



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI

**LABOUR,
SCIENCE AND
ENTERPRISE**



Assessment of Request to add Support Workers to Schedule 1A of the Employment Relations Act 2000

3 April 2025

1 Summary

1. The Minister for Workplace Relations and Safety (the Minister) has received a Request (the Request) from the E tū Union and the Public Service Association (the Requestors), for Support Workers to be added to Schedule 1A of the Employment Relations Act 2000 (the Act).
2. Employee groups listed in Schedule 1A have protections under Part 6A of the Act, if their work is affected by specific types of restructuring (see Table one).
3. To be added to Schedule 1A an employee group must meet all three of the following Criteria (the Criteria):
 - a. they are employed in a sector in which restructuring of an employer's business occurs frequently; and
 - b. they have terms and conditions of employment that tend to be undermined by the restructuring of an employer's business; and
 - c. they have little bargaining power.
4. Protections for eligible employee groups include that they can elect to transfer from an outgoing employer to an incoming employer on the same terms and conditions of employment.
5. The Ministry of Business, Innovation and Employment (MBIE) has analysed the Request and engaged with the Requestors, employer peak bodies and funding agencies in developing this Report. MBIE considers that Support Workers should not be added to Schedule 1A, as they do not meet any of the three Criteria.
6. This Report has been produced in accordance with s237A of the Act to support stakeholder consultation. Stakeholder feedback on this Report will inform the decision to be made by the Minister on whether Support Workers should be added to Schedule 1A.
7. Consultation questions are at **Annex One**. Please email your response to employmentrelationspolicyteam@mbie.govt.nz by 5pm on **15 May 2025**.

2 Background

2.1 Part 6A provides additional restructuring protections for specified categories of employees in certain sectors, facilities, or places of work

8. For the purposes of Part 6A of the Act, restructuring occurs when service provision arrangements change. This can be due to contracting out, contracting in, subsequent contracting or selling or transferring an employer's business (or part of it) to another person. Table one illustrates the main restructuring scenarios in the support sector, based on the definition of 'restructuring' given in sections 69B and 69C of the Act.

Table one: Restructuring scenarios in the support sector

Example	Scenario	Comment
Subsequent contracting	<i>Change of provider:</i> An agreement (or part of an agreement) between a funder and a provider for the provision of support services using the provider's employees or a subcontractor, expires or is terminated and a new service provider is instead contracted to provide some or all of the services.	Subsequent contracting is the most common type of restructure in the support work sector. Note: not all situations where a contract ends lead to a restructuring, for example if at the end of a contract term the incumbent service provider has its contract renewed (with or without a tender). This scenario would not be a restructuring, as the contracted provider is not changing.
Selling or transferring an employer's business (or part of it) to another person	A business with a contract to deliver a service is bought by another business. Note: There are exclusions in section 69B(b) from the definition of restructuring for situations involving the sale or transfer of company shares, and where an employer is bankrupt, in receivership or liquidation.	These scenarios are also common in the support work sector.
Contracting out	A business that uses its employees to deliver a service, contracts to an external business to deliver the service instead.	Less common in the support services sector as government agencies are mainly funders of contract services.
Contracting in	A business takes in-house a service that has been contracted out, and the work or some of the work had been performed by employees of the contractor or employees of a subcontractor.	Less common in the support services sector as government agencies are mainly funders of contract services.

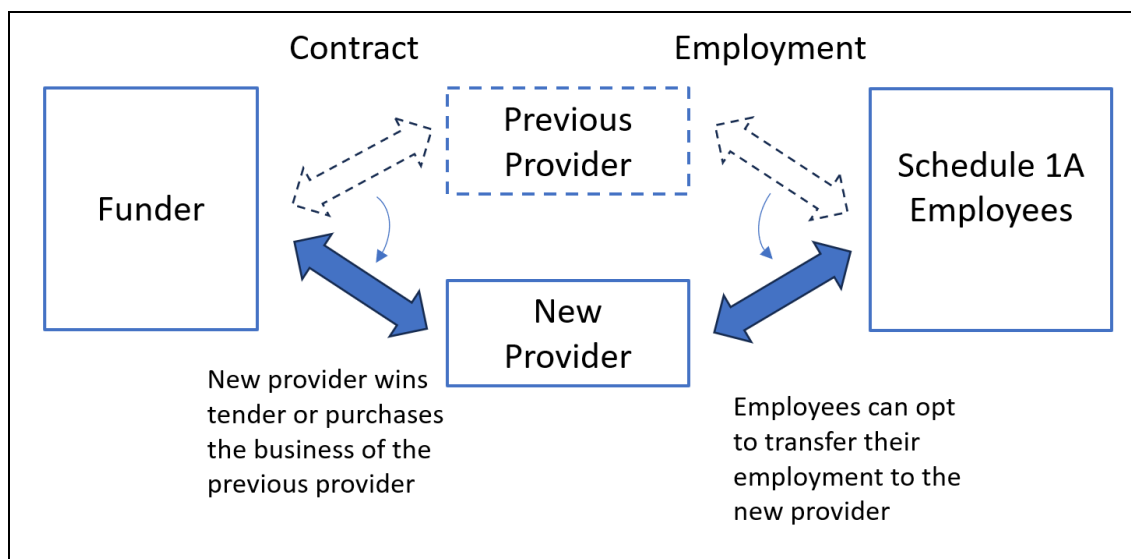
9. Subpart 1 of Part 6A of the Act provides additional restructuring protections for categories of employees who are listed in Schedule 1A, that go beyond the minimum standards which apply across the labour market.¹ The objective of these provisions is

