

# **Mental Health and Addiction Support Workers (Pay Equity) Settlement Agreement 2018**

## **Parties**

**Her Majesty the Queen in right of New Zealand,  
acting by and through:**

**the Director-General of Health** (as funder of District Health Boards, and Employers)

**the Chief Executive of the Ministry of Social Development** (as a funder of Employers)<sup>1</sup>

**the Chief Executive of Oranga Tamariki-Ministry for Children** (as a funder of Employers)

**the Chief Executive of the Department of Corrections** (as a funder of Employers)

**Accident Compensation Corporation**<sup>2</sup> (as a funder of Employers)

**District Health Boards** (as funders of Employers)

**Platform Charitable Trust**<sup>3</sup> (Employer Representative)

**E tū Incorporated, New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi Incorporated** (Employee Representatives)

**New Zealand Council of Trade Unions Te Kauae Kaimahi Incorporated** (interested party)

**Effective - 1 July 2018**

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<sup>1</sup> For the Ministry of Social Development and Oranga Tamariki – Ministry for Children, this Settlement Agreement is additional to the Settlement Agreement for vocational disability support workers, it was signed in July 2017 when payments for care and support workers applied from 1 July 2017 by way of contractual arrangements. The Parties intend that both Settlement Agreements will be covered by the Care and Support Workers (Pay Equity) Settlement Act 2017

<sup>2</sup> ACC is a party only for the purposes of the obligations relating to Funding

<sup>3</sup> Charitable Trust register number 2097664

## Background

- (a) On 2 May 2017, a Pay Equity Settlement Agreement was agreed between the Crown, DHBs, ACC and Union representatives in relation to care and support workers in the aged residential care, disability support, and home and community support sectors (**2017 Settlement Agreement**);<sup>4</sup>
- (b) The 2017 Settlement Agreement was an historic step forward for women workers in the elimination of systemic undervaluation of care and support work, and was a significant step in addressing gender based inequality in New Zealand;
- (c) The 2017 Settlement Agreement was implemented by the 2017 Act;<sup>5</sup>
- (d) The 2017 Settlement Agreement and the 2017 Act were effective from 1 July 2017;
- (e) The 2017 Act provided for funders<sup>6</sup> to pay employers:<sup>7</sup>
  - additional amounts over and above the amounts required by the funding agreement towards offsetting the additional costs faced by the employer as a result of this Act.<sup>8</sup>
- (f) The 2017 Act also provided for employers to pay their care and support workers the minimum hourly wage rates<sup>9</sup> and to ensure they are able to gain qualifications;<sup>10</sup>
- (g) Both the 2017 Settlement Agreement<sup>11</sup> and 2017 Act<sup>12</sup> specifically excluded mental health services and consequently mental health and addiction support workers;
- (h) In June 2017, the Employee Representatives filed an application in the Employment Relations Authority, on behalf of mental health and addiction support worker members, seeking a declaration that the minimum wages payable pursuant to section 3(1)(b) of the Equal Pay Act 1972 were no less than those provided in the 2017 Act;
- (i) In July 2017, representatives for the government, Employers, and Employees began discussions about resolving the application in the Employment Relations Authority;
- (j) In October 2017, the government was advised by the Ministry of Health<sup>13</sup> that the role of mental health and addiction support workers were comparable to that of care and support workers covered under the 2017 Act;
- (k) On 29 November 2017, the Employment Relations Authority dismissed the application;<sup>14</sup>

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<sup>4</sup> Settlement Agreement (clause 17, Services (a), footnotes 52 and 53) - <https://www.health.govt.nz/new-zealand-health-system/care-and-support-workers-pay-equity-settlement>

<sup>5</sup> All section and Schedule references are to the 2017 Act; section 3(1)

<sup>6</sup> Section 5

<sup>7</sup> Section 5

<sup>8</sup> Section 18(1) and (2)(a)

<sup>9</sup> Schedule 2

<sup>10</sup> Section 12

<sup>11</sup> Clause 17 (clause 17, Services, (b)(iii))

<sup>12</sup> Section 5 (care and support services, (b)), and section 9(3) (excluded services (a))

<sup>13</sup> Following a comprehensive analysis of position descriptions, job advertisements and interviews with support workers, team leaders, supervisors and managers

<sup>14</sup> *Alo and Others v Emerge Aotearoa Limited and Others* [2017] NZERA Wellington 121 (3013394)

- (l) On 20 December 2017, the Employee Representatives filed proceedings in the Employment Court to challenge the Employment Relations Authority determination;<sup>15</sup>
- (m) On 12 February 2018, Cabinet:
  - directed the Ministry of Health to enter into negotiations with the unions and employers with a view to settling the claim for mental health and addiction support workers;<sup>16</sup>
- (n) On 18 May 2018, a settlement was reached among the Parties;<sup>17</sup>
- (o) On 18 June 2018, Cabinet agreed to the settlement;<sup>18</sup>
- (p) This Settlement Agreement records the main terms of the settlement, covers the payment of Retrospective Funding and Back-pay, the payment of the Funding and Pay Rates, matters that will be included in the Legislation, operational and related matters.

