

# The Treasury

## Budget 2017 Information Release

### Release Document July 2017

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[40]	Not in scope	

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File number: tbc

Action required by: 30 March 2017

## Terranova update to joint Ministers

**To:** Rt Hon Bill English, Prime Minister  
 Hon Paula Bennett, Minister for State Services  
 Hon Steven Joyce, Minister of Finance  
 Hon Dr Jonathan Coleman, Minister of Health  
 Hon Michael Woodhouse, Minister for Workplace Relations and Safety; and  
 Minister for Accident Compensation Corporation

### Purpose

1. This note provides an update for Ministers on progress with negotiations to settle the Bartlett v TerraNova pay equity case.
2. The Union's latest offer exceeds the funding agreed to by Cabinet by \$290 million over five years. The Crown Negotiator advises it will not be possible to reach a settlement within the agreed funding, and seeks a revision of the financial parameter.

### Key points

3. On 8 March the Crown negotiator tabled an offer of settlement to the Unions. On 17 March, the Unions made a without prejudice response to the Crown's offer. The Union offer has been costed at \$2.169 billion, and exceeds the cabinet parameters of \$1.879 billion by \$290 million over the five year settlement period (when one off settlement costs are included).
4. [38]
5. The current union position is outside of the Cabinet approved cost parameter but achieves all the other Crown objectives, especially:
  - no back-pay
  - extinction of all 6000 existing claims
  - agreement that this settles all pay equity claims for this group of employees
  - a commitment that the settlement will not be used as a basis for relativity claims for other groups
  - a qualification based pay scale.
6. It is the view of the Crown Negotiator and the Ministry of Health that settlement cannot be achieved within the current bargaining parameters. Officials are unable to move outside the agreed parameters: if Ministers wish to settle this case out of court, a revision to existing parameters will be required to achieve a settlement.

Contacts:	Stephen Barclay, Chief People and Transformation Officer	[39]
	Paki Ormsby, Deputy Director, Critical Projects	[39]

7. [38]

8. Providers have expressed concern around how funding for pay increases will be distributed. These issues are being worked through by the implementation team. Providers have been invited to indicate their views about what general principles should be used to guide implementation. They have generally agreed that the assumptions in the cost model are reasonable.

Stephen Barclay  
Chief People and Transformation Officer

**Minister's signature:**

**Date:**

## Terranova update to joint Ministers

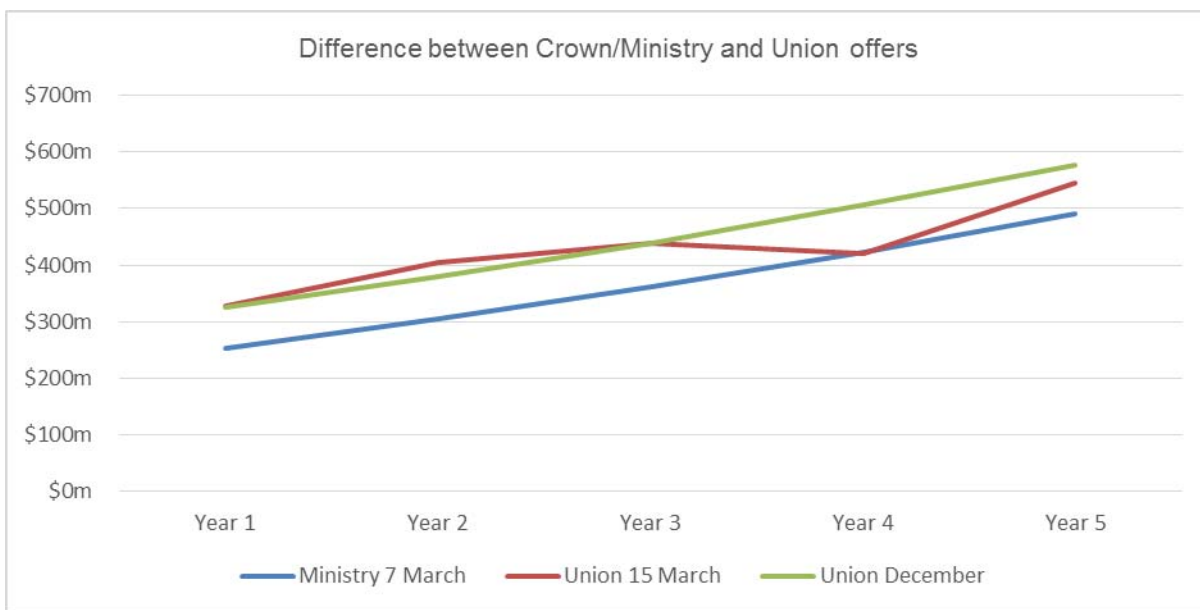
### Background

9. Since June 2015, negotiations have been underway to settle the Bartlett v Terranova pay equity case, with an aim to better manage the process and outcomes. A settlement would cover around 55,000 care and support workers across the aged care, home care and support, and disability support (both community and residential) sectors.

