



BRIEFING

Post consultation advice on Support Workers' request for extra restructuring protections

Date:	3 September 2025	Priority:	Medium
Security classification:	In Confidence	Tracking number:	BRIEFING-REQ-0020204

Action sought		
	Action sought	Deadline
Hon Brooke van Velden Minister for Workplace Relations and Safety	Agree that you are not satisfied that Support Workers meet the criteria for extra restructuring protections. Sign and send the attached letter informing the Requestors of your decision.	17 September 2025

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Beth Goodwin	Manager, Employment Relations Policy	04 901 1611	s 9(2)(a)	✓

The following departments/agencies have been consulted
ACC; Corrections; Health New Zealand; the Ministries: for Children, of Disabled People, of Health, of Social Development, for Pacific Peoples; the Public Service Commission. The following targeted stakeholders have also been consulted on the MBIE report: the Public Service Association; E tū Union; NZCTU; BusinessNZ; Platform Trust; Home and Community Health Association; Aged Care Association; New Zealand Disability Support Network.

Minister's office to complete:

☐ Approved

☐ Declined

☐ Noted

☐ Needs change

☐ Seen

☐ Overtaken by Events

☐ See Minister's Notes

☐ Withdrawn

Comments



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Purpose

To provide advice, following consultation, to support your decision-making on whether you are satisfied that Support Workers meet the criteria for extra restructuring protections, and to advise on next steps.

Executive summary

You approved targeted consultation on MBIE's report (the MBIE Report) on the Request for Support Workers to be provided with additional protections in certain restructuring situations (the Request) [BRIEFING-REQ-0009086 refers]. The MBIE Report analysed the Request and concluded that none of the necessary criteria were met.

Consultation was undertaken on the MBIE Report for 12 weeks. MBIE received and analysed eight submissions. Although MBIE still considers the required **criteria are not met**, submissions did lead us to look more closely at the evidence relating to each criterion, identifying and correcting an error in a spreadsheet regarding union coverage and gathering new information to make a more robust assessment of whether Support Worker wages are low.

The *Employment Relations Act 2000* (ER Act) provides that you may recommend the making of an Order in Council by the Governor-General to add Support Workers to the Schedule of employee groups with additional restructuring protections, if you are satisfied that the statutory criteria are met. Given that we do not consider sufficient evidence has been provided to demonstrate that the required criteria are met, we do not recommend that you decide that you are satisfied. Subject to your agreement, a draft letter is provided at Annex Five to inform the Requestors of your decision.

We can provide you with further advice if you do not agree with our assessment of the criteria and would like to recommend an Order or would like MBIE to undertake further research before you decide (not recommended).

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

- a **Note** that MBIE has consulted targeted stakeholders on the MBIE Report, which analysed available evidence and concluded that Support Workers do not meet the criteria in the ER Act to be provided extra restructuring protections

Noted
- b **Note** that MBIE received eight submissions on the Report, with unions and the Ministry for Pacific Peoples supporting the Request, peak bodies representing employers opposing it, and other government agencies expressing general comfort with the conclusions in the MBIE Report

Noted

- c **Note** that we have considered stakeholder submissions, which led us to look more closely at the available evidence relating to each criterion, and concluded that the criteria are not met for the reasons given in **Annex Four** and summarised in paragraphs 10 to 15 of this briefing

Noted

EITHER

- d **Agree** that you are **not satisfied** that Support Workers meet each criterion:

- | | |
|--|----------------------------------|
| i. <i>Criterion 1 – Are Support Workers employed in a sector in which restructuring of an employer’s business occurs frequently?</i> | <i>Satisfied / Not satisfied</i> |
| ii. <i>Criterion 2 – Do Support Workers have terms and conditions of employment that tend to be undermined by the restructuring of an employer’s business?</i> | <i>Satisfied / Not satisfied</i> |
| iii. <i>Criterion 3 – Do Support Workers have little bargaining power?</i> | <i>Satisfied / Not satisfied</i> |

AND

- e **Agree** to sign and send the letter at **Annex Five** informing the Requestors of your decision

Yes / No

OR

- f **Indicate** that you would like MBIE to undertake further research or consult more widely before you decide whether the three criteria are met, and note that we will provide you with further advice on next steps [**not recommended**]

Yes / No

- g **Agree** that, in consultation with your office, we proactively release this briefing, including the MBIE Report at **Annex Two**, on the MBIE website.

