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CLAIM: Health and Disability Care and Support

Claimant Unions

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Multiple Employers

See appendix 1 for a full list of employers the Care and Support Workers Pay Equity Claim ("the Claim") has been raised with ("the Employers").

Pay Equity Claim: Care and Support Workers

Claim

The PSA, E TŪ, NZNO (the Unions) formally raise a claim on behalf of care and support workers employed by the Employers, and those doing the same or similar work. The claim is raised under the Equal Pay Act 1972 (as amended 2020) (the Act).

The claim will be settled under section 13ZH of the Act when

- Remuneration is determined that the parties agree does not differentiate on the basis of sex
- Terms and conditions of employment are determined that the parties agree do not differentiate on the basis of sex
- A process is agreed to review the settlement to ensure pay equity is maintained

Description of the work

Care and Support workers provide connection, community, dignity, and independence to hundreds of thousands of people across Aotearoa. Every person, of every age in New Zealand, deserves to live with dignity and to fulfil their potential in life, and without care and support workers, this is simply not possible.

Care and Support workers deliver support to people through a range of situations in the community, including in individual homes, residential care facilities, retirement villages, rest homes, and workplaces, in vocational work or day programmes or in social time, across the aged care, mental health and addictions, home and community and disability sectors within the wider Health and Disability Sector.

Care and Support workers primarily perform work delivered under service agreements with multiple Government funding agencies including Health NZ (previously Ministry of Health and District Health Boards), Māori Health Authority, Ministry for Disabled People, Ministry of Social Development, Accident Compensation Corporation, Oranga Tamariki and the Department of Corrections. These service agreements assist in understanding the scope of the support worker role, in addition to related Needs Assessment Coordination Agency (NASC) assessments which determine the support to be provided by support workers to individuals.

Core elements of the work include directly supporting individuals as outlined in the person's care or support, goal plan or assessment, including as follows:

- supporting a person to continue to live in the person's home or in the community (such as providing personal care, or household management services or other care and support to enable community participation and to continue to live in their own homes);
- assisting a person who has a disability to live and/or work in the community; or

- supporting the person's rehabilitation from an injury covered by the Accident Compensation Act 2001 and to achieve and sustain the person's maximum level of participation in everyday life; or
- providing personal care and supporting people in long-term and relief residential care (in a hospital, or a rest home) under the Residential Care and Disability Support Services Act 2018
- providing vocational and disability support services that are provided to a person with a disability for the purposes of assisting them to continue to live in their home or in the community (such as personal care and household management services); or work or volunteer in the community; or participate in activities in, and contribute to, their community; or learn new skills to manage their lives and achieve overall well-being; or maintain and develop social and support networks; or
- providing mental health and addiction services that are provided to a person who has a mental health need or an addiction need for the purpose of assisting them to continue to live in their home or in the community (such as personal care and household management services); or work or volunteer in the community; or participate in activities in, and contribute to, their community; or learn new skills to manage their lives and achieve overall well-being; or maintain and develop social and support networks; or to a person with a mental injury covered by the Accident Compensation Act 2001 for the purpose of supporting their rehabilitation from the injury; or supporting them to achieve and sustain their maximum level of participation in everyday life.

How the work is the same or similar across employers

The purpose and focus of care and support work includes keeping people healthy and safe, while supporting them to live with dignity, including the ability to fully engage in their community and whanau. This is the same regardless of employer or environment.

The following core skills are common across the sectors:

- Organisational skills.
- Social skills
- Emotional skills.
- Physical ability including dexterity and stamina.
- Caring skills.
- Communication skills.

- Skills required to deal with the issues of illness and death.
- The skills necessary to deal with agencies, professionals, and medical providers.
- Cultural skills.
- Sensitivity.
- Commitment.
- Compassion.
- Skills required to deal with the complex psychological, psychosocial, medical, personal, family, and other circumstances that affect residents/clients.
- Comforting skills.
- The skills required to deal with grief.
- The skills required to support those residents who feel loneliness, isolation and despair.

Care and Support workers access and are recognized through the same qualifications and are all covered by the Support Workers (Pay Equity) Settlements Act 2017.

Under that legislation they share:

- legal definition (in relation to the work being performed under Government service agreements)
- pay rates and a single progression system
- recognition of qualification

The purpose, definitions and skills required for the role all affirm that the work is the same or similar across the employers.

Affected Employees

Under Section 13W of the Equal Pay Act Affected Employees are automatically covered by Union Claims.

Under the Equal Pay Act 1972 an affected employee means an employee who performs work that is the same as, or substantially similar to, the work performed by another employee of the same employer, if a pay equity claim has been raised with the employer in respect of that work.

Equal Pay Act 2020 13F Meaning of Arguable

The Unions rely on the following information in support of the elements required for an arguable equity claim (EPA section 13f)

13F (1) (a) The work is predominantly performed by female employees.