¹ Every employment agreement must contain an 'employee protection provision'. However, employees covered by Schedule 1A also have a right to elect to transfer to a new employer on the same terms and conditions of employment.

to provide protection to these employees if, as a result of a proposed restructuring, their work is to be performed by another employer.²

10. Categories of employees currently included in Schedule 1A are:
 - Cleaning services and food catering services in any place of work
 - Caretaking services for the education sector
 - Laundry services for the education, health or age-related residential care sector
 - Orderly services for the health or age-related residential care sector
 - Certain services in the security sector (security guards).
11. In restructuring situations the employee groups in Schedule 1A have a right to elect to transfer to the new employer if:³
 - a. their employer will no longer require them to perform their work; and
 - b. the work performed by the employee (or work that is substantially similar) is to be performed by, or on behalf of, another person.

Table two: Employees in listed in Schedule 1A can opt to transfer to a new employer on the same terms and conditions if a restructuring leads to a change of provider



12. Under Part 6A the new employer must recognise the terms and conditions of employment of transferring employees, including entitlements to leave, such as sick leave and annual holidays, and treat service as continuous and unbroken.

² The objective of Subpart 1 of Part 6A is in the Employment Relations Act 2000, section 69A.

³ Paraphrased from section 69F of the Act.

13. If employees elect to transfer to the new employer, and they are made redundant because of the transfer situation, they may become eligible for redundancy entitlements.⁴
14. Part 6A also includes a system for ensuring prospective employers (eg businesses competing for a tender) can request information relating to the transfer of employees from the current employer, such as the number of employees eligible to transfer, wages, and work hours, and (if a transfer occurs) individualised employee information (such as personnel records).

2.2 To change the categories of employees listed in Schedule 1A the process in section 237A must be followed

15. Section 237A of the Act sets out the process by which the Minister may recommend that the Governor-General amends Schedule 1A to add, delete or amend categories of employees by Order in Council. The Minister must first receive a request to add, delete or amend a category of employees that:
 - clearly identifies the category of employees to which the request relates; and
 - specifies the sector in which the category of employees provides service; and
 - includes evidence that the relevant employees satisfy or no longer satisfy (as applicable) the three Criteria below.

2.2.1 All three Criteria must be met

16. The current Request is to add a new category of employee. The Minister may only recommend amending Schedule 1A to include a new category of employees if satisfied that they meet all of the following Criteria (the Criteria).

The Criteria for an employee group to be added to Schedule 1A, are that they:

- ***are employed in a sector in which restructuring of an employer's business occurs frequently; and***
- ***have terms and conditions of employment that tend to be undermined by the restructuring of an employer's business; and***
- ***have little bargaining power.***

17. MBIE has a role under the Act to prepare a Report (this document), assessing whether the category of employees identified in the Request satisfies the Criteria.
18. Before deciding whether to recommend an amendment to Schedule 1A, the Minister must provide this Report to and consult any employers, employees, and their representatives, as well as other persons or organisations the Minister considers appropriate.
19. If the Minister is satisfied that all three Criteria are met, the Minister may recommend an amendment to add Support workers to Schedule 1A.

⁴ More information is available on the Employment NZ website: [Restructuring when a business is sold or transferred | Employment New Zealand](#).

2.3 The Request

20. A request for Support Workers to be added to Schedule 1A was lodged in July 2021, and an addendum clarifying and updating the original request was provided in August 2023. Together these comprise the Request, with the addendum prevailing where there are any differences. See the following link for the Request documents.
<https://www.mbie.govt.nz/business-and-employment/employment-and-skills/employment-legislation-reviews/support-workers-request-for-additional-employment-protections>

2.3.1 The category of employees requested

21. The Request seeks to add Support Workers as a new category of employees to Schedule 1A, defined as the following sub-groups of Support Workers:

“All of the care and support sector. We confirm the coverage of this Request is as defined in the Support Workers (Pay Equity) Settlements Act 2017:

- *care and support worker;*
- *mental health and addiction support worker; and*
- *vocational and disability support worker.*

We are seeking to include all care and Support Workers irrespective of who they are funded by.”