## Purpose

1. The purpose of this Settlement Agreement is to:
  - (a) record the agreed outcome of settlement negotiations determining that the minimum hourly wage rates, obligations to enable qualifications to be gained, and related conditions of employment<sup>19</sup> for mental health and addiction support workers consistent with those provided in the 2017 Act;
  - (b) provide for the Retrospective Funding of Employers to enable them to pay Back-pay to their Employees from the Application Date;
  - (c) provide for Employers to pay the Back-pay to their Employees from the Application Date;
  - (d) provide that:
    - (i) implementation of this Settlement Agreement is through the Legislation from the Commencement Date;

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<sup>15</sup> *Alo and Others v Emerge Aotearoa Limited and Others* NZEmpC 377/2017

<sup>16</sup> CAB-18-MIN-0025; on 14 February 2018, the Minister of Health, in a public statement confirmed *the Government has agreed to negotiate a settlement agreement to extend the Care and Support Pay Equity Settlement Agreement to mental health and addiction support workers*

<sup>17</sup> The Parties agree that an *Agreed Position of the Parties* (similar to that for care and support workers) is not necessary in the circumstances; the intention is that the same matters are recorded directly in this Settlement Agreement

<sup>18</sup> GOV-18-MIN-0033 (Cabinet Government Administration and Expenditure Review Committee - 12 June 2018); CAB-18-MIN-0281 (Cabinet confirmation – 18 June 2018)

<sup>19</sup> Weekend and night penal rates, and the extinguishing of allowances for length of service or qualifications

- (ii) implementation of this Settlement Agreement is through this Settlement Agreement if the Commencement Date is after the Settlement Date;<sup>20</sup>
- (iii) this Settlement Agreement is a deemed amendment to all Funding Agreements if Employers confirm in writing to their Funder that they wish this Settlement Agreement to apply;<sup>21</sup>
- (iv) this Settlement Agreement is a deemed amendment to all Employment Agreements between Employers and Employees represented by the Employer and Employee Representatives;<sup>22</sup>
- (v) this Settlement Agreement is a deemed amendment to all employment agreements between Employers and Employees not represented by the Employee Representatives if such Employees confirm in writing that they wish this Settlement Agreement to apply;<sup>23</sup>
- (e) provide certainty for all Parties that this Settlement Agreement is in full and final settlement of all issues related to the Proceedings;<sup>24</sup>
- (f) provide that this Settlement Agreement expires on 30 June 2022;
- (g) provide for related or incidental matters to paragraphs (a) to (f).

### **Title**

2. This is the Mental Health and Addiction Support Workers (Pay Equity) Settlement Agreement 2018.

### **Conditions precedent**

3. This Settlement Agreement is:
  - (a) conditional on:
    - (i) Cabinet approval of the settlement;
    - (ii) an appropriation by Parliament;<sup>25</sup>

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<sup>20</sup> The Parties acknowledge that, unlike the Care and Support Workers (Pay Equity) Settlement Agreement 2017, Legislation may not be able to implement this Settlement Agreement from the Settlement Date; implementation by the Legislation could therefore be delayed until after the Settlement Date. To enable the lawful payment of public monies from the Settlement Date (without the Legislation), this Settlement Agreement must apply for the period between the Settlement Date and the Commencement Date. Accordingly, Funding Agreements must be deemed to be varied by this Settlement Agreement. The Funders acknowledge however that the Employer Representative does not have a mandate from its members to negotiate the implementation of this Settlement Agreement other than through Legislation. An additional process (confirmation in writing as provided in paragraphs (d)(iii) to (d)(v)) is therefore necessary to ensure that all Employers agree to their Funding Agreements being varied by this Settlement Agreement if Legislation is delayed. Such confirmation is intended to occur during the ratification process

<sup>21</sup> The intention is that the deemed amendment to Funding Agreements applies to all Employers whether or not they are represented by the Employer Representative

<sup>22</sup> The intention is that the deemed amendments to Employment Agreements are authorised by Employees (represented by the Employee Representatives) through the ratification process (including default deemed ratification under this Settlement Agreement if that occurs)

<sup>23</sup> As with the deemed amendment to the Funding Agreements, Employees (not represented by the Employee Representatives) must also agree to any deemed amendment to their Employment Agreements by an additional process (intended to occur during the ratification process) to ensure that their Employment Agreements are varied by this Settlement Agreement if Legislation is delayed. Confirmation in writing only has to be from Employee to the Employer, it is expected that the Employer will advise the Funder