OECD data affirms that long term care work is female dominated around the world¹.

The vast majority of care and support workers in New Zealand are women². Ravenswood says the home support and aged care residential workforce is 94% female, disability support is 84% female and mental health and addictions is 76% female.³

13F(1)(b) It is arguable the work is currently undervalued or has been historically undervalued.

It is arguable that the work of care and support workers is currently and has been historically undervalued based on consideration of the following relevant factors that may be considered under section 13F(3)

13(f)(3)(a) The origins and history of the work, including the manner in which wages have been set

The work, no matter in which sub-sector, has come out of women's role in supporting the family's sick and elderly, or those with disabilities in the home. In the early part of the 20th century churches and other religious groups started setting up residences, which housed those who had no support in their homes. Other groups, such as the Women's Division of Federated Farmers started providing home support to sick or elderly people living in rural areas. People with disabilities and mental health issues were normally placed in a hospital, sometimes called mental asylums. Following the election of the First Labour Government in 1935 and the passing of the Social Security Act a greater investment was made in public hospitals and more older people were accommodated there. However, the not-for-profit aged care residential sector continued to grow with a 50% government subsidy paid by Government for the capital costs of setting up a facility accompanied by a staffing subsidy. For-profit organisations had to provide their own facilities but negotiated a price with the Department of Health for the running of the facilities. None of these organisations any of the sub-sectors were covered by the National Award System and unless they were working in a public hospital were unionised and simply accepted the wage they received.

There was an attempt in 1968 by the Inspector of Awards in the Arbitration Court to get aged residential care work recognised under the Private Hotel Employees Award or as an alternative the NZ Private Hospital Domestic Workers Award in order for the enforcement of minimum wage rates for the Canterbury-based Cedar Nursing Home. The Cedar Nursing Home accommodated up to about 20 elderly residents, one of whom was paralysed, and the others need help to get in and out of baths, seen to bed at night and assisted during the night by an on-call worker if required. The Court decided that this rest home was not a private hotel because the residents were of "a different kind and

¹ <https://www.oecd.org/gender/data/women-are-well-represented-in-health-and-long-term-care-professions-but-often-in-jobs-with-poor-working-conditions.htm>

² <https://thehub.swa.govt.nz/assets/documents/HRC-12-Caring%20Counts%20Tautiaki%20tika.pdf>

³ NZ Care Workforce Survey 2019 Report, Ravenswood K, Douglas J and Ewertowska T.

character” from those normally accommodated in a private hotel and it was not a private hospital because it was not registered under the Hospitals Act 1957 and did not provide medical care. Cedar Nursing Home was also registered under the Old Peoples’ Homes Regulations 1965, which was further evidence, according to the court, that it was not a hospital.

The Court knew though that the issue of where rest homes sat in the award system would not go away and said that if there was to be a change to the Private Hotels Award or the Private Hospitals Award to include rest homes then this should be done by clearly defining this group in the coverage and citing an employer representative of the group affected so that they could be heard or represented at the Conciliation Council proceedings. Five years after this decision the union achieved the first award in the aged care sector with the registration of the Canterbury Rest Homes’ Employees Award dated 3 May 1973. The 1973 award was limited in scope to the Canterbury industrial district. The award was promulgated by the Arbitration Court after the hearing of evidence and argument. The 1973 award contains a memorandum, which is in effect a judgment of the Arbitration Court. It deals with an application by numerous employer parties (essentially the religious and welfare homes) “to be excluded from the provisions of the award”.⁴ This was opposed by the union and the other employers. His Honour Judge Blair outlined the argument for the religious and welfare homes in detail, who argued that the relevant workers were mainly “married women” who saw the work “primarily as a contribution to a worthy cause”. The Court received a letter from one of the women employed at Lister House stating she was “completely satisfied” with her current situation.

The Court rejected the arguments raised, and emphasised that all workers were entitled to the minimum conditions of the award. The arguments run by the charity employers are very similar to those referred to in this Court’s decision of 22 August 2013. The union subsequently sought and obtained the award (excluding the Canterbury Industrial District) this award absorbed the Canterbury Industrial District Award, forming the first national award.

Apart from a national award achieved by the Early Childhood Workers Union residential aged care workers were the last to achieve an award before they were abolished in 1991. There was no award for home support workers, nor disability support workers nor community mental health and addictions workers.

13F(3)(b) any social, cultural, or historical factors and 13F (3)(c) characterisation of the work as Women’s work

Women’s work refers to work traditionally and historically undertaken by women, this tends to focus around the traditional role of the wife and mother, including caring for the home and family. Women’s work extends beyond the home and often refers to professions that extend the work, particularly of caring work, into the paid work force.

