



progressing through training in various specialities toward vocational registration. On average,<sup>1</sup> although varying in settings/location and available staffing, NZRDA point to research by the New Zealand Medical Council, that a House Officer will work 65.1 hours per week and a Registrar 52.5 hours. NZRDA claim that the average hours of work for house officers and registrars “has been steadily increasing since 2021” and they attribute this as likely to be due to RMO shortages.

[3] The New Zealand Resident Doctors Association (NZRDA) and HNZ-TWO are agreed successor parties in bargaining for the renewal of the: “District Health Boards NZ Resident Doctors Association Multi Employer Collective Employment Agreement” (CEA) that came into force on 17 May 2021 and expired on 31 March 2024. The NZRDA say the CEA covers around 2,500 of their members.

[4] The parties have been in bargaining since 26 February 2024, have met on several occasions and attended mediation on 30 April and 1 May. Thereafter, HNZ-TWO applied for a direction to facilitation by the Employment Relations Authority that was granted in a determination of 6 May 2024.<sup>2</sup> Against this backdrop, NZRDA members have engaged in repeated periods of strike action where a complete withdrawal of labour has occurred (7 and 8 May for 25 hours, 16 and 17 May for 49 hours and 30 and 31 May for 49 hours. Further strike notices were issued on 31 May involving full withdrawal on Sunday afternoons in specified circumstances from 15 June to 11 August.

[5] Consequent bargaining facilitation assistance for two separate sessions by the Authority, has left the parties unable to conclude matters.

[6] A comprehensive formal offer from HNZ-TWO was tabled on 14 May that they described as being at the limit of their fiscal constraints but the NZRDA bargaining team signalled it is currently not an offer that they could confidently put before their members for consideration or ratification and an alternative offer was proffered but rejected by HNZ-TWO.

[7] Following this impasse on 24 May, I provided the parties with a draft recommendation after reaching the view that bargaining had reached the point where s 50H (1) the Employment

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<sup>1</sup> Medical Council of New Zealand, The New Zealand Medical Workforce 2023, available at <https://www.mcnz.org.nz/assets/Publications/Workforce-Survey-Report-2023.pdf>.

<sup>2</sup> *Te Whatu Ora v New Zealand Resident Doctors Association Inc* [2024] NZERA 267.

Relations Act 2000 (the Act) came into play. This led to the parties engaging in further facilitation on 28-29 May and HNZ-TWO tabling a further formal offer on 5 June with a covering letter summarising the rationale behind the offer.

[8] While the last facilitation made some limited progress, NZRDA chose to continue with strike action on 30 and 31 May and have served notice of a further two months of partial withdrawal of labour on Sundays involving non shift workers commencing mid-June. In addition, after expressing concerns about the accuracy of post facilitation communication, HNZ-TWO has signalled a belief that good faith principles enunciated in the parties' Bargaining Process Agreement have not been followed. NZRDA dispute this assertion.

[9] For brevity given the complexity of issues and to protect the sanctity of the parties wishing to communicate their bargaining to their constituents, I will not refer in detail to all respective positions of the parties or the reasons for each adopting such. I, however, observe that significant effort has gone into an attempt to construct a settlement by both parties and their detailed work on non-remuneration issues has been impressive.

### **Contextual impediments to settlement**

[10] The CEA is unique in the sense that it is a transitional agreement for those covered by it, as once RMO's complete specialist training and obtain vocational registration (a process that takes a median time of 8-12 years) the majority expect to transit to become Senior Medical Officers and subject to a different collective employment agreement. The practical impact of this is a fluid situation with no bunching of RMOs at the top of the salary scales.