<sup>24</sup> Including Employers and Employees who are not represented by the Employer and Employee Representatives

- (b) null and void if both conditions precedent are not satisfied.
4. The Parties acknowledge that Cabinet may:
- (a) approve payment of the Funding and the payment of the Pay Rates, from the Settlement Date;
  - (b) approve payment of the Retrospective Funding and the Back-pay from the Application Date.<sup>26</sup>

#### **Commencement and expiry**

5. This settlement:
- (a) is effective through the Legislation if the Settlement Date and Commencement Date are the same date; or
  - (b) is effective through this Settlement Agreement if the Commencement Date is after the Settlement Date; and
  - (c) applies from the Application Date for the payment of the Retrospective Funding and Back-pay; and
  - (d) applies from the Settlement Date for the payment of the Funding and Pay Rates; and
  - (e) expires on 30 June 2022.<sup>27</sup>

#### **Obligation of Funders to pay Retrospective Funding**

6. Funders must pay each Employer the appropriate Retrospective Funding within 1 month of Settlement Date.

#### **Obligation of Employers to pay Back-pay**

7. Employers must pay each Employee the correct Back-pay:
- (a) for respective existing Employees at the Settlement Date, within 1 month of receiving the Retrospective Funding;
  - (b) for respective Employees no longer employed by the Employer at the Settlement Date, the parties acknowledge that the Employer will take all reasonable steps to contact such Employees, and where such contact is made, the Employer will pay the Back-pay to those Employees as soon as practicable.

#### **Obligation of Funders to pay the Funding to Employers**

8. Funders must pay the Employers as follows:
- (a) the Crown must pay the Funding to each DHB and Crown Funded Employer;
  - (b) DHBs must pay the Funding to each Crown Funded Employer;

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<sup>25</sup> eg similar to the separate appropriation for care and support workers in the Appropriation (2017/18 Estimates) Act 2017 [Schedule 1, Vote Health, 6/7, *Supporting Equitable Pay for Care and Support Workers*]

<sup>26</sup> The intent is that the payment of the Funding and Pay Rates (and contribution to training costs) will be made based on this Settlement Agreement if the Legislation does not commence on 1 July 2018; no subsequent funding or employment contractual variations are required before payments are made; a written undertaking from Employers not represented by the Employer representative will be obtained; this will ensure that in both situations the Treasury requirement for a document of accountability to be in place before public monies are paid will be satisfied; this clause is included for the benefit of Employers and Employees

<sup>27</sup> The intent is that the Pay Rates and the Funding are fixed for 5 years so that there will be no increase in those rates or Funding relating to the Settlement

- (c) ACC must pay the Funding to each ACC Funded Employer;
- (d) the Crown and ACC must pay<sup>28</sup> 2 days per full time equivalent employee per year as its contribution to education and training.<sup>29</sup>

### **Obligation of Employers to pay the Pay Rates to Employees and enable training**

9. Each Employer must:
- (a) pay each Employee the appropriate Pay Rate;
  - (b) take all reasonably practicable steps to ensure that Employees are able to gain a level 4 Qualification within 72 months of commencement of employment with that Employer.<sup>30</sup>

### **Legislation for parts of this Agreement**

10. The Parties acknowledge that for consistency with care and support workers:
- (a) the 2017 Act will apply in all respects to relevant parts of this Settlement Agreement;<sup>31</sup>
  - (b) the Legislation to amend the 2017 Act is subject to Executive and Parliamentary processes.<sup>32</sup>

### **Implementation without Legislation for limited time**

11. The Parties acknowledge and agree that for consistency with care and support workers, if the Commencement Date is after the Settlement Date, and to enable the lawful payment of public monies from that date in respect of the Retrospective Funding, Back-pay, Funding, and Pay Rates:
- (a) implementation is intended to occur through this Settlement Agreement by way of contract;
  - (b) implementation under this Settlement Agreement ceases from the Commencement Date.