### Recent discussions

10. On 14 November 2016, Cabinet agreed to detailed negotiating parameters; the Crown negotiator and officials have since been engaged in discussions with unions<sup>1</sup> and employers<sup>2</sup> to reach a settlement. On 8 March the Crown negotiator tabled an offer of settlement to the unions.

11. A without prejudice offer (attached as appendix one) was received from the unions on 17 March. The current union offer amounts to \$2.169 billion over five years, and exceeds the Cabinet agreed parameters of \$1.879 billion by \$290 million when one-off settlement costs are included. The dip in year four is because the union's offer includes no fixed increases in that year.



### Transition costs: workers with experience without qualifications

12. The cost of the union position largely reflects the impact of transition arrangements for the existing workforce. The unions argue that existing workers with experience but without qualifications should be appointed to positions on the new scale that reflect their experience. The Crown Negotiator has agreed to the principle but not the detail. There is a significant cost difference between the union transition proposal and the Crown proposal.

13. [38]

<sup>1</sup> E Tu, CTU, PSA and the NZ Nurses Organisation are the participating Unions.

<sup>2</sup> A range of Aged Care, Home Care and Support, and Disability Support employers and organisations participate in the Employers Working Group.

[38]

14.

### *Nature of settlement*

15. There is in principle agreement on the nature of the settlement. The agreed words are:

“The parties agree that the settlement will extinguish all pay equity claims made prior to 1 July 2017 for the employees covered by this settlement.

“The settlement addresses historic issues of systemic gender discrimination and by its nature involves a change in wage relativities. Consequently, the parties agree that this settlement will not be used as a precedent for other occupational groups.

“Both parties are agreed that this settlement is an historic step forward for women workers in the elimination of systemic undervaluation of caring work. As such, it is a significant step in addressing gender based inequality in New Zealand.”

### *Existing parameters*

16. In November 2016, Cabinet approved the below fiscal parameters, with a total cost to the Crown of \$1.88 billion based on comparability with rates paid to mental health assistants (a male majority workforce):

		2017/18	2018/19	2019/20	2020/21	2021/22	5 year total
<b>Crown costs</b>	MOH and DHBs	\$231.61m	\$280.88m	\$334.67m	\$394.95m	\$461.27m	\$1.70b
	ACC <sup>3</sup>	\$25.46m	\$29.63m	\$34.52m	\$40.20m	\$45.98m	\$0.18b
	<b>Total Crown</b>	<b>\$257.08m</b>	<b>\$310.51m</b>	<b>\$369.19m</b>	<b>\$435.15m</b>	<b>\$507.25m</b>	<b>\$1.88b</b>
Costs borne privately by aged-care residents		\$35.65m	\$43.37m	\$51.31m	\$60.26m	\$70.09m	\$0.26b
Costs borne by ACC levy payers		\$56.02m	\$66.68m	\$77.49m	\$89.90m	\$102.52m	\$0.39b
<b>Crown cost plus private cost</b>		<b>\$348.75m</b>	<b>\$420.56m</b>	<b>\$497.98m</b>	<b>\$585.31m</b>	<b>\$679.86m</b>	<b>\$2.53b</b>

### *Costs of Union offer*

17. The cost of the Union offer is estimated as follows:

		2017/18	2018/19	2019/20	2020/21	2021/22	5 year total
<b>Crown costs</b>	MOH and DHBs	\$294m	\$365m	\$398m	\$381m	\$495m	\$1.93b
	ACC	\$32m	\$39m	\$41m	\$39m	\$49m	\$0.20b
	<b>Total Crown</b>	<b>\$326m</b>	<b>\$404m</b>	<b>\$439m</b>	<b>\$420m</b>	<b>\$545m</b>	<b>\$2.13b</b>
Costs borne privately by aged-care residents		\$41m	\$51m	\$55m	\$53m	\$68m	\$0.27b
Costs borne by ACC levy payers		\$71m	\$87m	\$92m	\$87m	\$110m	\$0.45b
<b>Crown cost plus private cost</b>		<b>\$438m</b>	<b>\$541m</b>	<b>\$586m</b>	<b>\$559m</b>	<b>\$723m</b>	<b>\$2.85b</b>

<sup>3</sup> The Crown cost for ACC is an appropriation for the Non-Earners' Account. Costs to the Earners, Work, Motor Vehicle and Treatment Injury Accounts are borne by ACC levy payers. Costs provided are cash costs and do not include the increase to ACC's Outstanding Claims Liability.