22. The three sub-groups of Support Workers have been assessed in this Report as a single group.

2.4 Background information on the support sector and workers

23. Data on the employment of Support Workers is derived from the Household Labour Force Survey (HLFS), a representative sample survey conducted by Statistics New Zealand that provides official information on the country’s labour market. According to the 2024 HLFS, there are an estimated 56,000 Support Workers in New Zealand, of which 80% are women. Support Workers are largely employed by organisations that are contracted by Government agencies to provide services. Table three sets out support sector roles in more detail.

Table three: Description and roles of key support sector participants

Employees	Employers	Funders
Individual Support Workers employed to provide support services. Support Workers include employees working in the following roles and are variously represented by the Requestor Unions ⁵ : - Nursing Support Workers - Personal Care Assistants - Therapy Aides - Aged or Disabled Carers	Provider organisations contracted by funders to deliver services, broadly represented by the following peak sector bodies: - Home and Community Health Association (Home support sub-sector)	Government agencies that fund provider organisations by contract to deliver services, in particular: - Ministry of Health/Manatū Hauora - Health New Zealand/Te Whatu Ora (Te Whatu Ora)* - Ministry of Disabled People /Whaikaha (Whaikaha)**

⁵ The roles listed are based on Australian and New Zealand Standard Classification of Occupations (ANZSCO) categories supplied by Requestors.

- Diversional Therapists - Disabilities Services Officers - Kaiawhina/Māori Health Assistants.	- NZ Disability Support Network (Disability sub-sector) - Platform Trust (Mental health and addictions sub-sector) - Aged Care Association NZ (Residential Aged Care sub-sector).	- Accident Compensation Corporation/Te Kaporeihana Āwhina Hunga Whara - Ministry of Social Development /Te Manatū Whakahiato Ora (MSD) - Department of Corrections/Ara Poutama Aotearoa - Ministry for Children/Oranga Tamariki (Oranga Tamariki) There are also a small proportion of private funders.
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*Some support services formerly funded by the Māori Health Authority (Te Aka Whai Ora) have been transferred and are now funded by Health New Zealand. The Māori Health Authority still existed at the time the original request and addendum were made. As the organisation was in transition when the research for this Report was completed, it did not provide information on the support services it funded. The lack of data on these support services is not expected to have materially affected the analysis in this Report, as together Health New Zealand and ACC fund the majority of support services provided in New Zealand.

** The service delivery arm of Whaikaha was transferred to MSD in September 2024. The transfer in functions and staff (under s86 of the Public Service Act) meant that the management of Whaikaha contracts transferred to MSD at the same time. In this Report Whaikaha is referred to as the funder of these services as it had this function for nearly all of the time period considered by this Report. MBIE has no evidence to suggest that this change in funding arrangements has had a material effect on the conclusions reached in this Report.

24. The sub-sectors within which Support Workers provide services can overlap, with some employers contracted to provide services on behalf of several funders. The sub-sectors are:

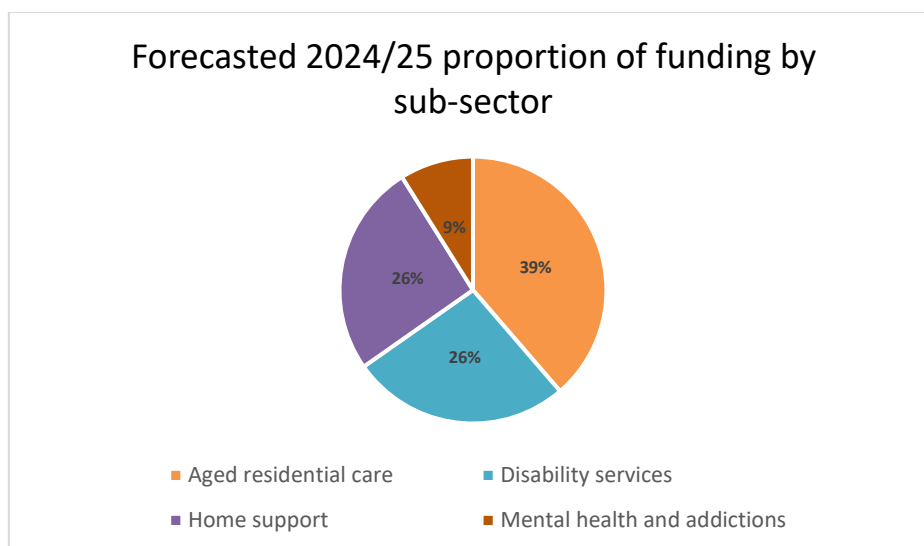
- *Home support sub-sector:* Support workers provide a range of care and support services to people in their homes.⁶ Services can include personal care, household management, and complex care. This sub-sector is primarily funded by Te Whatu Ora, Accident Compensation Corporation (ACC), and Whaikaha.
- *Disability sub-sector:* Support workers provide support services to individuals or groups of disabled people in private homes, facilities or in the community. This sub-sector is primarily funded by Whaikaha, but also Oranga Tamariki and MSD.
- *Mental health and addictions sub-sector:* Support workers provide mental health and addictions care and support in people's homes, workplaces, provider facilities and community facilities. Most employers are not-for-profit non-government organisations, and primarily funded by Te Whatu Ora (with a small proportion from Oranga Tamariki, MSD, Corrections and ACC).
- *Residential Aged Care sub-sector:* Support workers generally provide support within residential aged care providers. The sub-sector comprises mostly for-profit operators, with funding per occupied bed. This sub-sector has a national level

