

Home and Community Support (Payment for Travel Between Clients) Settlement Bill

Government Bill

Explanatory note

General policy statement

The Home and Community Support (Payment for Travel Between Clients) Settlement Bill implements a settlement (the **settlement agreement**) between the Crown, District Health Boards, providers of home and community-based care and support services (**HCS employers**), and certain unions (on behalf of home and community-based care and support employees (**HCS employees**)).

The Bill follows a claim filed with the Employment Relations Authority that claimed that time spent by HCS employees travelling between clients receiving home-based care and support is work for the purposes of the Minimum Wage Act 1983.

The Bill supports implementation of Part A of the settlement agreement (Payment for Travel) between the parties, which seeks to ensure an enduring, affordable, and sustainable solution for paying HCS employees for the time and costs of travelling between each of their clients.

In accordance with the settlement agreement, and as agreed between the parties, HCS employees will receive payment from 1 July 2015 for time spent travelling between clients. From 1 July 2015 to 29 February 2016, the payment will be calculated using a figure that represents the minimum wage for the weighted average of the time spent travelling between clients. From 1 March 2016, the payment will be calculated based on the employee's qualifying travel time (being the weighted average time per client visit assigned to the travel band applicable to the client's location—this will be prescribed by regulation).

The specific objectives of the legislation are to ensure that—

- HCS employees will be compensated in accordance with the Bill, at the minimum wage, for qualifying travel time from 1 March 2016; and

- HCS employees will be compensated, at no less than 50 cents per kilometre, for qualifying travel costs (also to be prescribed by regulation) from 1 March 2016; and
- HCS employees will abandon any claim under the Minimum Wage Act 1983 for payment for travel between clients undertaken by them before the enactment of this Bill and after its commencement are prevented from bringing a claim that travel between clients is work under the Minimum Wage Act 1983; and
- following commencement of the Bill, any prior agreement between an HCS employee and HCS employer relating to travel by the employee (including any agreement as to payment for first and last visits) would be unenforceable and replaced with the payment requirements as detailed in the Bill; but
- no HCS employee will be financially disadvantaged as a result of the operation of the settlement agreement and the Bill.

The settlement agreement is based on the paramount principles agreed between the parties, which provide—

- for a commitment to transitioning to a regularised workforce within a time frame that allows consideration of the fiscal and environmental constraints; and
- for a commitment to a support service model that is financially viable and can meet the on-going needs of the home and community populations; and
- for a support service model that ensures that overall no party is financially disadvantaged by Part A of the settlement agreement; and
- consistent with Cabinet Minutes (14) 10/14 and (14) 30/6, the parties will keep the Minister of Health informed of the implications of transitioning to a regularised workforce and the fiscal implications.

An important aspect of the settlement agreement is an agreement that HCS employers will be adequately funded, whether by the relevant District Health Board or the Ministry of Health, to meet their obligations under the settlement agreement and this Act. The applicable funding will be transferred from the District Health Boards and the Ministry of Health to the contracted HCS employers and then on to qualifying HCS employees. If any issues arise as to the sustainability of the settlement agreement, as it relates to the payment to qualifying HCS employees as per this Act, the parties will address the issue in good faith and where necessary engage in a dispute resolution process as provided for in the settlement agreement.

Part B of the settlement agreement (Establishment of a Regularised Workforce and Review of the Home and Community Health Sector) is not included in the provisions of this Bill. However, it is important and relevant to the general policy development of this Bill.

During the negotiations between the parties, a wider discussion was held regarding the ongoing sustainability of the current home and community-based support service model of service delivery. Discussions have led to agreement by all settlement parties

to investigate and implement a transition towards a sustainable regularised home and community-based support service workforce.

A Director-General of Health's reference group has been established to conduct a review of the health-funded home and community-based support service in one work stream and in a second work stream to consider the viability of transitioning to a regularised workforce within 24 months of the signing of the settlement agreement. Any changes as a result of this review are to occur within the existing available and approved home and community-based care and support service funding.

Departmental disclosure statement

The Ministry of Health is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2015&no=67>.

Regulatory impact statement

The Ministry of Health produced a regulatory impact statement on 8 September 2014 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <http://www.health.govt.nz/about-ministry/legislation-and-regulation/regulatory-impact-statements>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

The *Preamble* sets out the factual background and reasons why the Bill is necessary.

Clause 1 is the Title clause.

Clause 2 is the commencement clause. It provides for the Bill to come into force on the day after the date on which it receives the Royal assent.

