

Support Workers (Pay Equity) Settlements Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill gives effect to elements of the following settlement agreements:

- the agreement in respect of vocational and disability support workers signed by the Crown and the relevant parties on 17 July 2017. The agreement is available on the Ministry of Social Development and Oranga Tamariki—Ministry for Children websites at—
 - <https://www.msd.govt.nz/documents/what-we-can-do/providers/msd-and-mvcot-care-and-support-workers-pay-equity-settlement-agreement.pdf>
 - <https://www.orangatamariki.govt.nz/assets/Uploads/News/2017/Care-and-Support-Workers-Pay-Equity-Settlement-Agreement-2.pdf>
- the agreement in respect of mental health and addiction support workers, signed by the Crown and the relevant parties on 25 July 2018. The agreement is available on the Ministry of Health website at https://www.health.govt.nz/system/files/documents/pages/mental_health_and_addiction_support_workers_pay_equity_settlement_agreement_2018.pdf

As part of those agreements, the parties agreed that certain matters would be provided for in the Care and Support Workers (Pay Equity) Settlement Act 2017 (the **principal Act**).

The agreements follow a pay equity claim and settlement agreement, known as the TerraNova Settlement, which gave rise to the principal Act. That agreement is available on the Ministry of Health website at <http://www.health.govt.nz/new-zealand-health-system/care-and-support-workers-pay-equity-settlement>

The TerraNova Settlement 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. Thus, the primary purposes of the agreements are to address historical inequities and achieve pay equity in a consistent manner across the support services sector. The agreements establish a matrix of pay rates, linked to qualifications, to be phased in until 30 June 2022.

The principal Act applies to care and support workers who provide care and support services that are funded by the Ministry of Health, District Health Boards, and the Accident Compensation Corporation. The principal Act expressly excludes mental health services and also excludes services that are funded by the Department of Corrections, the Ministry of Social Development, and Oranga Tamariki—Ministry for Children. The exclusion of services funded by the Ministry of Social Development and Oranga Tamariki—Ministry for Children means that the Act also excludes the services provided by vocational and disability support workers.

It was agreed by the parties to the settlement agreements referred to in the first paragraph of this statement that mental health and addiction support workers and vocational and disability support workers form workforces that are analogous to the care and support workers to which the TerraNova Settlement and the principal Act apply. Consequently, those workers should be treated in a manner that is consistent with the terms of the TerraNova Settlement and the principal Act.

In accordance with the agreements, the Bill provides for—

- mental health and addiction support workers and vocational and disability support workers to receive the agreed pay rates, and for training to be facilitated in the same manner as for care and support workers covered by the principal Act:
- mental health and addiction support workers and vocational and disability support workers to be covered by the other provisions of the principal Act, including the enforcement provisions in the case of a dispute or an employer's failure to comply with the requirements of the principal Act:
- employers to receive funding from the Department of Corrections, the Ministry of Social Development, and Oranga Tamariki—Ministry for Children towards offsetting the additional costs imposed by the Bill in respect of those workers:
- the terms of the agreements to apply to all support workers regardless of whether they are union members:
- any current pay equity claims by mental health and addiction support workers and vocational and disability support workers to be extinguished, and future proceedings barred, for the term of the agreements:
- changes to the definition of care and support services, which consist of—
 - specifying the funders for care and support workers as being the Ministry of Health, a DHB, and ACC; and
 - replacing paragraph (a)(i)(C), which is in respect of care and support services provided to a person with an injury covered by the Accident Com-

pensation Act 2001, to clarify that a care and support worker may provide a service that consists of supporting the person's rehabilitation from the injury and may also provide a service that consists of supporting that person to achieve and sustain their maximum level of participation in everyday life, but the worker might not necessarily be providing both of those services. The change in wording also more closely aligns with the structure of the equivalent provision in the new definitions of mental health and addiction support services and vocational and disability support services; and

- in paragraph (b), replacing “mental health services” with “mental health and addiction support services, vocational and disability support services, or services provided by a health practitioner” to add clarity as to what is not covered by the definition of care and support services:
- new definitions of mental health and addiction support services, mental health and addiction support worker, support services, support worker, vocational and disability support services, and vocational and disability support worker:
- the amendment of a formula in Schedule 2 to fix an error that was in the principal Act with respect to the calculation of wages for the period beginning on 1 July 2021 and ending on 20 June 2022:
- transitional provisions to provide that—
 - 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 new Title of the principal Act, the Support Workers (Pay Equity) Settlements Act 2017:
 - employers must pay back pay to support workers, other than care and support workers, who provided support services for the period beginning on 1 July 2017 and ending on the day before the commencement of this Bill, in the amount specified:
 - the length of service for a specified mental health and addiction support worker includes the time, during the period beginning on 1 July 2017 and ending on 30 June 2018, that the worker was employed by any employer and was providing support services; or was employed by any employer but was not providing support services; or was employed outside the support services sector.

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=2019&no=137>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause and provides that the Bill comes into force on the day after the date on which it receives the Royal assent.

Clause 3 states that the Bill amends 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

Clause 4 amends section 1 of the principal Act to replace the Title Care and Support Workers (Pay Equity) Settlement Act 2017 with Support Workers (Pay Equity) Settlements Act 2017.

Clause 5 amends section 3 to replace and delete certain references and to add references to the settlement agreements for vocational and disability support workers and mental health and addiction support workers.

