records kept by the employer under section 130 of the Employment Relations Act 2000.

##### Subpart 2—Consequential amendments and repeal of this Act

*Clause 20* makes consequential amendments to the Employment Relations Act 2000.

*Clause 21* repeals *clauses 8 to 20* and *Schedule 2* on 1 July 2022. This is because the settlement agreement that the Bill implements relates to the period starting on 1 July 2017 and ending on 30 June 2022. *Clauses 8 to 20* and *Schedule 2* will therefore not be required after 30 June 2022. The remainder of the Act is repealed 6 years later, on 1 July 2028. This is to ensure that *clause 7* prevents claims by care and support workers under the Equal Pay Act 1972 relating to work performed before 1 July 2022. (Section 142 of the Employment Relations Act 2000 provides a 6-year limitation period for an action, other than a personal grievance, relating to an employment relationship problem.)

*Hon Dr Jonathan Coleman*

# **Care and Support Worker (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 Worker (Pay Equity) Settlement Act **2017**.
- 2 Commencement**  
This Act comes into force on **1 July 2017**. 5

**Part 1**  
**Preliminary provisions**

- 3 Purpose**
- (1) The purposes of this Act are—
- (a) to implement the settlement agreement described in **subsection (3)**; and 10

- (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 5
- (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
- (c) provides for the Ministry of Health, DHBs, and ACC to pay additional funding to employers towards the cost of employers' obligations under this Act. 10
- (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. 15

#### 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 20

**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— 25
- (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 30
- (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 35

**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,— 5
- (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 10 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 15 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 20
- (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)** 25
- 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) of the Employment Relations Act 2000
- employer**— 30
- (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 35



- (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 5
- (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) 10

**level 2 qualification** means—

- (a) a level 2 New Zealand Certificate in Health and Wellbeing issued by NZQA; or 15
- (b) a qualification 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
- (c) an overseas qualification that is equivalent to a qualification described in **paragraph (a) or (b)** 20

**level 3 qualification** means—

- (a) a level 3 New Zealand Certificate in Health and Wellbeing issued by NZQA; or
- (b) a qualification 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 25
- (c) an overseas qualification that is equivalent to a qualification described in **paragraph (a) or (b)** 30

**level 4 qualification** means—

- (a) a level 4 New Zealand Certificate in Health and Wellbeing issued by NZQA; or
- (b) a qualification 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 35
- (c) an overseas qualification that is equivalent to a qualification described in **paragraph (a) or (b)**

	<b>Ministry of Health</b> means the department of the Public Service referred to by that name	
	<b>NZQA</b> means the New Zealand Qualifications Authority established under Part 20 of the Education Act 1989	
	<b>ordinary hourly wage</b> , in relation to a care and support worker,—	5
	(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.	10
<b>5</b>	<b>Transitional, savings, and related provisions</b>	
	The transitional, savings, and related provisions (if any) set out in <b>Schedule 1</b> have effect according to their terms.	
<b>6</b>	<b>Act binds the Crown</b>	
	This Act binds the Crown.	15

## Part 2

### Care and support worker entitlements and employer obligations

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

<b>7</b>	<b>Existing claims extinguished and potential claims barred</b>	20
(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	25
	(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).	
(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.	30

#### *Wage rates*

<b>8</b>	<b>Minimum hourly wage rates</b>	
	An employer must pay a care and support worker no less than the greater of—	
	(a) the applicable hourly wage set out in <b>Schedule 2</b> ; and	35

- (b) the ordinary hourly wage that the employer was required to pay the worker under the terms of conditions of employment in place between the employer and the worker immediately before the commencement of this Act.

- 9 Weekend and night penal rates** 5
- (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. 10
- (2) For work 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.

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**Example** 15

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. 20

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- 10 Previous agreements that require allowances for service or qualifications unenforceable** 25
- (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) The term or condition has no effect and is not enforceable. 30

*Support for training*

- 11 Employers must ensure care and support workers are able to gain qualifications**
- (1) An employer must take all reasonable steps to ensure that a care and support worker is able to attain— 35
- (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 steps to ensure that the worker is able to attain the qualification as soon as is reasonably practicable. 5

### *Enforcement*

## **12 Compliance dispute is employment relationship problem** 10

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. 15

## **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. 20

## **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. 25

### *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 30
  - (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**. 35

- 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— 5
- (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** 10
- 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,— 15
- (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 20
    - (i) Home and Community Support Services; or
    - (ii) Individual Residential Support Services; or
    - (iii) Residential Support Services.
- 18 Funding amounts increased** 25
- (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— 30
    - (a) the increased wage costs faced by the employer as a result of this Act; and
    - (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. 35
  - (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— 5
- (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— 10
- (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. 15

## 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**”. 20
- (3) After section 161(1)(m)(ii), insert: 25
- (ia) under the Care and Support Worker (Pay Equity) Settlement Act **2017**:
- (4) After section 223(1)(a), insert: 10
- (ab) the Care and Support Worker (Pay Equity) Settlement Act **2017**; and
- (5) After section 236(4)(b), insert: 30
- (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**

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

## Schedule 2

### Minimum hourly wages

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#### 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: 5

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 <b>subclause (2)</b> applies	\$22.50	\$23.50	\$24.50	\$26.00
12 years or more, if <b>subclause (2)</b> 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 10
  - (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)(vi)** 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). 15



## 2 Hourly wages 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

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- (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:

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

10

where—

- a is the Labour Cost Index at 31 June 2021  
 b is the Labour Cost Index at 31 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 June 2021  
 c is the Labour Cost Index at 31 June 2017

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- (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.