Part 1

Preliminary provisions

Clauses 3 and 4 define terms used in the Bill. *Clause 3* is the general interpretation section. Important terms defined in this clause include HCS employer, HCS employee, and travel between clients. *Clause 4* defines exceptional travel and terms related to that definition (maximum travel distance, exceptional first client travel, and exceptional last client travel).

Clause 5 states that the Act binds the Crown.

*Extinguishing claims for travel payments and statutory amendment to
employment agreements*

The Minimum Wage Act 1983 will not apply to HCS employees in relation to travel between clients from the commencement of the Bill (*see clause 28*). However, HCS employees have potential claims for wages payable under the Minimum Wage Act 1983 for travel between clients before the commencement of the Bill. *Clause 6* prohibits an HCS employee from pursuing such a claim or potential claim.

Clause 7 makes it clear that the prohibition in *clause 6* does not prevent an HCS employee from bringing a claim for enforcement of a term or condition in the employee's employment agreement requiring payment for travel between clients by the employee before the commencement of the Bill.

Clause 8 provides that, for travel to which the Bill applies, the provisions of the Bill override existing more favourable terms or conditions of an employee's employment agreement. Such conditions have no effect and are unenforceable for travel on and from the commencement of the Bill. However, note that the effect of *clause 8* is mitigated by *clauses 9 and 10*.

Clause 9 provides that an HCS employee and an HCS employer may, after the commencement of the Bill, negotiate more favourable conditions relating to payment for travel between clients than that payable under the Bill. Any such agreement has full effect and is enforceable.

Clause 10 provides a mechanism to ensure that no HCS employee is financially disadvantaged by the operation of *clause 8*. It requires an HCS employer to compensate an HCS employee if the employee's entitlement for travel between clients after the commencement of the Bill is less than the employee's entitlement would have been before the commencement of the Bill. This is measured by comparing the employee's entitlement under the Act for the first pay period after commencement with the employee's entitlements under his or her employment agreement for that same period.

Clause 11 provides that an HCS employee's entitlements under the Bill cannot be contracted out of.

Part 2

Payment for travel between clients

Time spent in travel between clients

Clause 12 requires an HCS employer to pay an HCS employee for time spent by the employee in travel between clients on or after 1 July 2015. The minimum amounts payable are calculated,—

- under *clause 13*, for time spent in travel between clients during the period starting on 1 July 2015 and ending on 29 February 2016:

- under *clause 14*, for time spent in travel between clients other than exceptional travel on or after 1 March 2016:
- under *clause 15*, for time spent in exceptional travel on or after 1 March 2016.

Under *clause 13*, an employee's entitlement is \$2.28 for each journey between client visits.

Under *clause 14*, an employee's entitlement is calculated using the employee's qualifying travel time in minutes for the day. The method for calculating the employee's qualifying travel time will be prescribed by regulations and will be based on weighted average travel times to the areas where the clients that the employee visits live.

Under *clause 15*, an employee's entitlement is calculated using the employee's deemed travel time. The employee's deemed travel time is the time that it would take a person to travel between the clients visited by the employee.

Costs relating to travel between clients

Clause 16 provides that an HCS employer must pay an HCS employee a contribution towards the costs relating to travel by the employee on or after 1 March 2016. The minimum amounts payable are calculated,—

- under *clause 17*, for costs relating to travel between clients other than exceptional travel:
- under *clause 18*, for costs relating to exceptional travel.

Under *clause 17*, an employee's entitlement is calculated using the employee's qualifying distance in kilometres for the day. The method for calculating the employee's qualifying distance will be prescribed by regulations and will be based on weighted average distances travelled to the areas where the clients that the employee visits live.

Under *clause 18*, an employee's entitlement is calculated using the employee's deemed distance. The employee's deemed distance is the distance that the employee would travel in exceptional travel in the day taking the most efficient route.

Relationship with Employment Relations Act 2000

Clause 19 provides that a dispute about an HCS employer's compliance with this Bill is an employment relationship problem and must be resolved in accordance with the Employment Relations Act 2000.

Clause 20 provides that an HCS employee may recover unpaid money under this Bill by an action commenced in the Employment Relations Authority.

Record keeping

Clause 21 requires an HCS employer to keep a record of the amounts paid to each HCS employee under this Bill and the basis for calculating those amounts.

HCS employer zones

Clause 22 authorises an HCS employer to apply to the chief executive of the Ministry of Health for approval of a zone for the purposes of the definitions of exceptional first client travel and exceptional last client travel. If the zone is approved, an HCS employee's travel time and distance for exceptional first client travel and exceptional last client travel will be measured from the boundary of the zone nearest to the employee's home, rather than from the employee's home.