18. The figures do not include a number of one off settlement costs: [38]

There will be implications for MSD-funded disability support, which will sit outside this settlement estimated at [38] billion per year, which MSD are working through.

19. The ACC costs in Table 4 are the cash cost impact only. Additionally, there is an outstanding claims liability (OCL) increase for ACC which, under the current funding policy, would be recovered from Non-Earners' appropriations over a three-year period and levies over a ten-year period. The OCL increase for the latest Union offer is estimated at \$1.24 billion (based on current discount rates). This quantification will be updated upon completion of the negotiations.

20. The OCL liability is sensitive to movements in discount rates. For example, an increase in the discount rate results in a decrease in the OCL quantification. Consequently when the OCL is recorded in ACC's Financial Statements, and used for Levy / Appropriation quantifications, it will be quantified based on the discount rate at the settlement date.

21. Additionally The Ministry of Business, Innovation and Employment are reviewing the funding policy for the Non-Earners' appropriations to a 10-year period (rather than the current 3-year period). Any change would have a material impact on the increase in Non-Earners' Account costs for pay equity.

#### **Provider concerns**

22. Providers have raised a number of concerns in the course of negotiations, largely around how funding for the pay increases will be incorporated into current funding structures. These are implementation questions which are currently being addressed by the Ministry's implementation team. Providers have been invited to indicate their views about what general principles should be used to guide implementation.

23. The assumptions within the cost model have been shared with the providers and there is general acceptance that the model is based on the best available data and reasonable assumptions. Some specific concerns expressed by individual providers are being worked through.

24. The question of whether providers should be party to the settlement agreement has also arisen. There is a developing view that the agreement should be between the Crown and the unions. Both providers and unions appear to be more comfortable with this option than with the providers being parties to the agreement.

#### **Employment (Pay Equity and Equal Pay) Bill**

25. In November 2016 Cabinet accepted the recommendations of the Joint Working Group on Pay Equity to place pay equity within a bargaining framework. The Employment (Pay Equity and Equal Pay) Bill implements Cabinet's decisions by making changes to the Equal Pay Act 1972 and the Employment Relations Act 2000. The Ministry of Business, Innovation and Employment provided a draft of the Bill to the New Zealand Council of Trade Unions (CTU) and BusinessNZ on 1 March 2017 to seek initial feedback, prior to anticipated public consultation on the Bill.

26. On 23 March 2017, the Committee of Ministers on State Sector Employment Relations decided to delay public consultation on the Bill pending the outcome of the negotiations.

## Next Steps

27. Assuming agreement is reached, on 12 April 2017 SEC will be asked to confirm it and approve implementation. Funding will be sought by the Ministry of Health and ACC to fund a settlement; it has not been included in agency bids. The Ministry has been in discussion with PCO on legislation and anticipates it being ready for introduction in early May. This timeline may vary depending on key decision points in the negotiation process. As a result, the Ministry is undertaking a number of parallel activities to mitigate against schedule slippage.
28. Implementation will be complex. There are approximately 1000 providers and 4000 contracts affected by the proposed settlement. The sector has high turnover, and around 55,000 employees, many of whom are casual or part-time. That means payroll issues will be unusually complex. By way of comparison, the sleepovers settlement involved 120 providers and took two years, without additional resourcing. [38]

## Consultation

29. This paper has been prepared by the Ministry of Health. The Treasury, State Services Commission, Ministry of Business, Innovation and Employment, Crown Law, and ACC were consulted. The Department of the Prime Minister and Cabinet was informed.

## **Appendix 1**

# **Care and Support Equal Pay Negotiations Union Final Position for Settlement (16/3/17) Without Prejudice**

This position is from the union negotiating parties in response to the Government offer conveyed to the unions on 8 March 2017.

The unions note the 18 month long negotiating process and the historic significance of any prospective settlement but are also cognisant of the need to achieve a positive ratification of such a settlement by the care and support workforce for the benefit of all parties and the future development of services.

### **Nature of Settlement**

While the wording still needs to be tweaked slightly, the unions broadly accept the provisions in the Nature of Settlement section from the Crown proposal of 8 March 2017 as it relates to pay equity. However, we want to clarify that the word “retrospective” applies to any claims prior to 1 July 2017 and want to emphasise that as previously discussed and agreed it will contain agreed wording that reflects a recognition of the historic gender discrimination suffered by care and support workers that is addressed by this settlement.

Our proposed wording is the following:

Both parties are agreed that this settlement is an historic step forward for women workers in the elimination of systemic undervaluation of caring work. As such, it is a significant step in addressing gender based inequality in New Zealand.

### **Scope of Settlement**

The unions generally accept the provisions in the Scope of Settlement from the Crown proposal of 8 March 2017.

### **Vocational Disability Support Workers**

The parties have agreed that there will be a further process, within a short time period, to conclude a separate settlement with MSD for vocational disability support workers consistent with the terms of this Agreement.