### **Obligations enforceable**

12. The obligations of the Crown, DHBs and ACC to Employers, and the obligations of Employers to their Employees are enforceable under this Settlement Agreement as follows:

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<sup>28</sup> Payment is by way of on costs towards offsetting the additional costs faced by the Employer

<sup>29</sup> The goal is to have an industry wide workforce which is trained to meet current and future service needs

<sup>30</sup> Employers will provide the necessary systems and support to enable workers covered by this Settlement Agreement to gain a level 4 Qualification within 72 months. If an Employer fails or omits to take all reasonably practicable steps to ensure that an Employee is supported and enabled to gain a level 4 Qualification within 72 months, an employee may challenge such failure or omission by ways of a personal grievance under section 103(1)(b) of the ERA 2000. The intention is that Employers create the right incentives for Employees to achieve Qualifications; the obligation to provide support for training is a significant requirement over a sustained period of years to warrant a statutory obligation on Employers; some of the training is 'on the job', however the Settlement Agreement includes a financial contribution, by the Crown, to that training support. The period of 72 months does not apply to Employees who have been employed by their Employer for more than 72 months at the Settlement Date; the obligation on Employers for those Employees is to enable Employees to gain a level 4 Qualifications within 24 months of the Settlement Date

<sup>31</sup> Including, without limitation, preserving the rights of Employees to enforce compliance with the 2017 Act. The Settlement Agreement will be legislated in a way that is consistent with the signed Settlement Agreement.

<sup>32</sup> Including the Parliamentary Counsel Office

- (a) for Employers, under contract;<sup>33</sup>
- (b) for Employees, under the deemed amendments to their Employment Agreements, as if the Legislation was in force.
- (c) enforcement under (a) and (b) ceases from the Commencement Date.

### **Maintaining Currency of Rates**

13. 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 Appendix 1 will be adjusted accordingly.<sup>34</sup>

### **Weekend and Night Penal Rates**

14. If any Employment Agreement includes a night or weekend penal rate (as opposed to a weekend or night shift allowance) calculated as a percentage of the base hourly wage rate, such penal rates shall be converted into an allowance based on the wage scales in that Employment Agreement as at 30 June 2017.
15. If there is any dispute as to the transition of these penal rates into allowances, any party to an Employment Agreement may seek a final and binding decision on this matter by a Labour Inspector.

### **Extinguishing of Allowances**

16. From the Application Date any separate ongoing service allowances or qualifications allowance within the scope of this Settlement Agreement that is contained within any Employment Agreement is extinguished.

### **Leave liability**

17. The Crown, DHBs and ACC will make a one off contribution towards the increased cost of leave liability<sup>35</sup> to Employers for all Employees up to a maximum of 160 hours (four weeks) calculated per full time equivalent employee.<sup>36</sup>

### **Confirmation of Representation and Deemed Ratification Date**

18. The Employee Representatives and Employer Representative:
- (a) confirm that they represent their members;
  - (b) confirm they have the authority to sign this Settlement Agreement and bind their members (following appropriate consultation);
  - (c) confirm that they are required<sup>37</sup> to have any proposed settlement ratified<sup>38</sup> by their members;

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<sup>33</sup> The intent is that Employers may seek enforcement against the Crown, DHBs or ACC under this Settlement Agreement if they are not paid the appropriate Funding

<sup>34</sup> Parties acknowledge that the formula in the 2017 Act is incorrect and that the intention is to correct this

<sup>35</sup> The increased cost in leave liability is the difference in the cost of leave liability from the day before the Application Date and the Application Date. Leave means annual leave and time in lieu for working public holidays

<sup>36</sup> The obligation on the Crown, DHBs and ACC to pay the leave liability up to 160 hours per employee is consistent with the process agreed for care and support workers. It is intended to reimburse Employers for the accrued leave owing to their Employees for the leave entitlement equivalent to 1 year (from the Application Date to the Settlement date); any leave owing to Employees exceeding that amount must be paid for by the Employer

<sup>37</sup> By their respective constitutions and mandates

- (d) confirm that they will commence the ratification process<sup>39</sup> as soon as practicable after Cabinet approves the settlement;
- (e) acknowledge that, despite approving the settlement, Cabinet cannot approve introduction (into Parliament) of the Legislation on a conditional basis (including ratification of this Settlement Agreement by members of the Employee Representatives);
- (f) acknowledge that if ratification has not occurred 4 weeks after Cabinet approval of the settlement, this Settlement Agreement will be deemed to be ratified from that date.<sup>40</sup>

19. The Ministry of Health:

- (a) acknowledges and supports that the Employer and Employee Representatives must commence ratification processes, of the settlement, of its members;
- (b) agrees to pay Employers \$25 per Employee who attends a ratification meeting.<sup>41</sup>

**Full and final settlement**

20. This Settlement Agreement:

- (a) is in full and final settlement of all issues relating to the Proceedings (as at the Commencement Date);
- (b) expires on 30 June 2022;<sup>42</sup>
- (c) supersedes any representation (verbal or written, express or implied) made before the date that this Settlement Agreement is signed.<sup>43</sup>

**Good Faith**

21. The Parties will deal with each other in good faith<sup>44</sup> on all matters under, or associated with, this Settlement Agreement (including the ratification processes of the Employer Representatives and the Employee representatives).