Care and support workers take on the role that has long been considered that of women, caring for the vulnerable, connecting people with the community, allowing people to live with dignity, and physically or emotionally supporting those most in need of ongoing help.

13F(3)(d) That the nature of the work requires an employee to use skills or qualities that have been both generally associated with women and regarded as not requiring monetary compensation

In order to fulfill the core purpose of the care and support workers’ role use skills and responsibilities that have generally been associated with women, these skills and

⁴ page 2819.

responsibilities have historically been undervalued and regarded as natural to women and so not deserving of monetary compensation. These skills include but are not limited to:

It is widely accepted by both funders and employers that care and support work requires the following skills (the majority of which are generally associated with caring, with empathy, and with women):

- Organisational skills.
- Social skills
- Emotional skills.
- Physical ability including dexterity and stamina.
- Caring skills.
- Communication skills.
- Skills required to deal with the issues of illness and death.
- The skills necessary to deal with agencies, professionals, and medical providers.
- Cultural skills.
- Sensitivity.
- Commitment.
- Compassion.
- Skills required to deal with the complex psychological, psychosocial, medical, personal, family, and other circumstances that affect residents/clients.
- Comforting skills.
- The skills required to deal with grief.
- The skills required to support those residents who feel loneliness, isolation and despair.

It is also widely accepted by both funders and employers that care and support work imposes the following responsibilities (the majority of which are generally associated with caring, with empathy, and with women):

- Responsibility for the well-being of vulnerable human beings.

- Responsibility for the support of such persons including medical and emotional care.
- Responsibility for safety of the residents.
- Compliance with regulations and the requirements of residents/consumer rights.

13F(3)(e) Any sex based systemic undervaluation of the work as a result of any of the following factors

- **A dominant source of funding across the relevant market, industry, sector or occupation**
These workers are almost totally funded by the Crown, predominantly through Vote Health but also from other entities of the state.
- **A lack of effective bargaining in the relevant market, industry, sector or occupation**
There is a lack of real effective bargaining in this sector because the monopsony funder sets the minimum terms in the Support Workers Pay Equity Settlements Act 2017 and the Crown funding ensures that it is impossible to bargaining anything much beyond this.

It must be noted that as care work, the industrial landscape is complex. Care and support workers are dedicated to and invested in the wellbeing of the people they work with.

Traditional actions such as industrial action in any form are weighed by workers against the impact on vulnerable people. Even in the face of personal hardship, care workers will often prioritise care over their individual benefit.

- **Occupational segregation or segmentation in respect of the work**
- The work of care and support workers is predominantly performed by women workers, almost totally in the aged care and home support areas with rates above 70% in disability support and mental health/addictions.
- **The failure by the parties to properly assess or consider the remuneration that should have been paid to properly account for the nature of the work, the levels of responsibility associated with the work, the conditions under which the work is performed, and the degree of effort required to perform the work**

The work requires complex skills and significant responsibility, but it also involves conditions which are often onerous and/or demanding and/or difficult in the following respects:

- The work is difficult and exhausting.
- The hours are often unsociable involving nights and/or weekends.
- There is exposure to infection.
- Heavy work is often required.
- The nature of the work causes physical degradation over time.

- The work is emotionally demanding and draining.
- The work is stressful.
- The work requires dealing with challenging behaviours including sexual behaviours and/or aggression.
- The providing of personal cares is difficult work.

Care and support work requires significant degrees of effort, including:

- The work involves extensive, intensive and often continuous physical, mental and emotional effort.
- The work requires high levels of often continuous focus and concentration.
- There work requires constant and continuous attention to achieve high standards of care for residents/clients.
- The work is complex, demanding and physically exhausting.

Due to their total dependence on state agencies for funding, the focus of the employer has ultimately been on limiting cost, not appropriate recognition of the nature of the work, conditions, responsibilities or degrees of effort described above, nor on a proper assessment of the remuneration that should be paid to recognise the value of the work undertaken by care and support workers.

Consolidation

This Claim has been raised by the unions with multiple employers who employ care and support workers who are members of the unions.

Under section 13K each employer who receives a pay equity claim raised by a union with multiple employers must enter into a single multi-employer pay equity process agreement for the purposes of the pay equity bargaining process.

Please see appendix 1 for further consolidation information

Please see appendix 2 for a full list of employers with whom the Car and Support Workers' Pay Equity claim has been raised.

Appendix – advice to employers

Section 13K

13K Union-raised claims raised with multiple employers: employers must enter into pay equity process agreement

(4) This section applies if—

- a) 1 union has raised a pay equity claim with 2 or more employers in respect of employees who are members of that union and who perform the same, or substantially similar, work; or
- b) 2 or more unions have jointly raised a pay equity claim with 2 or more employers in respect of employees who are members of any of those unions and who perform the same, or substantially similar, work.**

(2) Each employer who receives a pay equity claim raised by a union or unions with multiple employers must enter into a single multi-employer pay equity process agreement for the purposes of deciding whether the claim is arguable and for the purposes of the pay equity bargaining process.