Enforcement of obligations under this Act

Clause 23 provides that an HCS employer who fails to comply with the Bill is liable to a penalty imposed by the Employment Relations Authority.

Other employers and employees unaffected

Clause 24 clarifies, for the avoidance of doubt, that the Bill does not affect the rights, duties, or obligations of any employer or employee to whom the Bill does not apply.

Regulations

Clause 25 provides for the making of regulations prescribing—

- the mileage rate;
- the method for calculating or basis for ascertaining an HCS employee's qualifying distance and qualifying travel time;
- the maximum distance to a client visit before travel is treated as exceptional travel.

Clause 26 authorises the Governor-General to add to the list of former HCS employers in *Schedule 1* by Order in Council.

Clause 27 authorises the Governor-General to amend the list of HCS employers in *Schedule 2* by Order in Council.

Part 3

Amendments to other Acts

Clause 28 amends the Minimum Wage Act 1983 by adding HCS employees to the list of workers to whom that Act does not apply.

Clause 29 amends the Employment Relations Act 2000 by—

- including money payable under this Bill in the definition of minimum entitlements in that Act;
- bringing actions for the recovery of penalties under this Bill into the jurisdiction of the Employment Relations Authority;
- granting an HCS employee the right to choose a person to represent the employee for the purposes of this Bill.

Clause 30 amends the Holidays Act 2003 by adding *new section 10A* to that Act. The new section specifies the treatment of payments made under this Bill for the purposes of calculating an employee's holiday pay entitlements.

Hon Dr Jonathan Coleman

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Preamble

- (1) On 7 August 2013, proceedings were lodged with the Employment Relations Authority claiming that the time spent by the applicant in travelling between clients to whom the applicant provided home-based care and support was work for the purposes of section 6 of the Minimum Wage Act 1983: 5
- (2) In light of these proceedings, Cabinet authorised the Ministry of Health to enter negotiations with certain unions, providers of home-based and community-based care and support services, and District Health Boards with a view to reaching an enduring, affordable, and sustainable funding solution for paying workers such as the applicant for the time and costs of travelling between each of their clients: 10
- (3) The negotiations began in April 2014:
- (4) In August 2014, the parties agreed to a proposed settlement to the effect that—
- (a) certain employees who provided particular services would be compensated, at no less than the minimum wage, for a fair approximation of the time spent travelling between clients on or after 1 July 2015; and 15
 - (b) the employees would be compensated, at no less than 50 cents per kilometre, for a proportion of the costs associated with travelling between clients on or after 1 March 2016; and
 - (c) the employees would abandon any claim under the Minimum Wage Act 1983 for payment for travel between clients undertaken by them before the commencement of this Act; and 20
 - (d) no employee was to be financially disadvantaged as a result of the operation of the settlement agreement and this Act:
- (5) To implement aspects of this proposed settlement, legislation is required: 25

The Parliament of New Zealand therefore enacts as follows:

1 Title

This Act is the Home and Community Support (Payment for Travel Between Clients) Settlement Act **2015**.

2 Commencement 30

This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1

Preliminary provisions

3 Interpretation 35

In this Act, unless the context otherwise requires,—

client visit means a visit by an HCS employee to a person to provide home and community-based support services to the person (the **client**)

day—

- (a) means a calendar day; but
- (b) in relation to an HCS employee who makes overnight client visits, means the employee's work period within the meaning of section 69ZC of the Employment Relations Act 2000 5

deemed distance has the meaning given in **section 18(2)**

deemed travel time has the meaning given in **section 15(2)**

DHB means an organisation established as a DHB (District Health Board) by or under section 19 of the New Zealand Public Health and Disability Act 2000 10

employee means a person who is an employee within the meaning of that term in section 6(1)(a) or (b)(i) of the Employment Relations Act 2000

exceptional first client travel has the meaning given in **section 4(2)(a)**

exceptional last client travel has the meaning given in **section 4(2)(b)** 15

exceptional travel has the meaning given in **section 4(1)**

former HCS employer—

- (a) means an entity listed in **Schedule 1**; but
- (b) if the former HCS employer does not itself have separate legal personality, means the person or persons who have the legal authority to make decisions on behalf of that employer 20

HCS employee —

- (a) means a person who—
 - (i) is an employee of an HCS employer; and
 - (ii) provides home and community-based support services to clients of the HCS employer; and 25
- (b) for the purposes of **sections 6 and 7**, includes a person who—
 - (i) was previously an employee of an HCS employer; and
 - (ii) provided home and community-based support services to clients of the HCS employer 30