Yes / No



Beth Goodwin
Manager, Employment Relations Policy
Workplace Relations and Safety Policy Branch
MBIE

3 September 2025

Hon Brooke van Velden
Minister for Workplace Relations and Safety

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Background

Part 6A coverage has been requested for Support Workers

1. The Public Service Association and the E tū Union requested that Support Workers be added to Schedule 1A of the ER Act, which would give Support Workers additional protections¹ in certain restructuring situations. The main additional protection would be that Support Workers could elect to transfer to a new employer on their existing terms and conditions if, for example, the business they work for is sold, or if a contract for services is changed to a different service provider. Previously-provided background material on the relevant ER Act provisions and the Request is in **Annex One**.
2. You may only recommend that the Governor-General make an Order in Council amending Schedule 1A to include a new category of employees if you are satisfied that they meet all three of the following Criteria (the Criteria):
 1. Are Support Workers employed in a sector in which restructuring of an employer's business occurs frequently?
 2. Do Support Workers have terms and conditions of employment that tend to be undermined by the restructuring of an employer's business?
 3. Do Support Workers have little bargaining power?
3. Support Workers work in four subsectors: home support; disability; mental health and addictions; and residential aged care. MBIE considers that, to be satisfied the criteria are met, would require evidence that the criteria are met across the subsectors as a whole and for a substantial proportion of the Support Worker population.

Officials analysed the application and provided a report for consultation

4. We analysed the Request and provided you with the MBIE Report (at **Annex Two**) for the purposes of consultation [BRIEFING-REQ-0009086 refers]. Our conclusion was that, based on the evidence available, Support Workers did not meet any of the criteria in paragraph 2. A summary of the analysis in the MBIE Report is at **Annex Three**.
5. You agreed that the Request was properly made, and which stakeholders were to be included in consultation on the MBIE Report [BRIEFING-REQ-0009086 refers]. Targeted stakeholders were asked for their views on our assessment that the criteria are not met, and for any further relevant evidence or data regarding the three Criteria, including changes that have occurred since the wage rates and support for training provisions of the *Support Workers (Pay Equity) Settlements Act 2017* (the 2017 Act) were repealed on 1 January 2024.
6. The MBIE Report considered information, including from StatsNZ, relating to the period from 2017 to 2024, and asked submitters to provide additional information about the last 20 months. MBIE considers data on this eight-year period is appropriate to support your decision-making: the time frame is long enough to allow us to assess both restructuring frequency and whether employment terms and conditions tend to be undermined in restructures, and it includes both pre- and post-COVID periods. The period also aligns to the 2017 Act, which set pay and conditions from 1 July 2017 until 1 January 2024.

¹ Part 6A, Subpart 1, of the ER Act provides additional restructuring protections for employee groups included in Schedule 1A.

After considering feedback from consultation, our view is still that the criteria are not met

We received submissions from both employer and Support Worker perspectives

7. Consultation on the report was undertaken for 12 weeks, between 3 April and 30 June 2025. We received submissions from eight organisations. The views expressed by submitters are summarised in the following table. Only the Requestors and the Peak Bodies provided detailed submissions addressing each criterion.

Submitters	Summary of submitter views
• The Requestors (PSA and E tū Union) • NZCTU	Support Workers meet all three criteria, because: • They are vulnerable due to low pay, high risk, and demographic profile. • They face frequent restructuring with clear evidence of loss. • Their conditions remain unfavourable, insecure, and eroding.
• Peak Bodies representing employers of Support Workers² • Home and Community Health Association (individual submission)	The Request is not supported for the following key reasons: • The Act's criteria are not satisfied for proceeding as requested. • The Unions' supporting information is not accurate and does not justify any need for the requested extended coverage. • Agreeing to the unions' request may lead to unintended consequences for the wider health and disability sector.
Government agencies: • Health New Zealand • ACC • Public Service Commission	• Submitters expressed general agreement with the findings in the MBIE report. • No concerns were expressed with the conclusions drawn.
• Ministry for Pacific Peoples	• Further analysis is suggested to assess whether restructuring is frequent. • Restructuring may significantly impact Support Workers, though current evidence is insufficient to confirm this point. • The Ministry considers that Support Workers' average wages are low. • Support Workers, predominantly women and Pacific women, face low wages and persistent gender pay gaps, with recent legislative changes likely to further weaken their bargaining power.

8. The following organisations were consulted and did not provide a submission: Department of Corrections; Ministry for Children; Ministry of Health; Ministry of Social Development; Business NZ; Ministry of Disabled People.

² NZ Disability Support Network, Atamira Platform, Home and Community Health Association, and Aged Care Association.

We considered information provided by submitters on each criterion

9. MBIE has reassessed each criterion in light of feedback from submitters. Detailed analysis of submissions is set out in **Annex Four**. A summary of our conclusions after considering the available evidence on each criterion follows.

Criterion 1. Are Support Workers employed in a sector in which restructuring of an employer's business occurs frequently?

10. MBIE considers that Criterion 1 is not met. The MBIE Report concluded that the available evidence suggests that restructuring is not likely to be frequent across all subsectors. The views of the Requestors and the Peak Bodies are not aligned, predictions of future restructuring are out of scope, and insufficient extra information has been provided in submissions to change the conclusion in the MBIE Report.

