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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.

Memorandum: Care and Support Workers (Pay Equity) Settlement Implementation

To: Hon Dr Jonathan Coleman, Minister of Health
CC: Committee of Ministers for State Sector Employment Relations

Purpose

The purpose of this memo is to provide an update to the Committee of Ministers for State Sector Employment Relations (CMSSER) on the care and support worker (pay equity) settlement implementation.

Context

- 1 Implementation for the care and support worker (pay equity) settlement will begin from 1 July 2017. The key pay equity implementation milestones to 1 July 2017 is attached at Appendix One.
- 2 The overall lead for implementation is Jill Lane, Director Service Commissioning, Ministry of Health (the Ministry). The Ministry is working closely with ACC and the Ministry of Social Development to align implementation activity.
- 3 The Ministry's engagement and implementation approach is built on a partnership between the Ministry and Funders (the Ministry, DHBs and ACC) to ensure providers have the money to pay care workers the new rates from 1 July 2017. The approach to distributing the funds also reflects the expectations of Ministers that there will be a level of assurance that funds are accurately distributed to providers and care workers, and that information about the growing level of qualifications in the sector as a result of the settlement is available.
- 4 There are approximately 1,000 providers and 4,000 contracts affected by the settlement. The care and support worker sector has high turnover, and around 55,000 employees, many of whom are casual or part-time. Payroll changes (wage rates, allowances and penal rates) will be significant due to number of employees but are manageable.
- 5 Starting 28 April 2017, a weekly progress update will be prepared for the Minister of Health. This will track progress against key deliverables and actions through to 1 July 2017.

Ratification

- 6 The unions (E tū, PSA and NZNO) are responsible for all employees (both union and non-union) ratifying the agreement. The employee ratification process has begun. The unions will conduct a meetings-based ballot in which 50 per cent plus one of the care and support workers covered by the settlement agreement and who attend the one-hour paid meetings, vote to ratify. There are no significant risks associated with the ratification process but it is expected that some employers may be difficult about the Unions being on their premises.
- 7 The Ministry will reimburse employers for wages paid to attendees of the ratification meetings at the rate of \$25.00 per care and support worker who is verified by the union and the employer as having attended. This will be paid via a claim to the Ministry on the basis of a declaration form. Funding to cover expected reimbursements has been appropriated.
- 8 The Ministry expects to know the outcome of the ratification process no later than 20 May 2017.

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Legislation

- 9 As part of negotiations, the Crown and Unions have agreed to give effect to elements of the settlement in legislation. Legislation is proposed to set minimum wage rates for workers with specified qualifications, and extinguish claims for back-pay. There will be a statutory matrix of wage rates, and the full range of existing remedies will be available to workers who are paid less than the legislated rate.
- 10 Where workers are currently receiving penal rates for night and weekend work, those rates will be converted into hourly allowances of the same value as the extra pay they formerly received.
- 11 The legislation will include provision for deemed variations to funding contracts. This will allow additional funding to be disbursed to providers in advance of actual contract changes incorporating the deemed variations. There will also be provision for legislation to require providers to provide relevant employee information to enable accurate payments to employees and for providers to be audited to ensure the funding is being used only for that purpose. The Parliamentary Counsel Office have been involved in successive drafts of the settlement agreement and their comments have been incorporated (particularly relating to the specific clause dealing with the content of the legislation). Officials have also met with the Legislation Design and Advisory Committee.
- 12 It is proposed to introduce the legislation on 25 May 2017 (following LEG approval on 11 May or Cabinet Business Committee approval on 15 May) as part of Budget night legislation and have the first reading of the Bill on that day for referral to the Health Select Committee. This will allow Select Committee consideration from 30 May to 1 June 2017 (these dates are the sitting days for this week).
- 13 Other elements of the settlement, such as provisions requiring support for employees to obtain qualifications, are generally covered in a manner similar to the payment of pay rates (as they are part of the agreed position of the parties). Again the intent is for the legislation to give effect through uniform changes in contracts and funding agreements.