Clause 6 amends section 4 to ensure that the overview of the principal Act includes all support workers.

Clause 7 amends section 5 to—

- amend the definitions of care and support services, continuous employment, employer, funder, funding agreement, and ordinary hourly wage; and
- insert new definitions of Department of Corrections, health practitioner, mental health and addiction support services, mental health and addiction support worker, Ministry of Social Development, Oranga Tamariki—Ministry for Children, relevant date, support services, support worker, vocational and disability support services, and vocational and disability support worker.

Clause 8 amends the Part 2 heading to reflect that the Part applies to all support workers.

Clause 9 amends the cross-heading above section 8 to reflect that section 8 applies to all support workers.

Clause 10 amends section 8 to—

- replace the references to “care and support worker” with “support worker” and “care and support services” with “support services”; and
- replace “before the commencement of this Act” with “before the relevant date”.

Clause 11 amends section 9 to—

- delete the reference to “care and” and replace the reference to “commencement of this Act” with “relevant date”, to ensure that section 9 applies to all support workers; and

- delete paragraphs (a) and (c) of the definition of excluded services; and
- delete the definitions of Ministry of Social Development and Ministry for Vulnerable Children, Oranga Tamariki.

Clause 12 amends section 10 to replace the reference to “commencement of this Act” with “relevant date” and to delete the reference to “care and”, to ensure that section 10 applies to all support workers.

Clause 13 amends section 11 to delete the reference to “care and” and to replace the reference to “commencement of this Act” with “relevant date”, to ensure that section 11 applies to all support workers.

Clause 14 amends section 12 and its heading to delete “care and” to reflect and ensure that section 12 applies to all support workers.

Clause 15 amends section 14 and its heading to delete “care and” to reflect and ensure that section 14 applies to all support workers.

Clause 16 amends section 16 to delete the reference to “care and” and to replace the reference to “commencement of this Act” with “relevant date”, to ensure that section 16 applies to all support workers.

Clause 17 amends section 17 and its heading to delete “care and” to reflect and ensure that section 17 applies to all support workers.

Clause 18 amends section 18 to replace “commencement of this Act” with “1 July 2017” in relation to care and support services and vocational and disability support services, and “1 July 2018” in relation to mental health and addiction support services.

Clause 19 amends section 19 to delete “care and” to ensure that section 19 applies to all support workers.

Clause 20 adds a *Part 2* to Schedule 1 of the principal Act, which provides for transitional, savings, and related provisions.

Clause 21 amends Schedule 2 to—

- remove “care and” before “support workers” in 5 places to ensure that the schedule applies to all support workers; and
- replace the formula in clause 3(2) of that schedule.

Part 2

Consequential amendments to Employment Relations Act 2000

Clause 22 replaces the references to the title of the principal Act (Care and Support Workers (Pay Equity) Settlement Act 2017) with the new title (Support Workers (Pay Equity) Settlements Act 2017) in 4 provisions of the Employment Relations Act 2000.

The Schedule of the Bill contains the transitional, savings, and related provisions that provide for the following:

- the updating of references to the Title of the principal Act:
- that employers must, on the commencement of this Bill, pay support workers, other than care and support workers, back pay for a specified period and amount:
- that the length of service for a specified mental health and addiction support worker includes the additional described periods.

Hon Dr David Clark

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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 **2019**.
- 2 Commencement** 5
This Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Principal Act** 10
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** 15
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)** 20
- (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 5
 - (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 10
 - (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. 15

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”. 20

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: 25
 - (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 30
 - (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”. 35
- (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— 5
- (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 10
 - (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 15
 - (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 20
- (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: 25
 - (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 30

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 35
 - (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 **2019** 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

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- 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 5
 - (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 10
 - (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: 15
 - (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: 20
- 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”: 25
 - (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**”. 30
- 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: 35

- (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) 5**
- (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**. 10
- 12 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”.
- 13 Section 11 amended (Previous agreements that require allowances for service or qualifications unenforceable) 15**
- (1) In section 11(1)(a), replace “commencement of this Act” with “relevant date”.
- (2) In section 11(1)(b), delete “care and”.
- 14 Section 12 amended (Employers must ensure care and support workers are able to gain qualifications) 20**
- (1) In the heading to section 12, delete “care and”.
- (2) In section 12(1) and (2), delete “care and”.
- 15 Section 14 amended (Care and support worker may recover unpaid or underpaid wages) 25**
- (1) In the heading to section 14, replace “Care and support” with “Support”.
- (2) In section 14, delete “care and”.
- 16 Section 16 amended (This Act overrides terms and conditions of employment agreements) 30**
- (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”.
- 17 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”.

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(2) In section 17, delete “care and”.

18 Section 18 amended (Funding amounts increased)

Replace section 18(4) with:

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

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(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.

19 Section 19 amended (Records to support additional funding)

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

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20 Schedule 1 amended

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

21 Schedule 2 amended

(1) In Schedule 2, delete “care and” in each place.

15

(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 Employment Relations Act 2000

22 Amendments to Employment Relations Act 2000

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(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

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(b) section 161(1)(m)(ia); and

(c) section 223(1)(ab); and

(d) section 236(4)(ba).

Schedule
New Part 2 inserted into Schedule 1

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Part 2	
Provisions relating to Support Workers (Pay Equity) Settlements Amendment Act 2019	
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 2019 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 2019 , 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 2019 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 2019 comes into force.

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Schedule

3 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.

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