

**Education Support Workers, Behaviour Support Workers and
Communication Support Workers Pay Equity Settlement
Agreement**

Between:

Chief Executive of the Ministry of Education
(as the employer)

and

New Zealand Educational Institute Te Riu Roa Incorporated
(representing Support Workers)

and

Denise Tetzlaff
(Support Worker)

and

Kathleen Power
(Support Worker)

and

Mary Jones
(Support Worker)

Effective: 1 July 2018

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Parties

This agreement is between:

- (a) the Chief Executive of the Ministry of Education;
- (b) the New Zealand Educational Institute Te Riu Roa Incorporated (**NZEI Te Riu Roa**);
- (c) Denise Tetzlaff;
- (d) Kathleen Power; and
- (e) Mary Jones,

together, the **Parties**.

Background

- A. In 2015, proceedings under the Equal Pay Act 1972 were lodged by NZEI Te Riu Roa, Denise Tetzlaff, Kathleen Power, and Mary Jones with the Employment Relations Authority against the Chief Executive of the Ministry of Education (the **Proceedings**).¹
- B. The Proceedings related to the terms of an existing collective employment agreement² and claimed that the wage rates of Education Support Workers, Behaviour Support Workers and Communication Support Workers (together, **Support Workers**) employed by the Ministry of Education (the **Ministry**) are non-compliant with the Equal Pay Act 1972 in that they are lower than what the rates would be for men if they were carrying out the work. NZEI Te Riu Roa, Ms Tetzlaff, Ms Power and Ms Jones sought:
 - (i) a determination that the wage rates currently paid are non-compliant with the Equal Pay Act 1972; and
 - (ii) a determination of the rate that must be paid to comply with the Equal Pay Act 1972.
- C. Mediation followed in April 2017 without resolution. However the parties agreed to apply the Joint Working Group Pay Equity Principles to address the pay equity claim.
- D. In May 2017, the New Zealand Council of Trade Unions and the State Services Commission agreed terms of reference for addressing identified pay equity claims in the State sector and prioritised the Support Workers' claim. The purpose of the terms of reference is to "guide agencies and unions in progressing identified pay equity claims in advance of legislation to implement the Joint Working Group's principles in the form approved by Government".
- E. On 22 December 2017, NZEI Te Riu Roa sought to have the Proceedings removed to the Employment Court on the grounds that:³

¹ *NZEI Te Riu Roa v Chief Executive of the Ministry of Education* NZERA 5587742.

² The Collective Agreement for Education Support Workers, Behaviour Support Workers and Communication Support Workers.

³ *NZEI Te Riu Roa v Chief Executive of the Ministry of Education* [2018] NZERA 24 (Employment Relations Authority's decision on application by NZEI Te Riu Roa, Ms Tetzlaff, Ms Power and Ms Jones to remove the matter to the Court under s 178 of the Employment Relations Act 2000); *NZEI*

- (i) important questions of law are likely to arise other than incidentally, including whether the Employment Relations Authority or the Employment Court has jurisdiction to determine the Proceedings; and
 - (ii) the Proceedings are likely to be the first substantive claim to be determined following *Terranova Homes and Care Ltd v Service and Food Workers Union Ngā Ringa Tota and Bartlett* [2014] NZCA 516 (CA) and in those circumstances the Employment Court should determine the matter.
- F. Bargaining for the Education Support Workers, Behaviour Support Workers, and Communication Support Workers collective agreement commenced in March 2018.
 - G. On 7 June 2018, the matter was put before the Employment Court.⁴
 - H. On 28 June 2018 the Ministry and NZEI Te Riu Roa agreed in principle to settle the Proceedings.
 - I. This Pay Equity Settlement Agreement for Education Support Workers, Behaviour Support Workers, and Communication Support Workers (the **Settlement Agreement**) records the terms of the settlement.
 - J. The Parties agree that the process undertaken was suitable and sufficient to settle the Proceedings.

Agreed terms of settlement

1. Purpose and application of this Settlement Agreement

- 1.1 The purpose of this Settlement Agreement is to:
 - (a) address historical pay equity issues for Support Workers that have occurred as a direct consequence of the predominantly female workforce resulting in lower hourly pay rates than would have been paid if the workforce was predominantly male;
 - (b) record the agreed outcome of settlement negotiations over a period of 15 months applying the relevant pay equity principles,⁵ to determine agreed pay rates and related conditions for recognition of the work that is delivered to support some of our most vulnerable children, and the experience and skills that Support Workers bring to the work;
 - (c) confirm an approach for considering the development of a career pathway and a qualifications framework for this workforce;

Te Riu Roa v Chief Executive of the Ministry of Education EmpC 95/2018 (application by NZEI Te Riu Roa, Ms Tetzlaff, Ms Power and Ms Jones for special leave to remove the matter to the Court under s 178(3) of the Employment Relations Act).