⁶ Family funded carers tend to be in the Home Support sub-sector, or the Disability sub-sector. Family funded carers are Support Workers who receive government funding to provide care to a family member.

‘evergreen’⁷ agreement (ie contract)⁸ where any new provider that meets the requirements can sign onto this contract.

25. The relative proportion of funding forecast to be attributed to each sub-sector in 2024/25, based on Ministry of Health data on forecast service volumes in hours, is set out in Table four below. This is a broad proxy for the proportions of Support Workers within the sub-sectors.

Table four: Relative size of support services sub-sectors⁹



3. Assessment of whether the Criteria in the Act have been met

26. MBIE has assessed the Support Worker sub-sectors in the Request as a whole against the three Criteria, all of which the Minister must be satisfied are met, if the Minister is to recommend an amendment to add Support Workers to Schedule 1A. Evidence used in MBIE’s analysis includes:
- Data from Statistics New Zealand, including the HLFS (which provides income and demographics data, including trends across different worker groups), occupation statistics for estimating numbers of care and Support Workers in New Zealand and other relevant statistics.
 - Information provided by the Requestors in their original request and subsequent addendum.
 - Information from engaging with key stakeholders: including the Requestors, employer peak bodies and Government agencies set out in Table three above.

⁷ An evergreen contract automatically renews after its initial term expires. The parties agree that the contract rolls over automatically and indefinitely until one gives the other notice to terminate it.

⁸ A number of terms are used across the support services sub-sectors to describe contracting arrangements, including ‘contract’, ‘agreement’, and ‘outcome agreement’. These terms are all “contracting” for the purposes of Part 6A of the Employment Relations Act 2000.

⁹ Graph based on data supplied by the Ministry of Health.

27. MBIE notes there are limitations in relation to available data and evidence, and the Requestors and employer peak bodies hold different views about whether Support Workers meet the Criteria.

3.1 Whether Support Workers are employed in a sector in which restructuring of an employer's business occurs frequently

28. We have heard that in support services, restructuring most commonly occurs when a new provider wins a tender or buys (ie takes over) an existing provider that holds one or more contracts to deliver support services.

29. Peak bodies and the Requestors have provided MBIE differing views and information about whether Support Workers are subject to frequent restructures, across all sub-sectors:

- The Requestors described in their original request that Home Support contracts change regularly, “but on average every 2-5 years”. In the addendum the Requestors stated that contracts with Te Whatu Ora, MSD, Corrections, ACC, Whaikaha, Oranga Tamariki, Te Aka Whai Ora are one-year contracts, with sales and mergers occurring regularly. We interpret this to mean that the Requestors consider that contract changes leading to restructuring affecting employment of Support Workers occurs on average every 2-5 years for Home Support, and annually for other sub-sectors. The Requestors provided examples of specific cases to support this general claim, without detailed data to evidence restructuring occurring frequently across all sub-sectors.
- Employer peak bodies consider that contracts are typically for periods of 3-5 years. They consider that some contracts have been in place for many years, and it is not common for service providers to change at any frequency during each contractual period. The employer peak bodies consider that the examples provided by the Requestors feature one-off contract changes, service withdrawal, or general business mergers and acquisitions, and in their view highlight that there have been very few restructures occurring for this workforce in the last ten years. The Aged Residential Care Association stated that 2.1% of aged care facilities had changed hands in the previous year. We interpret this to mean that the employer peak bodies consider that restructuring is infrequent. While contract duration is typically for periods of 3-5 years, our understanding is that employer peak bodies consider a restructuring (in terms of s69B and 69C) does not often occur following contract expiry, as contracts are commonly renegotiated with the existing provider.
- Feedback from funding agencies was limited, and included ACC indicating that since 2017, changes to its funding arrangements for services provided by Support Workers are unlikely to have resulted in a significant proportion of its providers losing contracts. ACC's contract terms are generally three years and are sometimes renewed without a competitive tender, with the same provider continuing to provide services. The most recent change was in March 2024. It involved ACC moving from contracting with five lead providers which sub-contracted to other providers, to ACC contracting directly with a larger number of providers. ACC does not consider that this change would have resulted in many providers losing contracts (and consequent restructures occurring).