## Support for Training

The unions accept the Crown offer of funding for two days per employee per year (via on costs) to enable back-filling for employees undertaking training

## Care and Support Workers, Minimum Pay Rates and the Qualification Path

The rates and progression for care and support workers employed after 1/7/17 will be the following:

	1 July 2017 Year 1	1 July 2018 Year 2	1 July 2019 Years 3/4	1 July 2021 Year 5
L0	\$19.00	\$19.80	\$20.50	\$21.50
L2*	\$20.00	\$21.00	\$21.50	\$23.00
L3*	\$21.00	\$22.50	\$23.00	\$25.00
L4*	<u>\$24.50</u>	<u>\$25.50</u>	\$26.50	\$27.50

\*"Qualifications" are those recognised by NZQA

The unions and Government absolutely support care and support workers gaining formal qualifications, but are nervous about these workers being held back from higher pay rates by the inability of the sector and its employers to provide the systems and support for these qualifications to be achieved.

The unions and Government will require an enforceable provision that employers will meet the training and assessment requirement to enable workers covered by the settlement to reach the following NZ Certificate qualifications within the following time periods:

Level 2 NZ Certificate – within 12 months of commencement of employment

Level 3 NZ Certificate – within 3 years of commencement of employment

Level 4 NZ Certificate – within 6 years of commencement of employment

Each employer will be required to ensure that the training referred to above is provided.

This is to be achieved through provisions in the Government/employer contract and by ensuring through legislation that all employees are entitled to be trained as above. The only exception would be, in a rare circumstance, in which there are genuine reasons based on reasonable grounds precluding an employee from becoming qualified.

The goal is to have an industry wide workforce all of which is properly trained. This will ensure a significant improvement in service and proper value for the taxpayer (as well as an end to gender-based discrimination in the sector).

## Transition for Existing Care and Support Workers

The Government and the unions recognise the historic nature of this agreement in addressing systemic gender inequality. The agreed transition reflects this.

All existing care and support workers on 1 July 2017 will move on to the following scale either at the step that recognises their current qualifications or their service with their current employer, whichever is the most advantageous. They will increase their pay rates under this scale on the basis of either service or qualifications, whichever is the most advantageous to them.

Notwithstanding this, each existing staff member will, as part of this agreement, be required to participate in training.

	1 July 2017 Year 1	1 July 2018 Year 2	1 July 2019 Year 3/4	1 July 2021 Year 5
L0 or <3 years service	\$19.00	\$19.80	\$20.50	\$21.50
L2* or 3+ years service	\$20.00	\$21.00	\$21.50	\$23.00
L3* or 8+ years service	\$21.00	\$22.50	\$23.00	\$25.00
L4* or 12+ years service	<u>\$24.50</u>	<u>\$25.50</u>	\$26.50	\$27.50

\*"Qualifications" are those recognised by NZQA

### Maintaining Currency of Rates

The above rates include an annual adjustor based on the All Industries Labour Cost Index as averaged over the last five years. If the All Industries Labour Cost Index by 30 June 2021 (for the period 1 July 2017 to 30 June 2021) moves on average by more than 1.7% annually then the figures in the above tables applying from 1 July 2021 will be adjusted accordingly.

### Weekend and Night Penal Rates

Should any union collective agreement or employee individual agreement have a night or weekend penal rate (as opposed to a weekend or night shift allowance) reflected as a percentage of the base rate such penal rates shall be adjusted for care and support workers covered by this settlement into an allowance format based on the care and support workers current collective or individual agreement wage scales.

If there is any dispute as to the transition of these penal rates into allowances any party to an employment agreement (as set out above) may seeking a final and binding decision on this matter by a Labour Inspector.

### Extinguishing of Allowances

The unions accept that this settlement will from 1 July 2017 extinguish any separate ongoing service allowance or qualifications allowance for care and support workers within the scope of this Agreement that is contained in any collective or individual agreement.

### **Kristine Bartlett Back Pay**

Kristine Bartlett will be back paid at the appropriate Level 4 rate from the date her claim was lodged in the Employment Relations Authority. There will be a separate agreement in relation to Kristine Bartlett, which will also deal with legal costs.

### **Ratification Process**

The union proposal for the ratification meetings (see attached document) is also agreed by Government and unions and its strict adherence is a condition of this settlement. The MOH will support the implementation of the ratification process and ensure all employers comply with this process.

The Government will fund employers at the rate of \$25.00 per care and support worker who are verified by the union and the employer as having attended a ratification meeting.

### **Consequent Legislation**

The settlement will be legislated in a way that is consistent with the signed settlement document and acceptable to the union parties.

John Ryall  
On behalf of the Unions Negotiating Team

**END.**