(3) The multi-employer pay equity process agreement must set out—

- a) whether there will be 1 or more representatives for the employers and who that representative or those representatives will be; and
- b) how decisions relating to the claim will be made.

(4) If the employers cannot agree on a multi-employer pay equity process agreement, any of them may apply to the Authority for a direction.

NOTE: Employers may opt out of the multi-employer process only for genuine reasons based on reasonable grounds, however, the employer must still progress a pay equity claim.

Legal responsibilities of employers: Process

What does the pay equity process look like for employers?

Employers will receive a Pay equity claim from the union/s for members and all employees doing the same or similar work.

The claim includes the following information:

- 1) state the name and address for service of the union claim
- 2) state the date on which the claim is made

- 3) include a brief description of the work performed by the employees to be covered by the union-raised claim
- 4) briefly set out the information that the claimant relies on in support of the elements required for an arguable pay equity claim under section 13F;
- 5) if it is a multi-employer claim it will include a notice of your obligations under section 13K to enter a multi-employer pay equity process agreement with the other employers with whom the claim is raised
- 6) the name/s of each employer/s with whom the claim has been raised
- 7) if it is a multi-employer claim it will include a brief explanation of how the work performed by the employees covered by the claim is the same or substantially similar.
- 8) The claim will not include the name of any individual members

If the claim has been raised with multiple employers, they will receive a list of the other employers covered by the claim. Under section 13K of the Act, employers are required to contact the other employers and enter a single multi-employer pay equity process agreement for the purposes of deciding whether a claim is arguable and for the purpose of the pay equity bargaining process.

Requirements for employers under the legislation

<p>Step 1 - Receiving the claim</p>	<p>An employer who receives a pay equity claim must within 5 working days:</p> <p>Give written notice of receipt to the union</p> <p>Give written notice and a copy of the claim to any other unions that represents employees who perform work that is the same as, or substantially similar to the claim.</p>
<p>Step 2 - agreeing the claim is arguable</p>	<p>An employer must enter a single multi-employer pay equity process if the claim is across multiple employers.</p> <p>Employers must give joint notice whether they agree the claim is arguable within 45 working days of receipt.</p> <p>Unless they extend this timeframe with a written notice to the union The maximum extension on the time limit is an additional 80 working days.</p>

<p>Step 3 - giving notice to affected employees</p>	<p>Each employer must individually give notice to affected employees that a pay equity claim has been raised and it is arguable within 20 working days of agreeing arguability.</p> <p>This can be extended under reasonable grounds by an extra 25 working days with a written notice to the union.</p>
<p>Step 4 - notice period for employees</p>	<p>There is a 20 working day notice period for employees covered by the claim, this starts from when the employer provides notice to the employees that a pay equity claim has been raised and is arguable.</p> <p>Once the 20 working day notice has passed, employer/s must provide the union with the contact details of all employees covered by the claim (including non-members) as soon as is reasonably practicable.</p>

Section 13ZB - 13ZZE of the Equal Pay Act 1972 sets out the Pay Equity Bargaining Process once arguability is agreed.

Appendix 2

Full list of Employers claim raised against

BUPA

CCS Disability Action Incorporated (CCS Disability Action Northland Inc., CCS Disability Action Auckland Inc., CCS Disability Action Waikato Inc., CCS Disability Action Bay of Plenty Inc., CCS Disability Action Manawatu-Horowhenua Inc., CCS Disability Action Hawkes Bay Inc., CCS Disability Action Wairarapa Inc., CCS Disability Action Northern Taranaki Inc., CCS Disability Action South and Central Taranaki Inc., CCS Disability Action Inc., CCS Disability Action Tairāwhiti Hawkes Bay Inc., CCS Disability Action Wellington Inc., CCS Disability Action Nelson Marlborough Inc., CCS Disability Action Canterbury and West Coast Inc., CCS Disability Action South Canterbury Inc., CCS Disability Action Waitaki Inc., CCS Disability Action Otago Inc., CCS Disability Action Southland Inc., CCS Disability Action Whanganui Inc.).

Dunedin Community Care Trust

Emerge Aotearoa Limited

Geneva Healthcare Limited

Health Care of New Zealand Limited (New Zealand Health Group Limited)

NZCommunity Living Limited

Services

Pacific Islands Home Care Trust
Pathways Health Limited
Presbyterian Support Central
Spectrum Care Limited
Te Roopu Taurima o Manukau Trust
The Lifewise Trust
Toucan Taranaki 2004 Limited
Visionwest Community Trust