Criterion 2. Do Support Workers have terms and conditions of employment that tend to be undermined by the restructuring of an employer's business?

11. MBIE considers there is insufficient information to support a conclusion that Criterion 2 is met. The regulation of wage rates for most of the period under consideration and the absence of clear changes to working hours do not support a conclusion that Support Workers have terms and conditions of employment that tend to be undermined by the restructuring of an employer's business. The survey data provided by submitters about the period since the expiry of the 2017 Act does not show that restructuring was the cause of any changes, and the data is limited to the home support subsector.

Criterion 3. Do Support Workers have little bargaining power?

12. MBIE's overall conclusion is that Criterion 3 is not met. There is insufficient evidence to support a finding that Support Workers have little bargaining power. MBIE assessed Criterion 3 through three sub-criteria, which are assessed below. These sub-criteria were previously used in 2020 to assess the eligibility of Security Officers to be added to Schedule 1A.

Criterion 3.1 Do Support Workers have low wages and unfavourable terms and conditions?

13. MBIE considers that Criterion 3.1 is not met. New Zealand does not have a single agreed definition of 'low pay'. In reaching its conclusion, MBIE has considered a range of comparators, and notes that Support Worker average and median wages are materially above the minimum wage. Neither the Requestors nor the Peak Bodies provided sufficient data to illustrate whether Support Worker non-wage terms and conditions are unfavourable compared to the general population of workers in New Zealand. The limited extra information provided in submissions does not address all subsectors and is inconclusive. In response to the Requestor's submission, MBIE checked against other data sources and found that in general these sources supported the conclusion in the MBIE Report.

Criterion 3.2 Do Support Workers have low union coverage?

14. MBIE considers that Criterion 3.2 is not met. Support Workers' union coverage (35%) is above the New Zealand average (20%).

Criterion 3.3 Are Support Workers vulnerable workers that have poor employment outcomes?

15. MBIE considers that Criterion 3.3 is not met. MBIE has insufficient evidence of actual employment outcomes that (a) are poor and (b) apply to a substantial proportion of Support Workers across subsectors. Although demographic groups that generally experience poor employment outcomes are over-represented among Support Workers, data about actual employment outcomes is lacking. The submitters do not agree on the evidence, and the examples provided are not sufficiently representative. MBIE finds the evidence inconclusive.

Overall, we advise that you do not recommend Support Workers be added to Schedule 1A

16. We consider the available evidence to be contradictory, inconclusive, and below the standard necessary for you to be satisfied that the three statutory criteria have all been met. The MBIE Report noted that the limited data and evidence available to MBIE made it difficult to analyse whether some of the criteria are met (such as the extent to which terms and conditions have been undermined). The submissions received have not substantively changed this.

Wider consultation is unlikely to fill data gaps

17. Our 27 February briefing [BRIEFING-REQ-0009086 refers] noted that, following targeted consultation, you could choose to do wider public consultation if you felt that the nature of the feedback from targeted stakeholders indicated that wider consultation on the Report was warranted. Having now completed targeted consultation, we consider that wider consultation is unlikely to address the data gaps identified in the MBIE Report, so we do not recommend it. New research would most likely be required to address identified data gaps, including into actual employment outcomes from restructuring for Support Workers across the subsectors.

Next steps

If you decide that one or more criteria are not met

18. If you decide you are not satisfied that all three criteria are met, the Request process will end. If this is the case, we recommend that you sign and send the letter at **Annex Five** to communicate your decision to the Requestors. MBIE will then inform other stakeholders.
19. Subject to your agreement, we will work with your office on the timing for the proactive release of the MBIE Report and this briefing on the MBIE website.

Annexes

Annex One: Background to the Request

Annex Two: MBIE Report, 3 April 2025

Annex Three: Summary of assessment in MBIE Report

Annex Four: Analysis of submissions on MBIE Report

Annex Five: Draft letter to the Requestors

Annex One: Background to the Request

The ER Act provides additional restructuring protections for specified employee groups

20. Part 6A (subpart 1) of the ER Act provides additional protections for the categories of employees listed in Schedule 1A, including:
 - a. The right for employees to transfer to a new employer where, because of a restructure (including contracting in, contracting out, or subsequent contracting), their work is to be performed by a new employer.
 - b. If employees elect to transfer to the new employer, their existing terms and conditions of employment are transferred. The new employer must recognise existing entitlements (such as sick leave, annual holidays and that continuous service is unbroken).
21. Part 6A (subpart 1) also includes a system where prospective employers can request information relating to the transfer of employees from the current employer, including the number of employees eligible to transfer, wages and work hours.
22. Section 237A of the ER Act allows for requests to be made for a group of employees to be added to Schedule 1A of the Act. The employee groups currently in Schedule 1A are cleaning, food catering, caretaking, orderly and laundry services in the education, health, public and local government sectors; and security services (security guards). Security guards were added in 2021. Prior to this, unsuccessful requests were made relating to paper mill workers in Kawerau (2007) and water workers in Wellington (2008).

