

The Treasury

Budget 2017 Information Release

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[37]	to enable the Crown to carry out commercial activities without disadvantages or prejudice	9(2)(i)
[38]	to enable the Crown to negotiate without disadvantage or prejudice	9(2)(j)
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[40]	Not in scope	

In preparing this Information Release, the Treasury has considered the public interest considerations in section 9(1) and section 18 of the Official Information Act.

Reference: T2016/1347

SH-1-6-3

Date: 22 July 2016

To: Minister of Finance (Hon Bill English)
Associate Minister of Finance (Hon Steven Joyce)
Associate Minister of Finance (Hon Paula Bennett)

Deadline: None

Aide Memoire: Responding to Terranova (Kristine Bartlett)

You should by now have received a joint agency report, *Government response to the Terranova case* (20 July 2016). This discusses options around pay equity principles and settlement negotiations. There are essentially two questions for Ministers:

- Whether to accept the joint working group's proposal on pay equity principles, with limited modifications.
- Whether to increase the fiscal envelope for the settlement negotiations with the workforce.

Pay equity principles

On 6 July, Cabinet considered whether the government should accept the proposals of the joint working group on pay equity, subject to certain modifications. In separate advice to you, we noted that Ministers may wish to consider whether they wanted to sign up to the principles now, when the litigation remains unresolved. We were concerned that the Crown may be weakening its hand in the settlement negotiations.

We are now persuaded that the principles themselves are not a particularly strong bargaining chip, not least because the working group's proposals could be considered by the court anyway. And there are advantages to a timely government response, as noted in the joint agency report. Therefore, irrespective of the status of the settlement negotiations, we do not think there is much to be gained from holding up the pay equity principles if Cabinet is otherwise comfortable with them.

Settlement negotiations

At the time Cabinet agreed to enter negotiations to settle Terranova, the intention was for a tight focus on low pay (not pay equity). The full out-year cost of a settlement was estimated

at around \$300 million per annum. (The joint agency report translates this into a \$1.5 billion 5-year settlement, which is generous because lower costs were anticipated in early years). The \$300 million estimate was based on parity with DHB-employed care assistants, a mainly female workforce.

The expected cost of a negotiated settlement has increased substantially. The Crown negotiator and the Ministry of Health now advise that a settlement will cost around [38] billion over 5 years, with a full out-year cost of [38] per annum. According to the joint agency report, this is because the unions insist on benchmarking against a male-dominated workforce (mental health assistants). However, the Ministry has indicated to us that changing the comparator has not increased costs: employment terms are similar, so the change was merely cosmetic. The higher costing reflects full parity of employment conditions – not just of pay rates (as was apparently assumed in the original costing).

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There are some on-going risks around workforce “regularisation” under Part B of the in-between travel settlement. Regularisation on the terms proposed by the Director General’s working group is estimated to cost \$60-100 million per annum (this costing is not particularly robust). The joint agency report states that this issue could be addressed (within a [38] fiscal envelope) through an out-of-court settlement in Terranova. We do not see this as a compelling reason to increase the negotiating mandate. Given the relative fiscal implications, that would be a case of tail wagging dog. It is anyway not clear that the Crown has any fiscal liability in relation to Part B. Regularisation was to take place within existing and approved funding, with additional proposals subject to the Budget process. [36]

Ministers have previously noted that a large settlement with the care and support workforce provides an opportunity to influence service models and workforce mix. The Ministry undertook to come back with advice about this. There is no sign of this work having been done. A settlement along the lines proposed would probably do something to increase levels of training in the sector. Fundamentally, however, existing services would continue in their current form, but with higher costs. The economic case for a substantial wage increase in

the sector has not been made. Staff turnover is apparently high, but there is no clear evidence that positions cannot be filled at existing wage rates.

Next steps

The judgement about whether to increase the negotiating mandate is finely balanced. Given the sums involved, we recommend that Ministers request further information from the Ministry of Health and Crown Law before making a decision. Specifically:

- A detailed written explanation of how estimated costs have increased from \$300 million per annum to [38] million per annum, and confirmation that this is due to the inclusion of employment conditions rather than the change of comparator. Costing should be provided on a year-by-year basis, rather than being aggregated into “5-year settlement” figures, which as noted above can be misleading.
- A more precise (year-by-year) cost estimate of the most likely scenario for a court-imposed settlement. This will help us to understand the risks involved in not settling the case. [38]
- Greater clarity about the Crown’s actual liabilities and options in relation to back pay. [38]
- Details of the Ministry’s strategy for progressing workforce regularisation by September 2016 in the absence of a settlement in Terranova or additional funding.

Given the escalation of costs to date, and on-going issues with the in-between travel settlement, we also suggest that Finance Ministers approve the details of any counter-offer to the unions (supported by detailed costings) before it is made, rather than simply agreeing to an increased mandate in the amount proposed.

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