HCS employer—

- (a) means—
 - (i) an entity listed in **Schedule 2**; and
 - (ii) an entity that provides home and community-based support services on behalf of an entity listed in **Schedule 2**, including any subsidiary or subcontractor; but 35

- (b) if the HCS employer does not itself have separate legal personality, means the person or persons who have the legal authority to make decisions on behalf of that employer

home and community-based support services means household management or personal care services performed in a client's home for the purpose of assisting the client to continue to live independently 5

maximum travel distance has the meaning given in **section 4(1)**

mileage rate means—

- (a) the rate prescribed by regulations made under **section 25(1)(a)**; or
(b) if no rate is prescribed, 50 cents per kilometre 10

qualifying distance means—

- (a) the distance that regulations made under **section 25(1)(b)** assign to an HCS employee for travel between clients that is not exceptional travel in a day; or
(b) if no regulations are made, the deemed distance 15

qualifying travel time means—

- (a) the time that regulations made under **section 25(1)(c)** assign to an HCS employee for travel between clients that is not exceptional travel in a day; or
(b) if no regulations are made, the deemed travel time 20

travel between clients—

- (a) means the travel by an HCS employee in a day to get to each client; and
(b) includes exceptional travel; but
(c) does not include—
(i) travel by the employee to the first client visit of the day (unless the travel is exceptional first client travel): 25
(ii) travel by the employee after the employee leaves the last client visit of the day (unless the travel is exceptional last client travel).

4 Meaning of exceptional travel and related terms

- (1) In this Act, unless the context otherwise requires,— 30

exceptional travel means—

- (a) travel by an HCS employee between clients where the distance travelled is more than the maximum travel distance; and
(b) exceptional first client travel by an HCS employee; and
(c) exceptional last client travel by an HCS employee 35

maximum travel distance means—

- (a) the threshold distance or distances prescribed by regulations made under **section 25(1)(d)**; or
- (b) if no distance is prescribed, 20 kilometres.
- (2) For the purposes of **subsection (1)**,—
- (a) an HCS employee’s travel to the first client visit of the day is **exceptional first client travel** if the location of the client visit is more than 20 kilometres from either of the following: 5
- (i) the boundary of the HCS employer’s zone nearest to the employee’s home, if the employer has a zone approved under **section 22** and the employee lives outside that zone: 10
- (ii) in all other cases, the employee’s home; and
- (b) an HCS employee’s travel from the last client visit of the day is **exceptional last client travel** if the location of the client visit is more than 20 kilometres from either of the following:
- (i) the boundary of the HCS employer’s zone nearest to the employee’s home, if the employer has a zone approved under **section 22** and the employee lives outside that zone: 15
- (ii) in all other cases, the employee’s home.
- 5 Act binds the Crown** 20
- This Act binds the Crown.
- Extinguishing claims for travel payments and statutory amendment to employment agreements*
- 6 Certain claims extinguished**
- (1) This section applies to—
- (a) any claim by or on behalf of an HCS employee for wages payable under the Minimum Wage Act 1983 for travel between clients lodged but not determined before the commencement of this Act; and 25
- (b) any potential claim by or on behalf of an HCS employee against an HCS employer, a former HCS employer, a DHB, or the Crown for wages payable under the Minimum Wage Act 1983 for travel between clients before the commencement of this Act. 30
- (2) The claim or potential claim cannot be pursued and must be treated as if it had been withdrawn or is incapable of being lodged.
- (3) Without limiting **subsection (2)**, an HCS employee (or any person acting on his or her behalf) cannot— 35
- (a) name, join, or seek to name or join an HCS employer, a former HCS employer, a DHB, or the Crown in any civil proceedings relating to liability

- for wages relating to travel between clients by the employee before the commencement of this Act; or
- (b) apply in any civil proceedings for any remedy or relief from an HCS employer, a former HCS employer, a DHB, or the Crown for wages relating to travel between clients by the employee before the commencement of this Act. 5
- (4) This section is subject to **section 7**.
- 7 Act does not affect enforcement of employment agreements requiring payment for travel before commencement of Act** 10
- Nothing in **section 6** limits or prevents an HCS employee from making a claim or commencing any proceedings in relation to the enforcement of a term or condition in the employee's employment agreement that required the HCS employer or former HCS employer to pay the employee for travel between clients before the commencement of this Act.
- 8 Act overrides existing terms and conditions in employment agreements requiring payment of greater amounts** 15
- (1) This section applies to an employment agreement containing either or both of the following terms or conditions agreed before the commencement of this Act:
- (a) a term or condition that requires an HCS employee to be paid a greater amount for travel between clients than that required by this Act: 20
- (b) a term or condition that requires an HCS employee to be paid for—
- (i) travel by the employee to the first client visit of the day that is not exceptional first client travel; or
- (ii) travel by the employee from the last client visit of the day that is not exceptional last client travel. 25
- (2) The term or condition has no effect, and is not enforceable, for travel on and from the commencement of this Act, to the extent that the term or condition exceeds the requirements of this Act.
- 9 Act does not prohibit new terms and conditions in employment agreements requiring payment of greater amounts** 30
- This Act does not prevent an HCS employer from paying an HCS employee a greater amount for travel between clients than that required by this Act, or for travel described in **section 8(1)(b)**, on a basis agreed with the employee after the commencement of this Act, and any such agreement has full effect and is enforceable. 35