The Request seeks extra restructuring protections for support workers

23. The Public Service Association and the E tū Union have requested that support workers be added to Schedule 1A of the Act, which would give them additional restructuring protections. The Request was made in July 2021 and updated in August 2023. We provided information to your office about the Request in December 2023, March, May and December 2024. We advised you that we were progressing this work as time and resourcing allows around supporting your Ministerial priorities, which is the reason for the time taken to reach this stage.
24. The Request uses the definition of support worker in the 2017 Act. There are three main subgroups of support worker in the 2017 Act:
 - a. care and support worker,
 - b. mental health and addiction support worker, and
 - c. vocational and disability support worker.
25. Support Workers are employed in four subsectors:
 - a. home support,
 - b. disability,
 - c. mental health and addiction, and
 - d. residential aged care.
26. The data available to MBIE suggests there are around 53,500 support workers in New Zealand.

Annex Two: MBIE Report

27. The MBIE Report is attached separately: *Assessment of Request to add Support Workers to Schedule 1A of the Employment Relations Act 2000*, MBIE 3 April 2025

Annex Three: Summary of assessment in MBIE Report

28. The following table provides a summary of the assessment in the MBIE Report, against each criterion.

Criterion	MBIE assessment prior to consultation
1. Are Support Workers employed in a sector in which restructuring of an employer's business occurs frequently?	<i>Insufficient evidence that restructuring occurs frequently across all subsectors</i> – There is insufficient information to support a conclusion that restructuring occurs frequently across all Support Worker subsectors. For example, the residential aged care subsector (which accounts for 38% of funding) is covered by an evergreen contract where employers can continue to provide services if the contract's requirements are met (indicating that restructuring does not occur frequently within at least this large proportion of Support Workers).
2. Do Support Workers have terms and conditions of employment that tend to be undermined by the restructuring of an employer's business?	<i>Insufficient evidence that terms and conditions tend to be undermined by restructuring across all subsectors</i> – From 1 July 2017 to 1 January 2024, the 2017 Act standardised hourly pay rates for Support Workers, meaning that pay rates were unlikely to change following a restructuring. In this period, any undermining of terms and conditions from restructuring would have tended to be through changes in hours worked, however we have only isolated and anecdotal evidence of this occurring. Employer support for worker education and training was also required by the 2017 Act. We have no evidence that would substantiate falling wages since the 2017 Act's expiry on 1 January 2024, or whether other terms and conditions have been systematically undermined across subsectors.
3. Do Support Workers have little bargaining power?	<i>Insufficient evidence of low bargaining power across all subsectors</i> – On balance, MBIE does not consider that Support Workers have little bargaining power, as there is evidence of relatively high union coverage, and stable wage rates with regular increases set by changes to the 2017 Act. This is despite some groups that tend to have poorer employment outcomes being over-represented among Support Workers.

Annex Four: Analysis of submissions on MBIE Report

29. Submissions are analysed below according to the criterion they relate to.

Criterion 1. Are Support Workers employed in a sector in which restructuring of an employer's business occurs frequently?

30. The Requestors said that less restructuring than normal occurred in the period 2021-25 due to the Election and establishment of Te Whatu Ora, but they predicted more change in 2026. MBIE's assessment has included data from 2017 to 2023, so covers more than just the period where the Requestors say the frequency of restructuring was not typical. MBIE considers that predictions of future restructuring are out of scope, as this criterion requires assessment of things that have happened and whether they happen frequently.
31. The Requestors provided two additional examples of recent individual contract changes. A 2024 report '*Transforming Care*' noted a contract change process where nearly 70 staff had to reapply for their positions and there were two redundancies and one resignation. The coverage of that contract is limited to the home support subsector, so it does not provide evidence of restructuring across all support work subsectors and a small proportion of all Support Workers were affected.
32. A copy of the 2012 'Caring Counts' (the 2012 Report) report by the Human Rights Commission was included in the Requestors' submission. This report is too old to provide much useful information regarding restructuring frequency. Many of the issues it identifies were at least in part addressed by the 2017 Act, which brought significant improvements to pay and other conditions that were identified as issues in the 2012 report. The 2012 Report is of an inquiry targeted primarily at support work in aged care, so findings may not be applicable to the other subgroups of Support Worker.
33. In their submission, the Peak Bodies restated many of their views expressed previously and that had been noted in the MBIE Report. Peak Bodies consider that support services are funded typically for periods of three to five years (not one year as stated by the Requestors). MBIE accepts that retendering will not necessarily lead to restructuring, eg where a contract is won by the existing provider.
34. The Peak Bodies dispute whether some examples provided by the Requestors fall within the definition of "restructuring" in sections 69B and 69C of the ER Act, eg where existing contracts with funders are expanded (rather than new contracts) and where a provider withdraws from a contract. MBIE notes that whether a specific contract change would constitute a restructuring is highly fact specific. With the information available to MBIE it is not possible to confirm the status of the examples provided by the Requestors.
35. The Ministry for Pacific Peoples suggested that MBIE undertakes more data analysis to investigate whether restructuring is frequent. However, it is the Requestors' responsibility to provide evidence in support of the Request. We provided all parties with multiple opportunities to provide further information and have obtained data from StatsNZ. We do not consider that the process requires MBIE to collect further data, and stand by our view that the "information available to MBIE (including that provided by Requestors, Peak Bodies and funders) does not provide a dataset that clearly quantifies the number of restructures across all subsectors or years".
36. **Conclusion:** MBIE considers that Criterion 1 is not met. The MBIE Report concluded that the available evidence suggests that restructuring is not likely to be frequent across all subsectors. The views of the Requestors and the Peak Bodies are not aligned, predictions of future restructuring are out of scope and insufficient extra information has been provided in submissions to change the conclusion in the MBIE Report.

