

The Case for Adding Home and Community Support Workers to Schedule 1A of the Employment Relations Act

E tū and the PSA request that the Minister of Workplace Relations, under Section 237A of the Employment Relations Act, amends Schedule 1A of the Act to add a category of employees, namely “home and community support workers”.

We offer the following for the Minister’s consideration.

A clear identification of the category of employees

The category of employees that we wish to include under Schedule 1A is “care and support work in a private residence”. Care and support workers provide care and support services, usually in people’s private residences. They provide care and support so people can continue to live in their own homes and maximise their independence. They provide a range of support from personal care to household management, including cleaning and meal preparation. The Ministry of Health website describes home and community support services as including Household Management and Personal Care:

Household management may include help with:

- meal preparation
- washing, drying or folding clothes
- house-cleaning, vacuuming and tidying up.

Personal care may include help with:

- eating and drinking
- getting dressed and undressed
- getting up in the morning and getting ready for bed
- showering and going to the toilet
- getting around your home.¹

Specification of the sector in which the employees provide service

Home and community support workers operate within the home and community support sector. According to the 2018 Sapere Group Report to the Ministry of Health there are 16,038 home and community support workers.

¹ <https://www.health.govt.nz/your-health/services-and-support/disability-services/types-disability-support/home-and-community-support-services>. Further details on services funded by MoH Disability Support Services are given in the Service Specification: <https://www.health.govt.nz/system/files/documents/pages/dss-home-community-support-services-tier-two.pdf>

Home and Community Support Services are currently contracted by the Ministry of Health's Disability Support Services, District Health Boards (DHBs) and the Accident Compensation Corporation (ACC). In some cases, Home and Community Support Services may also be contracted or funded privately or through support from other government agencies, such as the Ministry of Social Development.

Contracts for Home and Community Support are held by a range of organisations employing Home and Community Support Workers, including private companies and non-profit organisations. A 2015 report by the Productivity Commission lists 70 providers holding contracts for Home and Community Support, of which 37 were not-for-profit organisations and 33 were for-profit companies.² A 2017 Briefing by the Home and Community Health Association (HCHA) identifies around 55 providers, including NGOs, private companies and iwi organisations. The HCHA briefing also identifies a trend of contracts shifting to private companies, which were identified as holding around 70% of contracts for Home and Community Support by volume.³

A 2016 report by HCHA, drawing on research commissioned from Deloitte, described the Home and Community Support sector as 'critically challenged in terms of financial viability and workforce retention' with many providers facing 'material financial instability'.⁴ This environment adds to the insecurity faced by workers in the sector.

Evidence that the employees satisfy the criteria

Home and community support is a sector in which work is regularly re-tendered and contracted, resulting in relatively frequent changes of employment for the home and community support workforce.

- The most common scenario in Home and Community Support provision is that an employer is a contractor and they lose a contract to perform services and that contract is granted to another business, where the outgoing and incoming employer are responsible for the provision of identical work in the same area.
- The contracts for home and community support are funded by a narrow range of state organisations, principally the Ministry of Health, District Health Boards and ACC. Changes in contracting of services by these organisations affected the Home and Community Support workforce in similar ways to other categories of employees in the broad health and community sector currently covered by Schedule 1A, including cleaners and food service workers.
- The lack of any collective bargaining power and the insecure nature of their work has meant wages for home and community support workers have until recently been at levels significantly below those of comparable occupations, and in some cases below legislative minima. That is why the Government has needed to intervene through specific legislation (Care and Support Workers Pay Equity Settlement Act 2017 and Home and Community Support Payment for Travel In-Between Clients Settlement

² <https://www.productivity.govt.nz/assets/Documents/f9c0f69460/Appendix-E-Home-based-support-for-older-people.pdf>, p4-5.

³ <http://www.hcha.org.nz/assets/Uploads/Briefing-to-Ministers-2017-5.pdf>

⁴ <http://www.hcha.org.nz/assets/HCHA-paper-April-2016.pdf>

Act 2016) to establish minimum sector rates of pay. While this legislation has stabilised minimum rates of pay in the sector, it has not provided security of employment or stability of other terms and conditions.

- Home and Community Support Service workers have no control over the regular contracting processes within their sector that result in their employer changing.
- There should be a guarantee for the jobs and employment conditions of Home and Community Support Workers to ensure successive tendering processes do not result in a lowering of conditions, a reduction in secure hours of work and/or a loss of jobs at the point of contract change.
- There is a lack of clarity for all industry stakeholders about whether or not Part 6A applies to this workforce, and if it applies, exactly how it applies. This is because aspects of household management included within Home and Community Support Work overlap with the descriptions of cleaning and food preparation services.
- The lack of certainty has significant impacts on Home Support workers including:
 - Insecure work with contracts changing regularly, but on average every 2-5 years
 - A lack of security for their clients regarding the continued employment of their support worker
 - A lack of certainty about which provisions of employment transfer apply
 - A lack of clarity around support workers' rights in these situations and whether it is hours, or work tasks, or clients which constitute the work which leads to uncertain working hours
 - A lack of clarity around the interaction effects for support workers when multiple contracts in a geographical jurisdiction are operating but when only one is changing (e.g. DHB vs MOH contracts) and whether or not work outside of that being contracted can be altered

Recent home and community support contract change scenarios

1. Wellington/ Hutt Region Transfer 2019

Scenario: Contract change from a single provider to two providers

Impact:

- a. A home and community support worker was asked to transfer the whole of her employment to an incoming contractor when only 14% of her workload was transferring – her existing employer would not offer her work to replace the hours lost in the event she chose not to transfer and the incoming contractor would not allow her to stay with the clients they had taken over if she still worked partly for the outgoing contractor.
- b. One home and community support worker lost Ministry of Health clients – who had been clients for years – as a result of a DHB contract change – work which was theoretically unaffected by the contract change.
- c. Loss of conditions. Support workers could not rely on entitlements and conditions being maintained. For example, higher and additional payments for ACC travel time being lost with no compensation to the support worker.
- d. Some of these workers had been through the tender process that have resulted in 4 different employers in 6-7 years. Some workers ended up having two

employers as a result of the tenders and were required to then pay secondary tax which causes hardship.