10 No HCS employee to be financially disadvantaged

- (1) **Subsection (2)** applies if, because of the operation of **section 8**, an HCS employee's post-commencement travel entitlement is less than the employee's pre-commencement travel entitlement.
- (2) The HCS employer must compensate the employee for the reduced entitlement by inserting a term in the employee's employment agreement that has the effect of requiring the employer to pay the employee an amount for travel between clients greater than that required by this Act. 5
- (3) The amount must be no less than the amount that is equal to the employee's total entitlement before 1 July 2015. 10
- (4) An HCS employer and an HCS employee—
- (a) may agree to enhance a term inserted in the employee's employment agreement under **subsection (2)**; but
 - (b) may not agree to otherwise amend or remove the term at any time while the employee is employed by the employer. 15
- (5) In this section,—
- post-commencement travel entitlement** means an HCS employee's total entitlement under this Act for travel between clients in the pay period immediately after 1 March 2016
- pre-commencement travel entitlement** means the total amount an HCS employee would have been entitled to for the following travel under his or her employment agreement were **section 8** not in force: 20
- (a) travel between clients in the pay period immediately after 1 March 2016; and
 - (b) travel described in **section 8(1)(b)** in the pay period immediately after 1 March 2016. 25

11 Payment of lesser amounts prohibited

An employment agreement that contains a term or condition that excludes, restricts, or reduces an HCS employee's entitlements under this Act has no effect to the extent that the term or condition excludes, restricts, or reduces those entitlements, irrespective of whether the term or condition was agreed before or after the commencement of this Act. 30

Part 2
Payment for travel between clients

Time spent in travel between clients

- 12 Time spent in travel between clients** 5
- (1) An HCS employer must pay an HCS employee who is not paid a salary for the time spent by the employee on or after 1 July 2015 in travel between clients.
- (2) For travel between clients during the period starting on 1 July 2015 and ending on 29 February 2016, the minimum amount payable must be calculated in accordance with **section 13**.
- (3) For travel between clients on or after 1 March 2016— 10
- (a) that is not exceptional travel, the minimum amount payable must be calculated in accordance with **section 14**;
- (b) that is exceptional travel, the minimum amount payable must be calculated in accordance with **section 15**.
- 13 Minimum amount payable for travel before 1 March 2016** 15
- The minimum amount payable each day to an HCS employee is calculated as follows:
- $$a = \$2.28 \times (b - 1)$$
- where—
- a is the minimum amount payable 20
- b is the number of client visits for the employee for that day.
- 14 Minimum amount payable for travel on and from 1 March 2016 (other than for exceptional travel)**
- The minimum amount payable each day to an HCS employee is calculated as follows: 25
- $$a = b \times (c \div 60)$$
- where—
- a is the minimum amount payable
- b is the minimum hourly rate of wage prescribed under section 4 of the Minimum Wage Act 1983 30
- c is the qualifying travel time in minutes for the employee for that day.
- 15 Minimum amount payable for exceptional travel on and from 1 March 2016**
- (1) The minimum amount payable each day to an HCS employee is calculated as follows: 35

$$a = b \times (c \div 60)$$

where—

- a is the minimum amount payable
 - b is the minimum hourly rate of wage prescribed under section 4 of the Minimum Wage Act 1983 5
 - c is the deemed travel time in minutes for exceptional travel for the employee for that day.
- (2) In this section, **deemed travel time**—
- (a) means the time that it would take a person to travel to the client or clients visited by the employee (or from the client, if exceptional last client travel)— 10
 - (i) taking the most efficient route; and
 - (ii) when travelling at the same time of day and on the same day of the week; but
 - (b) if the HCS employer has a zone approved under **section 22**, does not include the time it would take to travel between the employee's home and the boundary of that zone nearest to the employee's home if— 15
 - (i) the employee lives outside that zone; and
 - (ii) the travel is exceptional first client travel or exceptional last client travel. 20