- In general, Oranga Tamariki outcome agreements (contracts) with providers are for more than one year, typically three and sometimes four years. Contracts can be varied as demand for services change, however most relevant services are quite specialised and there is a relatively small pool of providers able to provide them. There has been little change amongst contracted providers in the last five years.
 - Whaikaha's contracts tend to have three-to-five-year terms, although they can be varied each year. The contracts were last retendered in the early 2000s. The existence of the Residential Aged-Care sub-sector's national level 'evergreen'¹⁰ contract suggests restructuring due to a change in service provider following retendering is infrequent.
30. MBIE considers that restructuring frequency is likely to vary across sub-sectors. However, 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 sub-sectors or years.
 31. The 2020 decision that added Security Officers to Schedule 1A considered that a typical three-year contract period, at the end of which a restructure occurs, amounted to frequent restructuring of an employer's business, to which stakeholders in that sector generally agreed. As such, MBIE considers clear evidence that restructuring typically occurs on a three yearly (or more frequent) basis for a significant portion of employers in all sub-sectors would indicate that restructuring occurs frequently. Evidence of restructuring being less frequent than three years may still meet the threshold of 'frequent' depending on the particular circumstances.
 32. However, in the case of Support Workers, stakeholders have conflicting views on whether restructuring is frequent. Contract term alone is not a clear indicator of restructuring frequency, as contract expiry does not always result in changes of service provider and restructurings can also result from business acquisitions, mergers and closings.
 33. The evidence available to MBIE suggests that restructuring is not likely to be frequent across all sub-sectors. For example, the Residential Aged Care sub-sector is covered by an evergreen contract where employers can continue to provide services if the contract's requirements are met, ie service providers generally do not lose contracts. This means that the main driver of restructuring in the Residential Aged Care sub-sector is sales or mergers, and we have no evidence that this occurs frequently. This large sub-sector encompasses around 38% of all funding, indicating that restructuring is not frequent within at least this large proportion of Support Workers. In addition, there is no clear evidence or agreement between stakeholders that restructuring typically occurs on a three-yearly (or similarly frequent) basis for a significant portion of employers in all other sub-sectors.
 34. On that basis, MBIE does not consider that the Criterion is satisfied that restructuring of employers' businesses occurs frequently within all sub-sectors.

¹⁰ An evergreen contract automatically renews after its initial term expires. The parties agree that the contract rolls over automatically and indefinitely until one gives the other notice to terminate it.

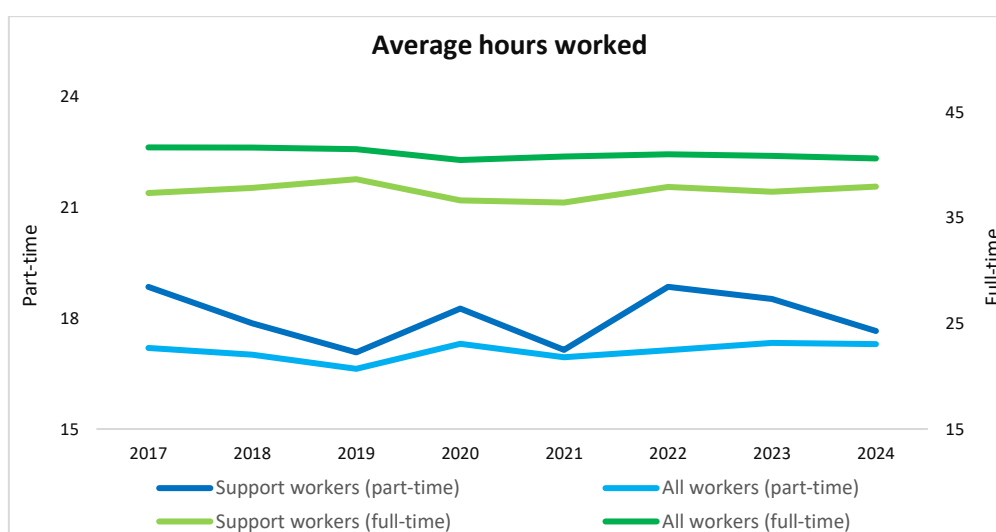
3.2 Whether Support Workers' terms and conditions of employment tend to be undermined by the restructuring of an employer's business