Criterion 2. Do Support Workers have terms and conditions of employment that tend to be undermined by the restructuring of an employer's business?

37. In their submission, the Requestors stressed that the protections of the 2017 Act expired on 1 January 2024, including the wage rates and the linkage of rates to service and qualifications. They claim that since then wage rates have been eroded, with new workers entering the workforce at the minimum wage rate and some employers in bargaining looking to decouple training from pay.
38. The Requestors provided a summary of the results of an October 2024 survey of 506 union members who are Home Support Workers. 62% of respondents reported changes to working hours, with 18% reporting increased hours and 82% decreased hours. The findings are limited to union members in the home support subsector and are not representative of Support Workers across all four subsectors. Again, there is no evidence that the reported changes to hours of work are due to restructuring.
39. The 'Transforming Care Report' provided by the Requestors includes an example of a Support Worker who is \$31.50 a week worse off as travel reimbursement does not meet the full cost of using her car for work. While this is a poor condition, it is not clear that it results from restructuring.
40. For this criterion the key question is whether there is evidence that restructuring has undermined terms and conditions, not simply whether terms and conditions have deteriorated. The Requestors' submission does not dispute that the 2017 Act provided "a degree of uniformity of key terms and conditions" while it was in force. However, the submission does not provide convincing evidence linking any changes in terms and conditions to restructuring, across subgroups.
41. The Requestors consider that MBIE applied an incorrect test to establish whether terms and conditions are undermined by restructuring. They assert that it is not necessary for MBIE to establish that the entire sector, or any particular subsector, had its hours reduced as a result of restructuring – only that where restructuring takes place, terms and conditions of employment were undermined as a result. MBIE disagrees. If the Requestor's approach were accepted this would enable anecdotal evidence that is not representative of the population of Support Workers to determine whether the criterion was met, which is not consistent with the requirement in the ER Act that the Minister must be "satisfied that the employees in the category of employees ... have terms and conditions of employment that tend to be undermined by the restructuring of an employer's business".
42. Another point raised in the Requestors' submission was that the stopping of the pay equity claims for Support Workers "strips away one of the few tools available to unions". They say that without Schedule 1A coverage "workers are at the mercy of contracting cycles and government whims". MBIE does not consider there is evidence that the pay equity changes in May 2025 have materially affected assessment of the criteria in paragraph two, as the period over which the criteria are being assessed is 2017 to 2025. In particular, MBIE has no evidence of the changes having affected restructuring outcomes in the months since May 2025.
43. The Peak Bodies say that the provisions of the 2016 Act³ and the 2017 Act resulted in a common job profile for Support Workers, with general employment terms and conditions consistently reflected across the wider sector workforce. MBIE considers that the effect of these Acts would have been to reduce the likelihood of restructuring leading to reduced terms and conditions, by increasing consistency across employers of Support Workers. Since the expiry of the 2017 Act it is possible that where new or existing employment agreements are negotiated, terms and conditions below that in the 2017 Act could be

³ The Home and Community Support (Payment for Travel Between Clients) Settlement Act 2016 ensures home and community support workers are fairly compensated for the time and costs associated with travelling between clients.

agreed. However, MBIE does not have evidence of this occurring across subsectors and for a significant proportion of Support Workers.