⁴ *NZEI Te Riu Roa v Chief Executive of the Ministry of Education* EmpC 165/2018.

⁵ Recommendations of the Joint Working Group on Pay Equity Principles – 24 May 2016

- (d) extinguish the Proceedings (and any associated awards of compensation), and establish a process for reviewing the terms and conditions of employment of Support Workers to ensure that pay equity is maintained; and
- (e) provide certainty for the Parties (and Support Workers) that this Settlement Agreement is in full and final settlement of all pay equity issues related to the Proceedings and all matters related to pay equity claims filed by Support Workers with the Employment Relations Authority or Employment Court from the date this Settlement Agreement comes into force.

1.2 This Settlement Agreement applies to all Support Workers, whether or not they are represented by NZEI Te Riu Roa.⁶

2. Pay rates for Support Workers as at 1 July 2018

- 2.1 Collective bargaining for the Education Support Worker, Behaviour Support Worker, and Communication Support Worker Collective Agreement commenced on 21 March 2018. Bargaining has occurred in parallel to the negotiations to address the pay equity claim.
- 2.2 The hourly rates and progression for Support Workers employed by the Ministry as at 1 July 2018 is as follows:

| | Pay Equity Rate | Agreed Pay Rates | |
|--------|-----------------|------------------|-------------|
| | 1 July 2018 | 1 July 2019 | 1 July 2020 |
| Step 1 | \$21.67 | \$22.65 | \$23.67 |
| Step 2 | \$22.65 | \$23.67 | \$24.73 |
| Step 3 | \$23.67 | \$24.73 | \$25.70 |
| Step 4 | \$24.73 | \$25.70 | \$26.70 |

- 2.3 Pay rates as at 1 July 2018 are the agreed pay equity rates informed by joint comparator work. The pay rates as at 1 July 2019 and 1 July 2020 are to maintain the currency of the established pay equity rate and settle the Education Support Worker, Behaviour Support Worker, and Communication Support Worker collective agreement. Subsequent increases over the remaining two years reflect predicted market movement and an increase to safeguard against any further widening of the gap between these rates, the comparator rates and general market movement.
- 2.4 Each Support Worker will move to the next step in the rate table following a year of service to a maximum of step four.
- 2.5 In addition to these pay rates, Support workers with 10 years or more service at 1 July 2018 will be paid a rate of \$25.70.
- 2.6 If the Qualifications Framework and Career Pathways working group referred to at clause 5 is unable to complete its work by 30 June 2019, then on 1 July 2019 those Support Workers who have reached 10 years plus service

⁶ The intent is that all Support Workers will receive the benefit of this Settlement even though they may not be a member of the NZEI Te Riu Roa.

between 1 July 2018 and 30 June 2019 will move to the 10 years plus service rate of \$25.70.

3. Transition to new pay rates

Support Workers will transition from the existing seven step pay scale to the pay rates specified in clauses 2 as follows:

- (a) Support Workers on existing step 1 (\$16.77 per hour) and step 2 (\$17.24 per hour) will translate to a new step 1 at \$21.67 per hour;
- (b) Support Workers on existing step 3 (\$17.58 per hour) and step 4 (\$17.98 per hour) will translate to a new step 2 at \$22.65 per hour;
- (c) Support Workers on existing step 5 (\$18.64 per hour) and step 6 (\$19.28 per hour) with less than 10 years' service will translate to a new step 3 at \$23.67 per hour;
- (d) Support Workers on existing step 7 (\$19.87 per hour) with less than 10 years' service will translate to a new step 4 at \$24.73 per hour; and
- (e) Support Workers with 10 or more years of service as at 1 July 2018 will translate to a 10 years plus service rate of \$25.70 per hour.