35. Employer peak bodies and Requestors hold different views about whether Support Workers' terms and conditions tend to be undermined by restructuring, with neither providing detailed data across all sub-sectors to support their opposing assertions:
- The Requestors provided 11 examples of contract changes that resulted in situations they consider would meet the definition of 'restructuring' in section 69B and 69C of the Act. The Requestors said that in these examples workers' entitlements, such as sick or annual leave balances, were not transferred to new employers and claimed that the terms and conditions regularly affected by change are pay rates, hours of work, leave provisions and access to qualifications.
 - Employer peak bodies emphasised that section 69OJ of the Act requires all collective and individual employment agreements to contain an employee protection provision in the event of restructuring. It is peak bodies' understanding that its members have such protection provisions in their relevant employment agreements, which have operated effectively where restructuring has occurred. The Aged Residential Care Association noted that Support Workers in aged residential care have employee protection under collective agreements and sub-sector agreements, which are not undermined by the restructuring of an employer's business.
36. MBIE interprets the words 'tend to be' in this criterion to mean that more often than not terms and conditions are undermined by restructuring across all sub-sectors. This is a higher standard than just isolated examples of terms and conditions being undermined by restructuring. MBIE considers there is insufficient evidence to support a conclusion that Support Worker's terms and conditions of employment across all sub-sectors tend to be undermined by restructuring.
37. In particular, the minimum wage rates that were set across the sector via the *Care and Support Workers (Pay Equity) Settlement Act 2017* (the 2017 Act), and minimum hours for certain sub-sectors under the *Home and Community Support (Payment for Travel Between Clients) Settlement Act 2016* are likely to have resulted in a degree of uniformity of key terms and conditions that would be unlikely to be undermined if restructuring occurred.
38. The 2017 Act specified minimum wage rates and regular increases to pay levels in the support sector (with funding provided for employers to meet these rates), which occurred between 2017 and 2023. As such, MBIE considers there was no scope for wages to have been undermined during that period. A large portion of the 2017 Act (including wage rates and support for training) was repealed on 1 January 2024, and it is possible that subsequently new employees could have been hired on lower rates, however MBIE has no evidence of this occurring widely across sub-sectors.
39. The Requestors have provided examples of non-wage terms and conditions being undermined, such as specific cases in relation to holiday pay and other entitlements. However, there is no readily available evidence to substantiate this occurring systematically across sub-sectors.
40. Although wage rates were regulated between 2017 and 2023, it was possible that working hours could have been undermined. We looked at the available data to see

whether there was evidence of Support Workers' hours decreasing, across all the sub-sectors, and found that there was not.

41. The average weekly hours of a full-time Support Worker's main job has remained relatively steady since 2017, ranging from 37 to 38 hours, except during the COVID-19 pandemic (2020-2021), when Support Workers worked an average of 36.5 hours. This trend aligns with national figures, which show that hours of work among all workers remained fairly constant in this period. While Support Workers' part time hours fluctuated between 2017 and 2024 there is no clear trend over the period.

Table five: Support workers' hours compared to the New Zealand population



42. In light of the different stakeholder opinions, regulated wage rates and absence of clear changes to working hours, MBIE does not consider that Support Workers have terms and conditions of employment that tend to be undermined by the restructuring of an employer's business.

3.3 Whether Support Workers have little bargaining power

43. Peak bodies and Requestors hold different views about whether Support Workers have little bargaining power. MBIE considers there are three key indicators of whether a workforce has bargaining power, as summarised below, consistent with the approach taken in the 2021 assessment of Security Officers.¹¹ Each is discussed below, with an overall conclusion on this criterion following.

3.3.1 Whether Support Workers have low wages, and unfavourable terms and conditions

44. As discussed above, Support Worker wage rates were set by the 2017 Act and included regular increases during the legislated period, with no evidence that they have subsequently fallen across sub-sectors. The average Support Worker hourly rate was \$29.96 in 2024. Although this is below the average wage rate of \$40.96 for the NZ population and the median hourly rate of \$33.56, it is substantially (\$6.81) above the

¹¹ In the addendum the Requestors indicate that the criteria used to assess the bargaining power of security guards is appropriate to use for Support Workers.

2024 minimum wage rate of \$23.15. On balance, MBIE does not consider that Support Workers have low wages.

45. In regard to non-wage terms and conditions, the Requestors considered that Support Workers are employed on guaranteed hours which are often low across the sector and can be amended with “as little as 1 weeks consultation and 2 weeks notice”. They said that hours of work and income fluctuate dramatically and they “often describe these workers as being precarious workers”.
46. However employer peak bodies refuted the Requestors claim that guaranteed hours are often low and that their work is precarious. They noted that the guaranteed hours framework, which was developed and agreed in a support sector settlement between union, employer and funder representatives, has been operating since 2017, with comparatively few employment cases (eg personal grievances) arising in the Employment Relations Authority or Employment Court.
47. Neither the Requestors or the employer 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.
48. In relation to employers’ support for Support Workers to gain qualifications, we note that from 1 July 2017 to 1 January 2024 the 2017 Act required employers to take all reasonably practicable steps to ensure that a Support Worker could attain a New Zealand Certificate in Health and Wellbeing issued by NZQA at levels 2 to 4, depending on their length of continuous employment.¹² Due to the existence of these training provisions and the absence of other information on changes to non-financial terms and conditions, MBIE does not consider there is evidence to conclude that Support Workers have poor non-wage terms and conditions.
49. A workforce shortage for Support Workers is acknowledged by all stakeholders. Peak bodies suggested that the presence of a shortage means employers will want to treat their employees well, to retain them. On the other hand the Requestors suggest the lack of a wage increase in response to a workforce shortage could be evidence of a lack of bargaining power. However, the labour market for Support Workers is constrained by the funding allocated and the legislative parameters that it operates within, so it is not clear that a shortage will directly feed through to wage pressure. The disconnect between wages and the supply of labour is illustrated by the fact that the shortage of workers was not significantly reduced by the substantial pay rise awarded to Support Workers as a result of the pay equity settlement implemented via the 2017 Act.
50. Therefore, overall, MBIE does not consider that Support Workers have low wages, nor that there is evidence they have unfavourable terms and conditions.