44. The submission of the Peak Bodies challenged whether some of the examples of restructuring provided by the Requestors in the Request met the definition of restructuring in the Act. As above, MBIE is unable to confirm this with the information available.
45. The Ministry for Pacific Peoples submission acknowledged insufficient evidence to satisfy this criterion but expressed concern that there may be significant impact on a large number of Support Workers and asked that MBIE provide further information. However, MBIE considers it has made reasonable efforts to obtain data. As noted, the ER Act places an onus on the Requestors to include evidence in their Request. MBIE provided the Requestors with multiple opportunities to provide information and obtained additional statistical data. Some further data was obtained in response to submissions (more information is provided on this below).
46. **Conclusion:** MBIE considers there is insufficient information to support a conclusion that Criterion 2 is met. The regulation of wage rates for most of the period under consideration and the absence of clear changes to working hours do not support a conclusion that Support Workers have terms and conditions of employment that tend to be undermined by the restructuring of an employer's business. The survey data provided by submitters about the period since the expiry of the 2017 Act does not show that restructuring was the cause of any changes, and the data is limited to one subsector.

Criterion 3. Do Support Workers have little bargaining power?

47. **Conclusion:** MBIE's overall conclusion is that Criterion 3 is not met. There is insufficient evidence to support a finding that Support Workers have little bargaining power. Support Worker average and median wages are not low, union coverage is above the New Zealand average and although demographic groups which generally experience poor employment outcomes are over-represented among Support Workers, there is a lack of data about actual employment outcomes.
48. MBIE has assessed Criterion 3 through three sub-criteria below. These key indicators of whether a workforce has little bargaining power were used in the 2020 assessment of Security Officers. Prior to MBIE preparing its Report these sub-criteria were discussed with the Requestors and Peak Bodies, which both supported their use.

Criterion 3.1 Do Support Workers have low wages, and unfavourable terms and conditions?

49. The Requestors questioned the validity of the 2024 average Support Worker hourly rate of \$29.96 and whether it is appropriate to compare this rate to the minimum wage rather than the average wage for the New Zealand working population.
50. MBIE sourced the Support Worker average wage figure from the HLFS, which is survey based and could potentially have been skewed upwards, if a proportion of people surveyed had misreported their income or the period over which it was earned. Since receiving the submission from the Requestors, MBIE has undertaken further analysis and obtained additional data to double check its findings on Criterion 3.1. This is outlined below. On balance MBIE considers that this new data supports the conclusion in the MBIE Report. New Zealand does not have a single agreed definition of 'low pay'. In reaching its conclusion MBIE has had regard to a range of comparators.
 - a. **Median wage** – New data shows that in 2024 Support Workers' median hourly earnings were \$28.33. This is close to (\$1.63 below) the 2024 average wage. Had the MBIE Report compared this figure to the minimum wage, the conclusions drawn would have been similar. Although the median figure is less than the median wage for the New Zealand working population (\$33.56) it is substantially (\$5.18) above the minimum wage.

- b. *Proportion at the minimum wage* – MBIE has obtained new HLFS data about the distribution of Support Worker wages compared to the New Zealand working population. Although this may be affected by small sample sizes, the data shows that between 2018 and 2022 the proportion of Support Workers at the minimum wage was less than the New Zealand working population. However, in 2023 and 2024 the proportion of Support Workers earning the minimum wage was greater.⁴ In percentage terms, the difference between the groups has generally been between 1 and 6 percent. In 2024, 9.1% of Support Workers earned at or below the minimum wage, compared to 5.5% of the New Zealand working population. Given the changes over time, the relatively small magnitude of the differences and the possibility of results being affected by small sample sizes, MBIE considers the data on the proportion of Support Workers receiving the minimum wage is inconclusive, neither proving nor disproving that Criterion 3.1 is met.
 - c. *Security guards* – A comparison with the average wage of security guards, who were added to Schedule 1A in July 2021, was undertaken. When the Security Guards request was assessed, their average wage was \$21.14 per hour which was 119% of the then minimum wage of \$17.70 per hour. In percentage terms the average Support Worker wage in 2024 was 130% of the minimum wage. This shows that the average wages of security guards were closer to the minimum wage rate, ie lower.
 - d. *Occupations in Schedule 1A* – MBIE compared Support Workers' wages to the wages of occupations already in Schedule 1A. In 2024 the average wage of Support Workers (\$29.96) was similar to the average wage for groups currently in Schedule 1A, which ranged from \$25.59 (food assistants) to \$30.94 (security guards). This data suggests that Support Workers' wages are similar to groups that have previously been assessed as low paid, although we note that Security Guards were added four years ago and pay rates for groups in Schedule 1A may be higher now than if they had not been added.
 - e. *OECD approach to defining low wage* – While, internationally, there is no agreed way to assess whether wages are low, the OECD considers wages low if they are less than two thirds of the median wage. When applied to New Zealand, this supports the conclusion in the MBIE Report. In June 2024 the median hourly wage for a full-time worker in New Zealand was \$33.56 per hour. Two thirds of this rate is \$22.37 per hour, which is below the 2024 minimum wage rate of \$23.15 per hour, suggesting that Support Workers' wages are not low.
51. MBIE disagrees with the Requestors that it would be more appropriate to compare the Support Worker average wage to the average hourly wage for the NZ population. We don't consider this would be an appropriate way to assess 'low' wages, as we don't consider the entire population below the average wage to be 'low wage'.
52. The requestors say that since the expiry of the 2017 Act, Support Worker wage rates have been in sharp decline and with the May 2025 changes to the Equal Pay Act 1972, they predict that "within months" Support Workers "will begin to be paid no more than the minimum wage rate". Evidence is not provided of pay rates dropping across the subsectors, and as noted above, predictions of the future are out of scope and MBIE does not have evidence that terms and conditions have reduced in the months since the changes to the Equal Pay Act.
53. The October 2024 PSA survey of home Support Workers included in the Requestors' submission noted that 36 percent of respondents had suffered work-related injuries in the previous 12 months and 23 percent of respondents reported experiencing violence and harassment in the previous year. MBIE also notes that there is some evidence provided by the Requestors (and in the media) that some home Support Workers using their own