Confidential payment to Ms Bartlett and E tū Union

- 14 There are two separate settlement agreements – compensation for Ms Bartlett, and the legal costs for E tū Union. Both settlement agreements have been prepared and the Unions are comfortable with these agreements. The obligation for the Crown to pay these agreements is recorded in the main settlement agreement. This means these agreements cannot be signed until the main agreement is signed. Payments to both Ms Bartlett and E tū will be made by 1 July 2017.

Allocation to providers

Minimum wage rates will be set in legislation...

- 15 There is no need for a separate contract mechanism to ensure workers are paid the new rates because minimum wage rates will be set in legislation. The Ministry is not the employer of these workers and therefore will not be directly involved in varying employment agreements. However, the legislated pay rates will be enforceable by workers and Unions, irrespective of whether employment agreements have been varied to reflect the new rates. Implementation planning has therefore centred on ensuring employers can be funded to meet the increased labour cost.

...and funding to providers will ultimately flow by means of a variation to the contractual price paid for the service.

- 16 The preferred option for 2017/18 for aged residential care is the annual standard national contract price negotiated between DHBs and providers by 10 May 2017. However, officials are providing advice to the Minister of Health as to whether there should be a transition arrangement for 2017/18 or if the associated pay equity costs should be included in the 2017/18 price increase.
- 17 For the remaining services, given the complexity of eligibility and pay rate translation for providers with multiple service contracts with a mixed workforce (in and out of scope), the Ministry will calculate

an interim payment. All providers (including aged residential care providers) will need to submit data for workforce monitoring purposes.

- 18 For 2017/18 providers will be paid monthly via the interim payment process to ensure that providers have the funds to cover the costs of pay increases. Refer to Appendix Two "How the funding will flow".

Workforce information will be collected in order to calculate an interim payment for providers.

- 19 The Ministry will request that providers supply workforce information for the period 1 April 2016 to 31 March 2017 (historical payroll data will be used to calculate the advance payment) to enable the Ministry to calculate an interim advanced monthly payment. The Ministry will develop guidance and a data collection tool to support this process. The guidance and data collection tool will also support providers to understand the impact of the translation rules (old wage rates to new wage rates) for each of their employees and the estimated additional cost resulting from the settlement.
- 20 The Ministry and Funders will review the workforce information supplied by providers. This review will check eligibility of services, translation from old wage rates to new wage rates for employees and reasonableness of interim advance calculated.
- 21 Once reviewed, the Ministry will generate interim advanced monthly payments for each provider. A contingency plan based on previous year annual service payments will be developed and deployed by exception where providers are unable to submit data returns on time. This will enable all providers to receive monthly advanced payments to cover the costs of pay increases.
- 22 From the first pay run after 1 July 2017 (i.e. weekly or fortnightly, depending on their normal pay run) providers will commence paying qualifying employees their increased pay rates.

There will be checks and balances of payments made.

- 23 A wash-up process will be carried out six monthly to ensure that providers receive payments for the assessed cost of pay increases. This will require providers to supply workforce information based on assessed cost of pay increases to employees from 1 July 2017. If a price change is negotiated within 12 months, the wash-ups will take place at the date that the new prices take effect.
- 24 The advanced payments made to providers will be based on anticipated actual costs. However, if a provider's eligible services increases or decreases significantly then this payment may be materially incorrect. The Ministry will monitor payments and proactively identify any instances where a provider may be impacted by an increased or decreased service volume prior to the six monthly wash-up period. If required, a bespoke payment calculation can be put in place for those providers.
- 25 This transitional payment process for the 2017/18 (year one) is expected to revert back to the business-as-usual process within twelve months i.e. from 2018/19 (year two) funder and providers will negotiate new prices for services.
- 26 The ACC funded services contracts are anticipated to be varied in time for the price to take effect on 1 July 2017. ACC is negotiating new contract prices to address the settlement and expects to have them in place by 1 July 2017. (There are comparatively few providers in this sector that ACC contracts with, and ACC does not anticipate significant difficulty).

Audit and Compliance

- 27 Providers will have additional requirements placed on them primarily around confirming eligibility and translation to new wage rates. For example, keeping a record of NZQA qualifications. The Ministry and Funders are focusing on early up-front training and education to enable providers to meet these requirements. Guidance is being provided and support and education will be given through regional roadshows and via a central helpline.
- 28 The additional requirements that providers will need to meet to implement the settlement will be subject to the usual audit and compliance controls and assurance. From 1 July 2017, provider

comparisons will be used to identify baselines and address concerns with providers. Robust exception reporting will be implemented approximately six to twelve months from this date to ensure enough data is available to identify outliers. The audit programme will include targeted and randomly selected audits.