3.3.2 Whether Support Workers have low union coverage

51. There are different views between employer peak bodies and Requestors on the level of union support and coverage. In the addendum the Requestors say that 20% of the workers in the support sector are covered by Unions and collective employment agreements, although it is not clear what year this figure relates to and, as shown in Table six, union membership increased substantially between 2021 and 2024. Employer peak bodies consider there is no evidence of little bargaining power, viewing

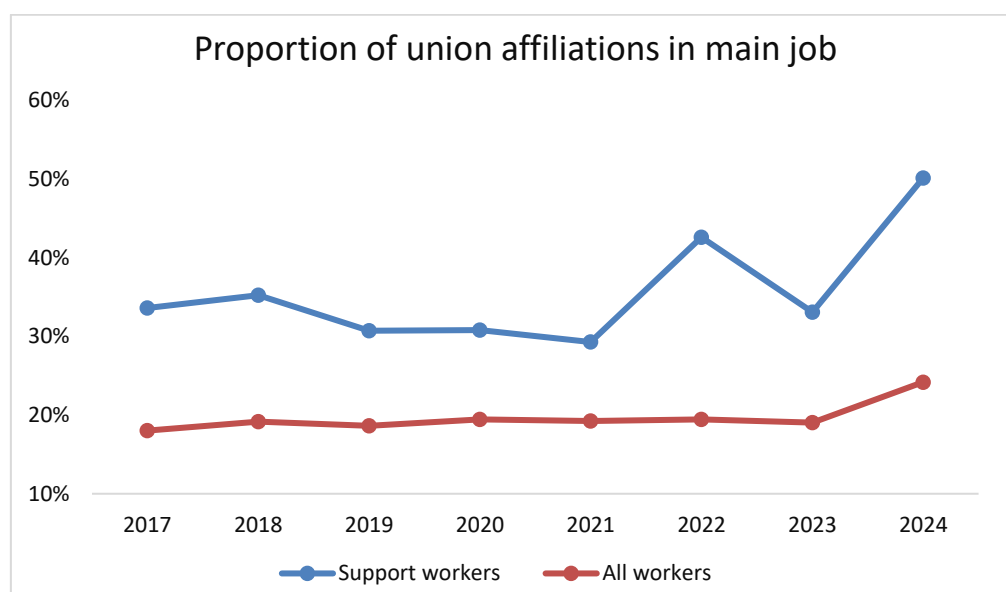
¹² This includes an equivalent qualification (whether from New Zealand or overseas). See section 5 of the 2017 Act.

protections gained for Support Workers in the last decade through union representation as evidence of this.

52. MBIE considers that union coverage appears high compared to the average for New Zealand overall:

- Although variable, HLFS data indicates that more Support Workers were on collective employment agreements compared to the New Zealand population, indicating collective bargaining power and consistency of terms.

Table six: Unionisation among Support Workers compared to the population



- There are multiple active pay equity claims, including the long-running Care and Support Workers' pay equity claim, for which proceedings have been filed with the Employment Relations Authority.

3.3.3 Whether Support Workers are vulnerable workers that have poor employment outcomes

53. The Requestors broadly describe Support Workers as 'largely precarious workers', where hours fluctuate with little notice, a lack of security of continued employment, and a lack of clarity around Support Workers' rights – particularly in relation to the Home Support sub-sector. Employer peak bodies noted the shortage of Support Workers, which are in high demand and valued by the employers they represent.
54. There is some evidence that demographic groups which generally experience poor employment outcomes (such as in relation to income, qualifications, underemployment and unemployment) are over represented among Support Workers. HLFS data indicates that, compared to the NZ population, the following groups are overrepresented among Support Workers:

- 80% of Support Workers are female

- Similar to current Schedule 1A occupations, Pacific (12%) and Asian (32%) are highly represented among Support Workers, compared with respective proportions in the NZ population¹³ (6% and 21%)
 - Most Support Workers (65%) have qualifications at certificate level (level 4) or less. This compares to the national average of 54%. Support workers have a similar proportion with no qualifications as the national average (9% vs. 10%).
55. This data suggests that Support Workers may tend to experience poorer employment outcomes compared to the general population. However such a conclusion would be inferred from the demographic profile of Support Workers, rather than being based on data about actual employment outcomes, and MBIE doesn't consider it sufficiently conclusive.