⁴ This is likely due to the minimum wage from 1 April 2023 (\$22.70) exceeding the lower end of the pay scale in the 2017 Act (\$22.49).

vehicles for work are not fully reimbursed for the actual cost of this. MBIE considers that these are two examples of an unfavourable condition in the home support subsector.

54. The October 2024 PSA survey of home Support Workers also reported some changes in terms and conditions. Paid travel time had increased for just over 1 in 10 people and decreased for 3 in 10. While this survey suggests a decrease in wages and conditions for some home Support Workers, it does not provide evidence of decreasing wages and conditions for all Support Worker subsectors, or a substantial proportion of Support Workers overall.
55. The 2012 “Caring Counts” report describes Support Workers as low paid. However as noted earlier, this report predates the increases to Support Worker terms and conditions made by the 2016 and 2017 Acts.
56. Peak Bodies consider that low pay and conditions have “already been addressed in 2017-2018 in the pay equity settlements”. These conditions form the baseline for the assessment in the MBIE report. The Peak Bodies saw the pay equity settlements that were under way from 2022 as evidence that pay and conditions were being addressed through that mechanism. As discussed elsewhere, MBIE does not consider that the pay equity changes in May 2025 have materially affected assessment of the criteria in s237A.
57. The Ministry for Pacific Peoples suggested that the living wage would be a more appropriate comparator than the minimum wage and that the average Support Worker wage should be considered ‘low’. However, MBIE does not agree this is an appropriate comparator. Nevertheless, the 2024 Support Worker average wage of \$29.96 exceeded the living wage of \$27.80 per hour by \$2.16, so this would not indicate low wages.
58. **Conclusion:** On balance MBIE considers that Criterion 3.1 is not met. Neither the Requestors or the Peak Bodies provided sufficient data to show whether Support Worker non-wage terms and conditions are unfavourable compared to the general population of workers in New Zealand. The limited extra information provided in submissions does not address all subsectors and is inconclusive. In response to the Requestor’s submission MBIE checked against other data sources and found that, mostly, these supported the conclusion in the MBIE Report.

Criterion 3.2 Do Support Workers have low union coverage?

59. The Requestors’ submission challenged the 2024 50% union coverage figure stated in the MBIE Report. The Requestors say the density of union coverage varies depending on the sector but is typically around 30 percent. We checked and found an error in our spreadsheet. Of the 53,000 workers with support work as their primary job, 35% (18,800) are affiliated to a union. This proportion is closer to the figure given by the Requestors. Compared to the New Zealand union coverage rate (20% in 2024) the union membership rate for Support Workers is not considered to be ‘low’.
60. The Requestors stated that “union coverage is not a sign of high bargaining power—it is a protective response to persistent vulnerability. Even where unionised, workers depend on protracted bargaining culminating in mediation or industrial action, or ERA action to secure basic rights. Bargaining fragmentation, employer resistance, and funding shortfalls severely undermine the ability to lift standards without a legislative backstop like Part 6A.”
61. MBIE maintains its view that low union coverage is a valid indicator of low bargaining power. However, high union membership does not necessarily mean that Support Workers have high bargaining power, just that this indicator of low bargaining power is not met.
62. Of the three reports supplied as part of the Requestors submission only the 2012 “Caring Counts” report addressed unionisation, with comments made about low union representation among aged care workers. This information is dated and only addresses one subsector.

63. The Peak Bodies submission did not directly address unionisation – instead focussing on the increases in terms and conditions achieved through the 2016 and 2017 Acts that unions have been able to achieve for Support Workers over the last ten years, and case law, and viewing these as indicators that bargaining power is not low.
64. Union coverage was not discussed in the Ministry for Pacific Peoples submission.
65. **Conclusion:** MBIE considers that Criterion 3.2 is not met. The 35% union membership of Support Workers is not low compared to the 20% figure for the working New Zealand population.

