

The Treasury

Budget 2017 Information Release

Release Document July 2017

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SSC Report: Aide Memoir: Government Response to the TerraNova Case

Date:	21 July 2016	SSC report no:	7/16-MoSS/4300
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Proposal: On 25 July you are attending a meeting of Ministers to discuss the wider implications of the care and support workforce negotiations. This note highlights further considerations related to two of the proposed options in the joint agency report *Government response to the TerraNova case* (20 July 2016).

Background

- 1 At their meeting on 29 June 2015, CMSSER asked officials to provide joint advice on the Health sector care and support workforce negotiations in the context of a Cabinet discussion on 8 August 2016 on the JWG recommendations on pay equity principles.
- 2 The joint agency report (developed by the Ministry of Health, MBIE and SSC in consultation with Crown Law and the Treasury) proposes options as summarised in the table below:

	Care & support negotiations	JWG proposals
Option 1	Continue bargaining with expanded fiscal parameters	Agree to implement the JWG proposals
Option 2a	Continue bargaining with current fiscal parameters (likely return to court)	Agree to implement the JWG proposals
Option 2b	Continue bargaining and seek an interim settlement within current fiscal parameters	Agree to implement the JWG proposals
Option 3	Continue bargaining with expanded fiscal parameters	Elect not to implement the JWG proposals
Option 4a	Continue bargaining with current fiscal parameters (likely return to court)	Elect not to implement the JWG proposals
Option 4b	Continue bargaining with current fiscal parameters (likely return to court)	Introduce legislation to restrict the scope of the Equal Pay Act to exclude pay equity (do not to implement the JWG proposals)

- 3 The joint agency report suggests that based on current information Government should focus their considerations on Option 1, or Options 2a or 2b (shaded in table above).

Key points

- 4 SSC supports the overall approach outlined in the joint agency briefing paper but we would like to highlight further considerations related to Options 1 and 2b.

Option 1: Expanded bargaining parameter

- 5 During the course of the care and support negotiations the apparent cost of achieving a settlement has continued to rise. This has been partly due to a shift in the original focus of the negotiations which was to address a pay disparity between care and support workers employed by DHBs and those working for providers funded by DHBs, with an estimated cost of \$1.5b over 5 years.
- 6 As it became clear in negotiations that this approach would not resolve the pay equity concern at the heart of the unions' claim in TerraNova, the focus moved to achieving a full pay equity settlement which necessitated the identification of a male dominated comparator group, mental health assistants who are paid at a higher rate.
- 7 The Ministry of Health costed a settlement using this comparator at \$1.6b excluding flow on costs (for example, recognition of qualifications and service, penal and overtime rates etc). When flow on costs are included the total cost increases to an estimated [38] over 5 years with an ongoing fiscal impact of [38] annually.
- 8 The Ministry of Health and the Crown Negotiator believe that unions will not settle without recognition of the workforce terms and conditions that make up the flow on costs outlined above. This will require Government's agreement to an expanded negotiating parameter.
- 9 Given the scale of investment required, and should Government agree to an expanded parameter, Ministers will want to have confidence that relevant costings are accurate and that a full and final settlement will be achieved. Because of the limited timeframe for the joint paper the detailed analysis that underpins the expanded parameter has not been available to officials other than the Ministry of Health. Ministers may wish to ask the Treasury to assist the Ministry of Health to confirm the full costs of a settlement using the expanded parameter as proposed.

Option 2 b: Seek an interim settlement

- 10 The key risk with Option 2 is that unions will continue to reject a settlement within current parameters and return to court in the TerraNova case.
- 11 Option 2b provides a middle course that Ministers could consider. Option 2b would involve an interim settlement within current parameters and provide an opportunity for unions to work through a pay equity claim applying the JWG principles once supporting legislation is in place. Unions would need to agree to defer TerraNova.
- 12 This option has the advantage of limiting Government's fiscal exposure in the short to medium term. The advantage of applying the JWG principles would mean that any later pay equity settlement is likely to be residual (the Health sector is confident that they have selected the right comparator).
- 13 An interim settlement would provide a way for Government to recognise the contribution of care and support workers and is likely to be welcomed by the workforce who would still receive a significant pay increase. Unions may see this as an acceptable compromise that assists them to maintain the confidence of members.
- 14 At this stage the Crown negotiator does not support this option because it is not new and it would not be acceptable to unions. However we believe even if this option has come up earlier in negotiations, Ministerial support and other factors, especially the availability of the pay equity principles, fundamentally changes how an interim settlement could be packaged and it could now be a viable option.