3.3.4 Assessment of Support Workers' bargaining power – conclusion

56. 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 close to the national median with regular increases set by the 2017 Act. This is despite some groups with poorer employment outcomes being over represented among Support Workers.

4 MBIE concludes that Support Workers do not meet the Criteria under the Act

57. Overall, MBIE considers that, across all support sub-sectors within the Request, Support Workers do not meet any of the Criteria that are required under the Act for them to be added to Schedule 1A. While MBIE notes the limitations in relation to available data, and the different views held by stakeholders, there is insufficient evidence to substantiate that Support Workers meet the Criteria.

5 Next steps

58. Under the Act the Minister must provide this Report to, and consult, any employers, employees, representatives of employers or employees, or other persons or organisations as the Minister considers appropriate.
59. Feedback from this consultation will inform the Minister's decision on whether the Minister is satisfied that Support Workers meet the Act's Criteria. If satisfied, the Minister may recommend that the Governor-General makes an Order in Council to add Support Workers to Schedule 1A of the Act, which requires a Regulatory Impact Statement and Cabinet approval.

¹³ StatsNZ, 2023: <https://www.stats.govt.nz/information-releases/2023-census-population-counts-by-ethnic-group-age-and-maori-descent-and-dwelling-counts/>

Annex One: How to give feedback

60. The Ministry of Business, Innovation and Employment (MBIE) is collecting written submissions on this Report, including on the questions below. We need to hear what you think by no later than **5pm on 15 May 2025**.
61. Please email your response to employmentrelationspolicyteam@mbie.govt.nz If you can't email your response, you can post it to:

Employment Relations Policy

Ministry of Business Innovation and Employment
PO Box 1473
Wellington 6140.

62. Your feedback will contribute to our final advice to the Minister of Workplace Relations and Safety on whether Support Workers should be added to Schedule 1A of the Employment Relations Act 2000.

Release of information on MBIE website

63. MBIE may publish copies or excerpts of submissions. MBIE will consider you to have consented to this when you submit your feedback unless you clearly state otherwise in your submission and have identified the confidential information.
64. If your submission contains any information that is confidential which you do not want published, please:
- state this at the start of your submission, with any confidential information clearly marked within your feedback text
 - provide a separate version, with your confidential information removed, for publication on the MBIE website.

Official information Act

65. Your submission will be kept by MBIE and will become official information. This means that a member of the public may request a copy of your submission from us under the Official Information Act 1982, regardless of whether you have requested that information be withheld in part or in full. Should you wish for some or all of the information you have provided to be withheld from release, please clearly specify your objections. We will take any objections into account when responding to any requests under the Official Information Act 1982.

Privacy statement

66. The Privacy Act 2020 governs how we manage personal information (eg collection, use, holding, disclosure, etc). Our intention is to only collect contact information and feedback that does not contain personal information. The personal information you supply to us in the process of making a submission for this consultation will be used for the purposes stated in this document for feedback, to attribute submissions, or for contacting you about your submission. We may also use personal information you supply in the course of making a submission for other reasons permitted under the Privacy Act 2020 (eg with your consent, for a directly related purpose, or where the law permits or requires it).

67. Please use caution when providing feedback that you do not include personal information in your responses. The information collected will be disclosed within MBIE, with ministers, as required by law and may be publicly disclosed on our website as part of a proactive release. We may edit responses before disclosure to protect privacy. You have rights of access to, and correction of, your personal information as explained on the MBIE website at www.mbie.govt.nz. To request access to, or correction of, your personal information please contact us at employmentrelationspolicyteam@mbie.govt.nz.

Questions for consultation

1. Do you agree with our conclusion that the Criteria for adding Support Workers to Schedule 1A are not met? Why, or why not?

The Criteria for an employee group to be added to Schedule 1A, are that they:

- ***are employed in a sector in which restructuring of an employer's business occurs frequently; and***
- ***have terms and conditions of employment that tend to be undermined by the restructuring of an employer's business; and***
- ***have little bargaining power.***

2. Do you have evidence that you can share with us, of changes relevant to the three Criteria, that have occurred since the wage rates and support for training provisions of the Support Workers (Pay Equity) Settlements Act 2017 were repealed on 1 January 2024?

Please note: We are particularly interested in any research or quantitative data you may have addressing the Criteria (this is likely to be more persuasive than anecdotal information about the experiences of small numbers of people).

3. Are you aware of other data which could be used to inform whether the Support Workers in each sub-sector [Home support sub-sector, Disability sub-sector, Mental health and addictions sub-sector, Residential Aged Care sub-sector] meet all three Criteria?
4. What would the benefits be of adding Support Workers to Schedule 1A?
5. What extra compliance costs would employers face from complying with Part 6A (Subpart 1), if Support Workers were added to Schedule 1A?