Criterion 3.3 Are Support Workers vulnerable workers that have poor employment outcomes?

66. The Requestors consider the demographic profile of Support Workers to be sufficient to illustrate their vulnerability. The MBIE Report shows that compared to their proportions in the New Zealand population, the following groups are over-represented among Support Workers: women (80%); Pacific (12%) and Asian (32%). As stated in the Report, MBIE considers that the demographic profile alone, without adequate data of actual employment outcomes, is not sufficient to meet this criterion.
67. The 2024 survey data provided by the Requestors included that:
 - 76 percent of workers said their take-home pay made it hard for them to make ends meet.
 - 69 percent struggled to meet the basic costs of housing and food.
 - The survey finds 36 percent of respondents had suffered work-related injuries in the previous 12 months.
 - The survey also found that 23 percent of respondents reported experiencing violence and harassment in the previous year.
68. The Requestors suggested that MBIE compare these figures to the ANZ Financial Wellbeing survey. MBIE notes that the ANZ survey found that 70% of New Zealanders can make ends meet. This is an indicator that Support Workers may be more vulnerable than some other New Zealanders, however it does not provide evidence of poor employment outcomes.
69. Other information provided in the Requestors' submission relevant to Criterion 3.3 includes the *Transforming Care Report 2024* which includes anecdotal interviews with 6 Support Workers in different subsectors, most of whom say their pay is low, and the *Caring Counts Report 2012* which includes a discussion of the vulnerability of Support Workers, especially migrants.
70. The Peak Bodies submission raised workforce shortages as evidence that Support Workers are in high demand and valued by their employers. However, MBIE does not see workforce shortages as a clear indicator of high bargaining power, due to the constrained funding environment for support services.
71. The Peak Bodies and the Requestors disagree on the status of the guaranteed hours framework⁵, with the Peak Bodies not accepting the Requestors' claim that "guaranteed hours are often low and that there is related precarity of work". The Peak Bodies cite "limited employment cases (eg personal grievances)" as evidence of this. MBIE finds a lack of conclusive evidence either way regarding guaranteed hours.

⁵ The 2017 Guaranteed Hours Framework for Support Workers included ensuring workers are paid even when client visits are cancelled (under certain conditions). This was a negotiated agreement between the Ministry of Health, District Health Boards (DHBs), unions, and providers.

72. The Ministry for Pacific Peoples notes that women make up the majority of the Support Worker workforce, including a significant number of Pacific women. The Ministry also references evidence of the national gender pay gap in New Zealand (8.2% as at 30 June 2024 and 17% for Pacific women), saying that with 2025 changes to the Equal Pay Act “bargaining power for Support Workers will be further diminished and it will be more difficult for lower paid workers, such as Support Workers, to achieve pay equity”.
73. MBIE does not consider the pay equity changes in May 2025 have materially affected assessment of the criteria in s237A, as the period over which the criteria are being assessed is 2017 to 2025. In particular, MBIE has no evidence of the changes having significantly affected Criterion 3.3 in the months since May 2025, and speculation regarding future changes is out of scope for this assessment.
74. **Conclusion:** On balance MBIE considers that Criterion 3.3 is not met. MBIE has insufficient evidence of actual employment outcomes that are poor, and which apply to a substantial proportion of Support Workers across the subsectors. The submitters do not agree on the evidence and the examples provided are not sufficiently representative. MBIE finds the evidence inconclusive.

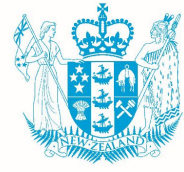
Annex Five: Draft letter to the Requestors

Hon Brooke van Velden

MP for Tāmaki

Minister of Internal Affairs

Minister for Workplace Relations and Safety



Melissa Woolley, Assistant Secretary PSA

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Mat Danaher, Director Etū

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Dear Melissa and Mat

Request to add Support Workers to Schedule 1A

I am writing to inform you that in accordance with the Employment Relations Act 2000, I have considered your request under section 237A to add Support Workers to schedule 1A of the Act. However, I am not satisfied that the necessary criteria are met.

You will be aware that the MBIE report *Assessment of Request to add Support Workers to Schedule 1A of the Employment Relations Act 2000* found that none of the three criteria in the Act were met. Acting on my behalf, MBIE then sought submissions from relevant stakeholders including Support Worker and employer representatives, and relevant government agencies.

MBIE has analysed the submissions received against each criterion and provided advice to me which I considered in reaching my decision. Some changes to MBIE's earlier analysis resulted from the submissions received, including the correction of an error in the MBIE report regarding union membership. However, I am unsatisfied that there is sufficient evidence to support a conclusion that the three criteria are met, which is supported by advice I have received from MBIE. The analysis I considered is set out in advice which will be released shortly on the MBIE website.

Yours sincerely

Hon Brooke van Velden

Minister for Workplace Relations and Safety