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<sup>38</sup> The Employer ratification process must also include an invitation for Employers to agree that the Settlement Agreement varies each Employment Agreement

<sup>39</sup> In accordance with their respective constitutions and mandates. Ratification processes are separate documents and do not form part of this Settlement Agreement. The parties recognise:

- (a) the ability of all Employees (union members and non-union members) to have the opportunity to vote in the ratification process for this agreement is fundamental to this Settlement. The Ministry of Health will support the implementation of the ratification process and in good faith encourage all employers to comply with this process;
- (b) the ability of all Employers to have the opportunity to vote in the ratification process for this agreement is fundamental to this Settlement. The Ministry of Health will support the implementation of the ratification process;

<sup>40</sup> All parties support the ratification processes for demonstrating that a fair process has been followed and provides a mandate for subsequent legislation that removes back-pay, phases in new rates and extinguishes claims.

<sup>41</sup> Payment will be made on verification, to the Ministry of Health, by Employer and Employee Representatives

<sup>42</sup> The intention is that the Settlement and this Settlement Agreement addresses all matters related to the Proceedings filed by Employees with the Employment Relations Authority (as at the Commencement Date), and any claim related to the Proceedings that may be filed by an Employee before 30 June 2022; nothing in this Settlement Agreement is intended to prevent any employee from filing a pay equity claim after that date

<sup>43</sup> The Parties confirm that they have specifically addressed the meaning of this paragraph and confirm that they have understood and agreed its meaning

<sup>44</sup> The intent is that good faith has a similar meaning to section 4 of the Employment Relations Act 2000

### **Settlement Agreement applies to all Employees**

22. This Settlement Agreement applies to all mental health and addiction support workers who provide the Services, whether or not they are represented by the Employee Representatives or employed by an Employer.<sup>45</sup>

### **Disputes**

23. Any Employer may, for any period between the Settlement Date and the Commencement Date, raise a dispute<sup>46</sup> against any Funder, in relation to:
- (a) the Retrospective Funding;
  - (b) the Funding.
24. Any Employee may, between the Settlement Date and the Commencement Date, raise a dispute against an Employer in relation to:
- (a) the Back-pay;
  - (b) the Pay Rates.
25. No Party may raise a dispute under this Settlement Agreement after the Commencement Date.

### **Settlement Agreement not to be varied except with Cabinet approval**

26. This Settlement Agreement:
- (a) must not be varied:
    - (i) except with the prior approval of Cabinet;
    - (ii) beyond the scope of any such Cabinet approval;
  - (b) must only be varied (following any such Cabinet approval):
    - (i) in writing; and
    - (ii) signed by the Parties;
  - (c) does not create any legitimate expectation that Cabinet will approve a variation.

### **One original Settlement Agreement**

27. This Settlement Agreement:
- (a) is signed by the Parties in 1 original;<sup>47</sup>
  - (b) must be retained by the Ministry of Health;
  - (c) must be published by the Ministry of Health on its website, and as soon as reasonably practicable after it is signed by the Parties;<sup>48</sup>

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<sup>45</sup> The intent is that all estimated 3,800 mental health and addiction support workers (2,800 full-time equivalents), working for 240 Employers (approximately) will receive the benefits of this settlement even though they may not be a member of one of the unions represented in the settlement negotiations

<sup>46</sup> *Dispute* has the narrow meaning as decided by the Supreme Court in *Zurich Australian Insurance Limited T/A Zurich New Zealand v Cognition Education Limited* [2014] NZSC 188 (the party asserting there is a dispute must be acting bona fide, or there must be a dispute in reality); *dispute* does not include a claim by an Employee that is a personal grievance or for recovery of arrears of wages; the intent is that this Settlement Agreement is full and final of all pay equity issues relating to the Proceedings, and pay equity claims filed by Employees with the Employment Relations Authority or Employment Court (as at the Commencement Date) and is also supported by the Legislation, it would therefore be inconsistent to enable disputes to be taken

<sup>47</sup> There are no counterparts

- (d) may be published by any other Party on its website, or shared website, or by way of a hyperlink provided to the Ministry of Health website.

## Definitions and Construction

28. In this Agreement, unless the context otherwise requires:

### *Definitions*

**2017 Act** — means the Care and Support Workers (Pay Equity) Settlement Act 2017;

**ACC** — means the Accident Compensation Corporation continued by section 259 of the Accident Compensation Act 2001;

**ACC Funded Employer** — means an entity that receives Funding from ACC, to provide the Services, under a Funding Agreement;

**Application date** — means 1 July 2017;

**Back-pay** — means:

- (a) the sum equivalent to the difference between an Employee's hourly pay rate<sup>49</sup> on the day before the Application Date and relevant Pay Rate; and
- (b) excluding any separate ongoing service or qualification allowance; and
- (c) for all hours worked; and
- (d) calculated for the period an Employee worked during the period from the day before the Application Date and Settlement Date.