Costs relating to travel between clients

16 Costs relating to travel between clients

- (1) An HCS employer must pay an HCS employee a contribution towards the costs relating to travel between clients by the employee on or after 1 March 2016.
- (2) For travel between clients that is not exceptional travel, the minimum amount payable must be calculated in accordance with **section 17**. 25
- (3) For travel between clients that is exceptional travel, the minimum amount payable must be calculated in accordance with **section 18**.
- (4) **Subsection (1)** does not apply to any travel between clients for which— 30
 - (a) an HCS employee uses a vehicle provided by the HCS employer; and
 - (b) the employer is responsible for all the costs associated with the use of the vehicle.
- (5) To avoid doubt, this section applies whether the employee is or is not paid a salary.

17 Minimum amount payable towards costs (other than for exceptional travel)

The minimum amount payable each day to an HCS employee is calculated as follows:

$$a = b \times c \quad 5$$

where—

- a is the minimum amount payable
- b is the mileage rate
- c is the qualifying distance in kilometres for the employee for that day.

18 Minimum amount payable towards costs for exceptional travel 10

(1) The minimum amount payable each day to an HCS employee is calculated as follows:

$$a = b \times c$$

where—

- a is the minimum amount payable 15
- b is the mileage rate
- c is the deemed distance in kilometres of exceptional travel by the employee for that day.

(2) In this section, **deemed distance**—

- (a) means the distance to the client or clients visited by the employee (or from the client, if exceptional last client travel), taking the most efficient route; but 20
- (b) if the HCS employer has a zone approved under **section 22**, does not include the distance between the employee's home and the boundary of that zone nearest to the employee's home if— 25
 - (i) the employee lives outside that zone; and
 - (ii) the travel is exceptional first client travel or exceptional last client travel.

Relationship with Employment Relations Act 2000

19 Compliance dispute is employment relationship problem 30

To avoid doubt,—

- (a) a dispute about whether an HCS employer is complying, or has complied, with this Act is an employment relationship problem within the meaning of that term in section 5 of the Employment Relations Act 2000; and 35
- (b) the dispute must be resolved in accordance with that Act.

20 HCS employee may recover arrears

The failure by an HCS employer to pay an HCS employee an amount required by this Act, either in full or in part, constitutes payment of wages or other money at a rate lower than that legally payable for the purposes of section 131 of the Employment Relations Act 2000.

5

*Record keeping***21 Record of amounts paid, qualifying travel time, and qualifying travel distance**

- (1) An HCS employer must keep a record, for each HCS employee employed by the employer, of— 10
- (a) the amounts paid to the employee under this Act for each pay period; and
 - (b) the qualifying travel times, qualifying distances, deemed travel times, and deemed distances used as the basis for calculating the amounts.
- (2) A record kept for the purposes of **subsection (1)** is deemed, for the purposes of the Employment Relations Act 2000, to form part of the wages and time record of the employee (as that record is described in section 130 of that Act). 15

*HCS employer zones***22 HCS employer zones**

- (1) An HCS employer may apply in writing to the chief executive of the Ministry of Health for approval of a zone for the purposes of determining exceptional first client travel and exceptional last client travel for HCS employees of the employer. 20
- (2) The chief executive may approve the zone only if he or she is satisfied that— 25
- (a) the employer has consulted the employees and any unions representing those employees; and
 - (b) all client visits by the employees will take place within the proposed zone; and
 - (c) at least 90% of the employees live within the proposed zone.
- (3) The chief executive must notify the employer of his or her decision on the application in writing. 30
- (4) An approval is valid for 1 year from the date on which the chief executive gives notice, but may be renewed in accordance with the process set out in **subsections (1) to (3)**.

Enforcement of obligations under this Act

23 Penalty for non-compliance

An HCS employer who fails to comply with an obligation imposed on the employer by this Act is liable to a penalty imposed by the Employment Relations Authority under the Employment Relations Act 2000.

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Other employers and employees unaffected

24 Other employers and employees unaffected

(1) Nothing in this Act limits or affects the rights, duties, or obligations relating to payment for employment-related travel of any employer or employee (within the meaning of those terms in the Employment Relations Act 2000) to whom this Act does not apply.

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(2) This section is for the avoidance of doubt.