- e. One affected worker described the impact of these changes to their union in the following terms:
“The regular contract changes and transfer process is the most soul-destroying and upsetting rigmarole I have been involved in. Workers are left in limbo, not knowing who their employer will be, which of their clients (if any) they will still support. The uncertainty around rostering processes and pay cycles, plus whether or not relevant legislation will be acknowledged and honoured, and if historical allowances in CEA's will be respected, is extremely stressful. Communication is non-existent. Respect for the clients and support workers is non-existent in these processes in my experience. Clients come to us because they trust us, but we don't know what to tell them – ‘you might get to keep your support worker?’. We are so demoralised and stressed at these points of contract change that I have witnessed good, trained, dedicated, honest, caring, hard-working people going on stress leave or leaving the industry. This should not happen to us simply because the DHB re-tenders work regularly. It leaves us unprotected, uncertain, and potentially our work and conditions undermined.”
- f. This 2019 tender process followed similar processes, with similar impacts on workers, in 2015 and 2011. The 2015 tendering process resulted in CCDHB reducing from two providers to one and HDHB reducing from three providers to two. In 2011, CCDHB had reduced from three providers to two.
- g. One affected worker in the Wellington region described the impact of having had three employers in just over 8 years:
It feels like we just get used to our new employers' systems and processes and our new clients and we then have another change. It's been a period of constant change in my working life of being a home support worker, I have lost hours through the transfer processes and have had to start qualifications all over again when getting a new employer. The transfers themselves have all been a mess to start with, when the new employer doesn't have all of our information, our rosters and even our leave and pay information.

2. Tairawhiti transfer, June/July 2019

Scenario: One outgoing, one incoming provider.

Impact:

- a. Workers were unsure if existing provisions around their rostering and provisions relating to payment of travel time transfer to their new provider. They feared that their existing terms and conditions (which are better than the standard at the incoming provider) would be undermined.
- b. The incoming contractor is not aware of existing conditions for the workforce when tendering, and therefore a driver is set from day one to minimise these higher provisions for the workforce in order to deliver on the contract terms.
- c. One affected worker described the impact of these changes to their union in the following terms:
“What we feel is happening is a loss of our conditions by stealth. It starts with little things – the day we are paid on, the technology we're required to use to do

our jobs, and who knows where it ends up.”

3. **Mid Central Transfer – September 2018**

Scenario: Multiple incoming providers, multiple outgoing providers, client choice as the determinant of provider.

Impact:

- a. In this scenario, the chances of home and community support workers ending up employed by multiple providers was extremely high due to client choice being the method of allocation of hours within the contract to each provider. There was resulting confusion about: employment processes, loss of guaranteed hours, entitlements and their transfer including proportionate transfers, the ability of each provider to offer reasonable hours to anyone wanting to work for only one provider.
- b. There was high potential for lessened employment terms over time - e.g. a requirement to change uniforms between appointments with clients allocated to different providers. Loss of travel payments between clients was also an issue where clients were now spread across providers throughout a worker's day.
- c. Incoming providers' failure to understand and maintain support worker conditions, and setting new terms, meant home and community support workers' conditions and pay were undermined.
- d. There was a lack of clarity around which work transfers or stays, with clients being able to change their mind about providers throughout the process. Workers who were in their final years of employment simply chose to leave rather than go through the stress of a transfer.

4. **Nelson Marlborough 2016**

Scenario: the DHB decided to go from 5 providers down to two providers. The successful provider was made up of 1 existing provider and 1 new provider in the region.

Impact:

- a. Workers' information was not adequately provided to the incoming employers, which meant that support workers were not paid accurately or paid properly for their work. Training for support workers had to start again for the new employer and could not be carried over from one employer to the other.

5. **Other Transfers**

- a. Hawkes Bay DHB transfer 2015: several providers reduced to two providers.
- b. Southern DHB transfer 2014: about 10 providers across the region down to 3 providers.
- c. ACC tender 2012: 75 employers reduced to 6.

Proposed wording

Schedule 1A Employees to whom subpart 1 of Part 6A applies

Employees who provide the following services in the specified sectors, facilities, or places of work:

- (a) cleaning services, food catering services, caretaking, or laundry services for the education sector (being the public and private pre-school, primary, secondary, and tertiary educational institutions):
- (b) cleaning services, food catering services, orderly services, or laundry services for the health sector (being any hospital, as defined by the Hospitals Act 1957 and any hospital within the meaning of the [Mental Health \(Compulsory Assessment and Treatment\) Act 1992](#)):
- (c) cleaning services, food catering services, orderly services, or laundry services in the age-related residential care sector:
- (d) cleaning services or food catering services in the public service (as defined in [Schedule 1](#) of the State Sector Act 1988) or local government sector:
- (e) cleaning services or food catering services in relation to any airport facility or for the aviation sector:
- (f) cleaning services or food catering services in relation to any other workplace.
- (g) care and support work delivered in private residences.