**Commencement Date** — means the date that the Legislation commences;

**Crown** — means Her Majesty the Queen in right of New Zealand, acting by and through the Director-General of Health, or the Chief Executive of the Ministry of Social Development, or the Chief Executive of Oranga Tamariki-Ministry for Children, or the Chief Executive of the Department of Corrections (whichever is applicable);

**Crown Funded Employer** — means an entity that receives Funding from the Crown or a DHB, to provide the Services, under a Funding Agreement;<sup>50</sup>

**Current Employee** — means an Employee who is employed by an Employer as at the Application Date;

**DHBs** — means each DHB specified in Schedule 1 of the New Zealand Public Health and Disability Act 2000;

**Employee** —

- (a) means a mental health and addiction support worker, employed by an Employer who performs<sup>51</sup> the Services;
- (b) includes any person who has been employed by an Employer as an Employee who has, between the Application date and the day before Settlement Date:
  - (i) exited their employment with an Employer and exited the sector;
  - (ii) transferred to another Employer and is performing the Services;

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<sup>48</sup> The intention is to publish this Settlement Agreement as soon as practicable after it is signed, however acknowledging it is still subject to ratification by the Employees and Employers or deemed ratification (if ratification has not occurred 4 weeks after Cabinet approval of the Settlement)

<sup>49</sup> This includes all statutory entitlements (such as leave)

<sup>50</sup> The intent is to also include individualised/ personalised funding

<sup>51</sup> Where an Employee performs Services and also services that are excluded, the primary purpose of their work must be considered as to whether or not they are an Employee

- (iii) transferred to another employer as defined in the 2017 Settlement Act;
  - (iv) changed roles with their current or former Employer to a non-Care and Support Worker role;<sup>52</sup>
  - (v) transferred to a non-funded service, but still employed by an Employer;
- (c) does not include employees who do not perform the Services.<sup>53</sup>

**Employer** — means an Employer of an Employee funded for the Services by the appropriate Funder;

**Employment Agreement** — — means a collective agreement or individual employment agreement;

**Funder** — means the Ministry of Health, Ministry of Social Development, Oranga Tamariki-Ministry for Children, Department of Corrections, DHBs, or ACC, contracting with an Employer to provide the Services;

**Funding** – means the sum equivalent to:

- (a) the additional wages costs for all hours worked; and
- (b) contribution towards training costs; and
- (c) on-costs; and

funding as a result of this Settlement Agreement.<sup>54</sup>

**Funding Agreements** — means the following funding agreements for, or including, the Services:

- (a) the Crown funding agreement<sup>55</sup> between the Minister/Ministry of Health and DHBs;
- (b) the direct funding agreement between the Ministry of Health and Employers;
- (c) the respective funding agreements between DHBs and Employers;
- (d) the formal contracts between the Ministry of Social Development and Ministry of Social Development funded Employers;
- (e) the formal contracts between Oranga Tamariki-Ministry for Children and Oranga Tamariki-Ministry for Children funded Employers;
- (f) the formal contracts between the Department of Corrections and Department of Corrections funded Employers;
- (g) the formal contracts between ACC and ACC Funded Employers entitled:
  - (i) Home and Community Support Services;
  - (ii) Individual Residential Support Services;
  - (iii) Residential Support Services;

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<sup>52</sup> The intent is that an Employee must have been providing the *Services*, as defined in the Care and Support Workers (Pay Equity) Settlement Agreement 2017 and not have been employed in any other role (such as a supervisor), or provided other services (as described in that Agreement) except mental health services

<sup>53</sup> Including (without limitation), any health practitioner registered under and in accordance with the Health Practitioners Competence Assurance Act 2003, supervisors, cleaners, cooks, and office workers - this list is not exhaustive and is intended to exclude any Employee whose primary work purpose is not mental health and addiction support even if mental health and addiction support is incidental to their primary work

<sup>54</sup> Section 18 of the 2017 Act, including funding for 2 days per full time equivalent Employee per year (by way of on costs) as a contribution to education and training support, and any other matter the Funder considers appropriate

<sup>55</sup> Section 10 of the New Zealand Public Health and Disability Act 2000

**Legislation** — means the intended amendment to the 2017 Act;<sup>56</sup>

**Mental health and addiction support services** — means services funded under a funding agreement that are performed in a person's home<sup>57</sup>, or home like setting,<sup>58</sup> or workplace, or in a provider or Employer facility,<sup>59</sup> or in a community facility<sup>60</sup> for the purpose of—