Regulations

25 Regulations

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister of Health, make regulations for the following purposes:

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(a) prescribing the mileage rate:

(b) prescribing the method for calculating or basis for ascertaining an HCS employee's qualifying distance:

(c) prescribing the method for calculating or basis for ascertaining an HCS employee's qualifying travel time:

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(d) prescribing the maximum distance to a client visit before travel is treated as exceptional travel:

(e) providing for any other matters contemplated by this Act, necessary for its administration, or necessary to give it full effect.

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(2) Before recommending the making of any regulations for the purposes of **subsection (1)**, the Minister of Health must consult—

(a) all DHBs; and

(b) all HCS employers listed in **Schedule 2**; and

(c) any unions representing 1 or more HCS employees.

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(3) Before recommending the making of regulations for the purposes of **subsection (1)(b)**, the Minister of Health must also be satisfied that any qualifying distance resulting from the regulations is a fair approximation of the actual distance HCS employees would travel between clients.

(4) Before recommending the making of regulations for the purposes of **subsection (1)(c)**, the Minister of Health must also be satisfied that any qualifying

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travel time resulting from the regulations is a fair approximation of the actual amount of time an HCS employee would spend travelling between clients.

26 Power to amend Schedule 1

- (1) The Governor-General may, by Order in Council, amend **Schedule 1** to insert the name of a former HCS employer. 5
- (2) An order made under **subsection (1)** may apply retrospectively from the commencement of this Act.

27 Power to amend Schedule 2

- (1) The Governor-General may, by Order in Council, amend **Schedule 2** to—
 - (a) replace the name of an HCS employer in recognition of a change in the employer's name: 10
 - (b) insert the name of an HCS employer.
- (2) An order made under **subsection (1)(a)** may apply retrospectively from the date that the HCS employer changes its name if the employer changes its name after the commencement of this Act but before the order is made. 15
- (3) An order made under **subsection (1)(b)** may apply retrospectively from—
 - (a) the commencement of this Act, if the HCS employer is providing home and community-based support services at the commencement of this Act; or
 - (b) the date that the HCS employer starts providing home and community-based support services, if the employer starts providing the services after the commencement of this Act but before the order is made. 20

Part 3

Amendments to other Acts

28 Amendment to Minimum Wage Act 1983 25

- (1) This section amends the Minimum Wage Act 1983.
- (2) After section 9(d), insert:
 - (e) employees to whom the **Home and Community Support (Payment for Travel Between Clients) Settlement Act 2015** applies, in respect of travel between clients (as defined in **section 3** of that Act) undertaken by those employees. 30

29 Amendments to Employment Relations Act 2000

- (1) This section amends the Employment Relations Act 2000.
- (2) In section 5, definition of **minimum entitlements**, after “Holidays Act 2003”, insert “or the **Home and Community Support (Payment for Travel Between Clients) Settlement Act 2015**”. 35

- (3) After section 161(1)(m)(iii), insert:
- (iiiia) under **section 23** of the **Home and Community Support (Payment for Travel Between Clients) Settlement Act 2015**:
- (4) After section 236(4)(d), insert: 5
- (da) the **Home and Community Support (Payment for Travel Between Clients) Settlement Act 2015**:
- 30 Amendment to Holidays Act 2003**
- (1) This section amends the Holidays Act 2003.
- (2) After section 10, insert: 10
- 10A Treatment of payments made under Home and Community Support (Payment for Travel Between Clients) Settlement Act 2015**
- For the purposes of sections 8, 9, and 14, the ordinary weekly pay, relevant daily pay, or gross earnings (as the case may be) of an employee—
- (a) includes payments made to the employee under **section 12** of the **Home and Community Support (Payment for Travel Between Clients) Settlement Act 2015**; but 15
- (b) excludes payments made to the employee under **section 16** of the **Home and Community Support (Payment for Travel Between Clients) Settlement Act 2015**. 20

**Schedule 1
Former HCS employers**

ss 3, 26

Capital Nursing & Home Care Limited (also known as Company2 Limited)	
CHT Healthcare Trust (formerly Christian Healthcare Trust)	5
Devon Care Limited	
Disability Resource Centre Hawkes Bay Trust (formerly Disability Resource Centre Hawkes Bay Incorporated)	
Disability Resource Centre Southland	
Dunedin Home Support Services	10
Five Pillars Limited	
Graeme Alexander Pearson and Elizabeth Mary Pearson (trading as Dunedin Home Support and Southern Home Support)	
Home Help Personal Care Professionals	
Insight New Zealand 2007 Limited	15
IRIS Limited	
Living Options Charitable Trust	
Manawatu Supported Living Trust	
McIsaac Healthcare Limited	
Methodist Mission Northern	20
Mobilize Care & Training Limited	
Mosgiel Abilities Resource Centre Incorporated	
Nga Kakano Foundation Charitable Trust	
Ngati Porou Hauora Incorporated	
Ngati Ranginui Iwi Society Incorporated	25
Northlink Health Incorporated	
Nursing Home Help Service Limited (also known as Clouds Limited)	
Pacific Health Care Limited	
Panacea Healthcare Limited	
Piritahi Hau Ora Trust	30
Premier Health Care Limited	
Presbyterian Support Otago Incorporated	
Q-Nique Limited	
Raukawa Trust Board	
Rodney North Harbour Health Trust	35