4. One-off compensation payment

- 4.1 A one-off compensation payment will be paid to all Support Workers, including those Support Workers waiting for renewal of a fixed term contract as at 1 July 2018, as follows:

| Service (Years) | One-off Compensation Payment |
|-----------------|------------------------------|
| 0 - 1.9 years | \$500 |
| 2 - 3.9 years | \$750 |
| 4 - 5.9 years | \$1,000 |
| 6 - 7.9 years | \$1,250 |
| 8+ years | \$1,500 |

- 4.2 The one-off compensation payment is a gross payment and will be paid as a lump sum to each Support Worker, or as requested by the Support Worker, provided the Ministry has given its prior written approval to the alternative payment arrangement. The one-off compensation does not form part of the pay-equity rate.

- 4.3 The one-off compensation payment:

4.3.1 acknowledges any disadvantage to Support Workers that may have arisen from the longstanding operational challenges raised during negotiations between the Ministry and NZEI Te Riu Roa;

4.3.2 acknowledges there have been inconsistencies of work practices / processes across regions that are now being addressed by the Ministry; and

4.3.3 reflects that staff who have been employed for longer are likely to have encountered these operational challenges more than other staff.

5. Qualifications Framework and Career Pathways

The Ministry and NZEI Te Riu Roa agree to establish a working group, and terms of reference for the working group, to explore:

- (a) ways to recognise the expertise and competency of Support Workers which has been gained through experience and/or qualifications; and
- (b) potential career pathways for Support Workers to move into field staff, teacher aide and early childhood education teacher roles.

6. Payment to attend meetings with NZEI Te Riu Roa

Subject to verification of attendance being provided to the Ministry, the Ministry will pay each Support Worker to attend meetings with NZEI Te Riu Roa to discuss this Settlement Agreement, up to a maximum of two hours, and reasonable travel time per Support Worker.

7. Ratification by members of NZEI Te Riu Roa

NZEI Te Riu Roa confirms that:

- (a) it represents its members;
- (b) it has the authority to sign this Settlement Agreement and bind its members; and
- (c) if ratification by its members is not obtained by 30 September 2018, the Settlement Agreement is deemed to have been ratified on that date.

8. Process for review to ensure the pay equity rate is maintained

The Ministry and NZEI Te Riu Roa agree that six months prior to the expiry of the Support Workers Collective Agreement, the Parties will work together to review the pay equity rates that are established under this Settlement to ensure they are kept current. The Parties agree to consider a range of available information as part of that review, which may (but is not limited to) include;

- (a) Relevant remuneration or market information
- (b) Labour cost index information
- (c) Any other information or factors the parties agree.

9. Consideration of future claims

This Settlement Agreement does not prevent a Support Worker bringing a pay equity claim after 30 June 2021 should this settlement be proven not to address pay equity, or the agreed review process with the Support Workers Collective Agreement be proven not to maintain pay equity rates.

10. Publication of this Settlement Agreement

This Settlement Agreement:

- (a) must be published by the Ministry on its website, and as soon as reasonably practicable after it is signed;⁷ and
- (b) may be published by NZEI Te Riu Roa on its website or by way of a hyperlink provided to the Ministry's website.

11. Good faith

The Parties will deal with each other in good faith on all matters under, or associated with, this Settlement Agreement.

12. Full and final settlement

This Settlement Agreement is in full and final settlement of:

- (a) all pay equity issues relating to the Proceedings (as at 1 July 2018); and
- (b) all matters related to the pay equity claim filed by Support Workers with the Employment Relations Authority or Employment Court (as at the Commencement Date),

13. Counterparts

This Settlement Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

14. Interpretation

In this Settlement Agreement, unless the context otherwise requires:

- (a) All amounts are expressed as gross amounts and are subject to the Income Tax Act 2007.
- (b) The singular includes the plural, and vice versa.

⁷ 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 Support Workers.

- (c) Footnotes are part of this Settlement Agreement, and are intended to assist in the explanation of a specific matter in the text.
- (d) Definitions apply to the footnotes.
- (e) Any term not defined has its ordinary meaning, or the meaning in the Employment Relations Act 2000, where appropriate and according to the context.
- (f) If any matter arises requiring the interpretation of this Settlement Agreement, the Purpose in clause 1 must be taken into account.
- (g) This Settlement Agreement is a contract for the purpose of interpretation; the common law principles of contract interpretation apply.⁸

⁸ 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].

Signatories

Dated at Wellington on

[Name]

[Signature]

[Name]

[Signature]

For the **Chief Executive of the Ministry of Education**

[Name]

[Signature]

[Name]

[Signature]

For **New Zealand Educational Institute Te Riu Roa Incorporated**

Denise Tetzlaff

[Signature]

Kathleen Power

[Signature]

Mary Jones

[Signature]