- (a) assisting a person who has a mental health or addiction need to achieve their goals to:
  - (i) continue to live in the person's home or in the community (such as personal care and household management services); or
  - (ii) work in the community; or
  - (iii) participate in activities in their communities of interest to them; or
  - (iv) contribute to their communities in ways valued by them and their communities; or
  - (v) learn new skills to help them manage their lives and overall well-being, and to participate and work in their communities; or
  - (vi) maintain and develop social and support networks;
- (b) supporting a person's rehabilitation from a mental injury covered by the Accident Compensation Act 2001 and to achieve and sustain the person's maximum level of participation in everyday life;

**Parties** — means collectively all the Parties to this Settlement Agreement (as described on the front page);

**Pay Rates** — means the minimum hourly wage rates Transition Rates<sup>61</sup> payable by Employers to Employees in Schedule 2(1) of the 2017 Act, payable from the Settlement Date and includes all other matters<sup>62</sup> (for convenience that are reproduced in Appendix 1);

**Proceedings** — means the application and associated challenge referred to in the Background;

**Qualification** — means the *New Zealand Certificate in Health and Wellbeing* (Levels 2, 3, and 4) issued by NZQA or equivalent;

**Retrospective Funding** – means

- (a) the sum equivalent to:

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<sup>56</sup> The mechanism for the Amendment will be determined by Parliament and the Parliamentary Counsel Office

<sup>57</sup> Including home and community support services for persons living at home (including residents who are in an independent living setting in a retirement village) following a needs based assessment

<sup>58</sup> Including residential care facility

<sup>59</sup> A provider or Employer Facility can be used for delivering support activities such as creative arts, fitness, knitting, cooking, or Maori language group activities (these are examples and not an exclusive list)

<sup>60</sup> Including correctional facility, hospital, public swimming pool and public library (these are examples and not an exclusive list)

<sup>61</sup> Support for training to gain a qualification, transition and progression for existing mental health and addiction support workers, progression for employees (other than Current Employees), maintenance of currency of rates, weekend and night penal rates, and one-off payment for Employees to attend ratification meetings

<sup>62</sup> The intent is that the Pay Rates do not include the rates of pay payable under section 22 of the Sleepovers Wages (Settlement) Act 2011 [expired on 18 October 2016], or section 17 of the Home and Community Support (Payment for Travel Between Clients) Settlement Act 2016; the intent is that the rates of pay for sleepovers and for in-between travel remain at the minimum amounts prescribed in or by those Acts

- (i) the difference between each Employee's hourly pay rate on the day before the Application Date and relevant Pay Rate; and
- (ii) on-costs; and
- (b) excluding any separate ongoing service or qualification allowance; and
- (c) for all hours worked; and
- (d) calculated for the period an Employee worked during the period from the day before the Application Date and Settlement Date; and
- (e) a one off contribution to increased leave liability costs.<sup>63</sup>

**Services** — means:

- (a) Mental health and addiction support services;
- (b) does not include:
  - (i) other services;<sup>64</sup>
  - (ii) services provided directly by Employees of DHBs under a Crown Funding Agreement;<sup>65</sup>
  - (iii) private services to a client, by a person whether or not they are performing those services as an Employee;<sup>66</sup>

**Settlement Agreement** — means this Mental Health and Addiction Support Workers (Pay Equity) Settlement Agreement 2018;

**Settlement Date** — means 1 July 2018;

**Transition Rates** — means the minimum hourly pay rates on or after the Application Date or for continuous service in Appendix 1 as appropriate;

*Construction*

- (a) parts of this Settlement Agreement are called:
  - (i) clauses (eg 1, 2, and 3);
  - (ii) paragraphs (eg (a), (b), and (c));
  - (iii) subparagraphs (eg (i); (ii); and (iii));
- (b) for simplicity and clarity, the phrases 'of this Settlement Agreement', 'under this Settlement Agreement', 'for the purposes of this Settlement Agreement', or 'in accordance with this Settlement Agreement' have not been expressly used in most places, and are implied;
- (c) there are no cross references to other clauses, it is intended that the Agreement be read as a whole;
- (d) the singular includes the plural, and vice versa;

<sup>63</sup> The increased cost in leave liability is the difference in the cost of leave liability from the day before the Application Date and the Application Date. Leave means annual leave and time in lieu for working public holidays

<sup>64</sup> Care and support services as defined in the 2017 Act, services excluded from the 2017 Settlement Agreement (footnote 57 of the 2017 Settlement Agreement), services performed by any health practitioner registered under and in accordance with the Health Practitioners Competence Assurance Act 2003

<sup>65</sup> Section 10 of the New Zealand Public Health and Disability Act 2000