**Home and Community Support (Payment for Travel
Between Clients) Settlement Bill**

Schedule 1

Te Hauora O Turanganui a Kiwa Limited	
Te Hauora Pou Heretanga Trust	
Te Whānau O Waipareira Trust	
Te Whatu Manawa Māori-Tanga O Rehua Trust Board	
Te Whatuiapiti Trust	5
Te Whatuiapiti Trust Incorporated	
The Community Nurses Limited (also known as Company3 Limited)	
The Friendship Centre Trust	
The Ngaiterangi Iwi Society Incorporated	
Tuwharetoa Health Services Limited	10
Waiapu Anglican Social Services Trust	

Schedule 2 HCS employers

ss 3, 25, 27

Access HomeHealth Limited	
Age Care Central Limited	5
Ali's Home Help Limited	
Aotea Health Limited	
Auckland DHB	
Canterbury DHB	
Care on Call (NZ) Limited	10
CCS Disability Action Bay of Plenty Incorporated	
CCS Disability Action Tairāwhiti Hawkes Bay Incorporated	
Central Health Limited	
Central Otago Living Options Limited	
Christchurch Residential Care (2011) Limited	15
Community Connections Supported Living Charitable Trust	
Community Living Limited	
Counties Manukau Homecare Trust	
Disabilities Resource Centre Trust	
Forward Care Home Health Limited	20
Geneva Healthcare Limited	
Geneva Northlink Healthcare Limited	
Good Partners Senior Care Limited	
Hawke's Bay DHB	
Healthcare of New Zealand Limited	25
Healthcare Rehabilitation Limited	
Healthvision (New Zealand) Limited	
Hokianga Health Enterprise Trust	
Home Support North Charitable Trust	
Howick Baptist Healthcare Limited	30
Huakina Development Trust Board	
IDEA Services Limited	
Independence House Connelly Trust	
Korowai Aroha Trust	
Lavender Blue Nursing and Home Care Agency Limited	35

Medibank Health Solutions New Zealand Limited	
Nelson Marlborough DHB	
Nelson Nursing Service Limited	
New Zealand Care Limited	
Ngati Hine Health Trust Board	5
Ngati Porou Hauora Charitable Trust Board	
Ngati Ranginui Home and Community Support Services Company Limited	
Ngati Whatua O Orakei Health Clinic Limited	
Oceania Care Company Limited	
Omahanui Homecare Limited	10
Pacific Island Homecare Services Trust	
PACT Group	
Pasifika Integrated Health Care Limited	
Presbyterian Support Central Incorporated	
Presbyterian Support (Northern) Incorporated	15
Presbyterian Support Services (South Canterbury) Incorporated	
Presbyterian Support (Upper South Island) Incorporated	
Rannerdale Home Care Limited	
Royal District Nursing Service New Zealand Limited	
Spectrum Care Trust Board	20
Summerset Care Limited	
Tairāwhiti DHB (also known as Tairāwhiti District Health and TDH)	
Tautako Service Charitable Trust	
Te Ata Resthome Limited	
Te Hauora O te Hiku O te Ika Trust	25
Te Kohao Health Limited	
Te Korowai Hauora o Hauraki Incorporated	
Te Oranganui Trust Incorporated	
Te Puna Ora O Mataatua Charitable Trust	
Te Rūnanga O Ngāi Te Rangi Iwi Trust	30
Te Rūnanga O Ngāti Whātua	
The Florence Nightingale Agency Limited	
The Florence Nightingale Agency (Marlborough) Limited	
The LIFEWISE Trust	
The Nurse Maude Association	35

The Salvation Army New Zealand Trust	
Timeout Carers Southland Trust	
Tui Ora Limited	
Tuwharetoa Health Charitable Trust	
VisionWest Community Trust	5
Waiapu Anglican Social Services Trust Board	
Waiheke Health Trust	
Waikato DHB	
West Coast DHB	
Whaiora Homecare Services Incorporated	10
Whaioranga Trust	