Appendix One – Pay Equity Implementation milestones to 1 July 2017

	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10
<i>Week beginning</i>	24 April	1 May	8 May	15 May	22 May	29 May	5 June	12 June	19 June	26 June
1 Ratification of settlement agreement	Unions hold ratification meetings	Signing ceremony (TBD)		Deemed ratified 20/05						
2 Ratification payment	Claim process sent out		Providers send claim forms to the Ministry (\$25 per employee who attends a ratification meeting)				Payments processed by Ministry and made to providers by 1 July			
3 Payment to Kristine Bartlett	Settlement agreement signed							Payment made to Terranova		Payment passed on to Ms. Bartlett
4 Legislation			LEG committee		Introduced to House 25/05	Select committee				
5 Contracts & accountability docs		Crown Funding Agreement	Letters sent to confirm changes to contracts							
6 Operational policy document	Conference call with GMs P&F Meet with peak body reps	Provider workshops: Akl., Ham., Wgn., Chch., Dun.	OPD published on website							
7 Interim advance payments			Data return spreadsheet on website	Providers complete spreadsheet and return to Ministry	Calculations team check and validate data returns		Payment schedule provided to payments team and made through Oracle 30/06			
				Guidance, phone/email and in-person support available	Exceptions panel considers eligibility and translation questions					
8 ARC price increase			Confirmation of price increase	Ministry translates by regions and confirms contracts with funders		System changes made by Ministry		Testing		New rates go live 30/06
9 Governance and decision making										
10 Funding monitoring, sector oversight, and employment relations										
11 Communications and engagement with funders and providers: newsletters, Q&As, website, etc.										
12 Workforce intelligence/monitoring										

1 July 2017

Appendix Two – How the funding will flow

Ultimately, increases to contracted prices will be used to enable the settlement. In the first year, interim “advance” monthly payments will be used.



The preferred 17/18 option for aged residential care is a national contract price negotiated between DHBs and providers by 10 May 2017. For the remaining services, given the complexity of eligibility and pay rate translation for providers with multiple service contracts with a mixed workforce (in and out of scope), the Ministry of Health will calculate an interim payment. For 17/18 providers will be paid monthly via the interim payment process to ensure that providers have the funds to cover the costs of pay increases. A wash up process will be carried out six monthly to ensure the actual additional costs are covered. HCSS and CRL providers will need to supply the Ministry with the data required to calculate interim payments. All providers (including ARC) will need to submit data for workforce monitoring purposes.

Sector	Crown to Funder	Normal contracting arrangements	Year 1	Year 2 onwards
Aged Residential Care	DHBs funded through Vote Health	National contract negotiated each year - rest homes paid price per resident	<i>Under active consideration</i>	Contract renegotiated to account for increased costs
Home and Community Support Services	<u>Over 65 years</u> DHBs funded through Vote Health	20 DHBs individually contract with service providers	Interim advance payment - first year costs reimbursed by DHBs (funded by Ministry) directly to providers	Contract renegotiated to account for increased costs
	<u>Disability Support Services (DSS)</u> Ministry NDE funding for DSS	Ministry (DSS) contracts directly with service providers	Interim advance payment - first year costs reimbursed by DHBs (funded by Ministry) directly to providers	Contract renegotiated to account for increased costs
Community Residential Living	Ministry NDE funding for DSS	Ministry (DSS) contracts directly with service providers	Interim advance payment - first year costs reimbursed by DHBs (funded by Ministry) directly to providers	Contract renegotiated to account for increased costs

Money will flow from the Ministry to funders, to providers, to employees

Employees are expected to receive their increase wages in the first pay run from their employer after 1 July 2017. Providers will be required to pay new pay rates from 1 July. The Ministry will ensure providers have an interim advance payment to fund the increased wages, subject to providers supplying the required data by (19 May) so that the Ministry can calculate payments required.