<sup>66</sup> The intent is that a client who engages a person directly to perform mental health and addiction support services, and pays for those services privately without any source of funding from the Crown, DHB, ACC, Ministry of Social Development, Oranga Tamariki – Ministry for Children, Department of Corrections are not Services within the meaning of this Settlement Agreement

- (e) footnotes are part of this Settlement Agreement, and are intended to assist in the explanation of a specific matter in the text;
- (f) definitions apply to the footnotes;
- (g) any term not defined has its ordinary meaning, or the meaning in the Legislation, or Employment Relations Act 2000, or any legislation consequentially amended by the Legislation, where appropriate and according to the context;
- (h) if any matter arises requiring the interpretation of this Settlement Agreement, the purpose must be taken into account; this Settlement Agreement is a contract for the purpose of interpretation; the common law principles of contract interpretation apply.<sup>67</sup>

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<sup>67</sup> Particularly the matrix of fact approach to establish the intention of the parties - *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1997] UKHL 28 (House of Lords, UK), and *Vector Gas Limited v ROPE Limited* [2010]

## Appendix 1

### Minimum hourly Pay Rates on or after 1 July 2017

	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*	\$23.50	\$24.50	\$25.50	\$27.00

\*"Qualifications" are those recognised by NZQA

**NB** – For the purpose of determining the minimum rates and progression for Employees, an employee may move immediately to Level 4 upon achieving a Level 4 Qualification with there being no requirement to complete Levels 2 and Levels 3 before completing Level 4.

The Pay Rates for Year 1 are for the purpose of Retrospective Funding and Back-pay only.

### Transition Rates (minimum hourly Pay Rates) on or after 1 July 2017

	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	\$23.50	\$24.50	\$25.50	\$27.00

**NB** – The Pay Rates for Year 1 are for the purpose of Retrospective Funding and Back-pay only.

### Transition Rates (minimum hourly Pay Rates) for current continuous service

After 1 July 2017	On or after 1 July 2018	On or after 1 July 2019	On or after 1 July 2021
\$22.50	\$23.50	\$24.50	\$26.00

**NB** – For the purpose of determining the appropriate Transition Rate for an Employee, Employees must have been employed in current continuous service with their Employer

The Pay Rates for Year 1 are for the purpose of Retrospective Funding and Back-pay only.

1. All Current Employees who reach 12 years current continuous service with their employer after 1 July 2017 and who have not achieved a Level 4 Certificate will move on to the

Transition Rates for continuous service unless there are genuine reasons based on reasonable grounds that the Employer did not provide the support necessary for the Employee to achieve the Level 4 qualification, in which case the Employee will be entitled to move to the Level 4 step above. Any dispute about the provision of the necessary support will be dealt with through the normal dispute resolution processes.

2. For the period from the Application Date to the day before the Settlement Date, “current continuous service” means:
  - (a) service recognised as continuous for the purpose of transferring workers (under the provisions of the Employment Relations Act 2000);
  - (b) service where an Employee was a mental health and addiction support worker after the Application Date and is an Employee on the Settlement Date; and
    - (i) transferred to another Employer and is performing the Services; or
    - (ii) transferred to another Employer as defined in the 2017 Act for a period of time<sup>68</sup>; or
    - (iii) transferred to an employer and did not perform the Services for a period of time.

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<sup>68</sup> This includes service across the care and support sector

**Dated** at Wellington 25 July 2018

**Signed:**

For and on behalf of **Her Majesty the Queen in right of New Zealand, acting by and through the Director-General of Health**

by

\_\_\_\_\_

[Name] [Signature]

For and on behalf of **Her Majesty the Queen in right of New Zealand, acting by and through the Chief Executive of the Ministry of Social Development**

by

\_\_\_\_\_

[Name] [Signature]

For and on behalf of **Her Majesty the Queen in right of New Zealand, acting by and through the Chief Executive of Oranga Tamariki-Ministry for Children**

by

\_\_\_\_\_

[Name] [Signature]

For and on behalf of **Her Majesty the Queen in right of New Zealand, acting by and through the Chief Executive of the Department of Corrections**

by

\_\_\_\_\_

[Name] [Signature]

On behalf of the **Accident Compensation Corporation**

by

\_\_\_\_\_

[Name]

\_\_\_\_\_

[Signature]

On behalf of all **20 District Health Boards**

by

\_\_\_\_\_

[Name]

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[Signature]

On behalf of **Platform Charitable Trust**

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[Name]

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[Signature]

On behalf of **E tū Incorporated**

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[Name]

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[Signature]

On behalf of the **New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi Incorporated**

by

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[Name]

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[Signature]

On behalf of the **New Zealand Council of Trade Unions Te Kauae Kaimahi Incorporated**

by

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[Name]

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[Signature]