

# Departmental Disclosure Statement

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Support Workers (Pay Equity) Settlements Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Health.

The Ministry of Health certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

18 May 2017

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## Part One: 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/Careand-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](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-zealandhealth-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 Compensation 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.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	YES
<p><i>The Bill incorporates aspects of two Settlement Agreements between the Crown, Crown Agencies, Unions and employers. The Agreements are available at:</i></p> <p><a href="https://www.health.govt.nz/system/files/documents/pages/mental_health_and_addicti_on_support_workers_pay_equity_settlement_agreement_2018.pdf">https://www.health.govt.nz/system/files/documents/pages/mental_health_and_addicti_on_support_workers_pay_equity_settlement_agreement_2018.pdf</a></p> <p><a href="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.msd.govt.nz/documents/what-we-can-do/providers/msd-and-mvcot-care-and-support-workers-pay-equity-settlement-agreement.pdf</a></p> <p><a href="https://www.orangatamariki.govt.nz/assets/Uploads/News/2017/Care-and-Support-Workers-Pay-Equity-Settlement-Agreement-2.pdf">https://www.orangatamariki.govt.nz/assets/Uploads/News/2017/Care-and-Support-Workers-Pay-Equity-Settlement-Agreement-2.pdf</a></p>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	NO
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	NO
<p><i>An exemption was granted on the basis that a regulatory impact statement would substantively duplicate other government policy development reporting and publication requirements or commitments, in this case the 2018 Budget Bid "Mental Health Pay Equity implementation".</i></p>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	N/A
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<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	N/A
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### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	NO
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	YES
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	NO
<i>The potential costs and benefits are outlined in the Cabinet Paper which directed the amendment of the principal Act.</i>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	NO
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	NO

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
<i>Discussion with the Ministry of Health's legal team identified no relevant international obligations.</i>

### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
<i>Discussion with the Ministry of Health's legal team identified no Treaty implications.</i>

### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>	YES

### Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	NO
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	NO
<i>Employees will have access to the remedies in existing employment legislation.</i>	

### Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	NO
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### External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	YES
<i>Crown agencies, Union and provider parties to the Settlement Agreements were provided with a copy of the draft Bill on 31 January 2019. Comments were received and changes proposed to the draft Bill where appropriate.</i>	

### Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	NO
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## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

### Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

### Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
<p><i>The Bill extinguishes pay equity claims by eligible workers. This was part of the settlement agreements, and compensated for by future benefits in the form of wage increases guaranteed for 5 years, and support to achieve formal qualifications.</i></p> <p><i>For the mental health and addiction support workforce, there was a requirement for employers to pay workers increased wage rates retrospectively (from 1 July 2017, the implementation date of the principal Act, to August 2018, as specified in the Mental Health and Addiction Support Workers (Pay Equity) Settlement Agreement). There is no obligation for employers to provide support for training retrospectively to this workforce.</i></p> <p><i>Both the Vocational Support workers and the Mental Health and Addiction Support workers settlements were implemented on the agreement. The incorporation of the agreements into the principal Act is a formality.</i></p>	

### Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

### Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

### Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	NO

### Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	NO

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	NO

### Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	NO