[11] Apart from ongoing strike action and the significant disruption of such for patients and staff covering doctors' absences, contextual difficulties hinder settlement progress, these include:

- A background of a difficult and constrained fiscal position for HNZ-TWO (and the wider public sector) when faced with the counter-inflationary pressure of addressing a stricture to remain within overall budget appropriations for the delivery of health care services by avoiding a deficit situation in the current financial year.
- The pressure created by recent substantial pay movements for the majority of HNZ-TWO health workforce flowing from pay equity adjustments and other collective bargaining settlements; predominantly the cost and scope of the nurses pay equity

settlement that has also placed comparative relativity pressure between nurses and doctors pay rates. This is coupled with the need for HNZ-TWO to soon address senior doctors' remuneration and conditions.

- Hard to fill vacancy rates and shortages in critical areas (of both RMOs and GPs); the consequent impact on RMOs workload and already significant working hours and shift pattern pressures.
- Overall, the pressing need to retain New Zealand trained doctors and attract overseas doctors while addressing long term shortages by increasing doctor supply at the graduate level (short term solutions being limited).
- The impact, from NZRDA's perspective, of the recent HNZ-TWO settlement of a CEA with a competing, established, breakaway union, the Speciality Trainees of New Zealand (STONZ).
- STONZ operates within the same coverage of NZRDA's CEA and has around 2,000 plus members employed by HNZ-TWO. STONZ has operated a significantly different bargaining approach to NZRDA but within largely the same contextual fiscal constraints which despite such, led to reasonably significant expenditure pressure on HNZ-TWO (as average above inflation base salary increases of 18.7 % were agreed upon with STONZ).
- A significant impediment to settlement is HNZ-TWO quest to incorporate in NZRDA's settlement, concessions made by STONZ to further progress on base scale remuneration issues. While NZRDA perceive and have presented this approach to their members as cuts to treasured conditions, HNZ-TWO assert that the situation is more nuanced and claim they are trying to construct a package deal with NZRDA while not seeking overall to spend less than expended on the STONZ settlement.

### **A way forward**

[12] Due to the bargaining impasse, the Authority has resolved pursuant to s 50H of the Act, to issue a recommendation to assist the parties in concluding the expired CEA in dispute. Both parties accept that this is an appropriate way forward given that setting aside their differences, the gap between them in bargaining positions on remuneration issues is relatively narrow and objectively the remuneration increases on offer are attractive in the current fiscal environment.

[13] In issuing this recommendation, I am guided by observations made during facilitated bargaining and the helpful submissions provided by both parties.

### **Summary of submissions**

[14] The NZRDA is essentially seeking to preserve conditions that they consider vital to encourage safe rostering practices and address workload/hours of work issues for a doctors' workforce that struggles to balance ongoing training requirements and pressure to transit their careers into specialty areas with the day-to-day tasks of being involved in directly providing health care services.

[15] The NZRDA is seeking to publicly highlight through ongoing strike action, that their members are angry with the lack of progress in negotiations and some are reporting they are exhausted by workload pressures and fear that their employer is not doing enough to maintain a vibrant and settled New Zealand doctor workforce.

[16] On a remuneration front, NZRDA is seeking to construct a complex salary structure that delivers fair cost of living pay increases and provides an attractive package to prevent doctors leaving New Zealand or exiting the profession. A major concern for NZRDA is the percentage gap between the NZRDA agreement pay rates and STONZ pay rates.

[17] In contrast, while acknowledging such, HNZ-TWO point to differences in non-remuneration items favouring NZRDA members and maintain a stance that the fiscal allocation between the two settlements is broadly comparable and that the respective approaches reflect different priorities of the unions in this and previous bargaining.

[18] Overall, HNZ-TWO say they recognise the need to retain doctors and are working on a medium to long term workforce strategy, based upon increasing supply by initially expanding graduate places, constructively addressing immediate pay issues, and working collaboratively with doctors and their unions on rostering practices where fatigue is at issue and other ongoing workload issues.

[19] However, HNZ-TWO while acknowledging the pressures placed on RMOs and their key role in maintaining a functioning public health care system, do not consider that extraordinary retention issues or other factors prevail that would warrant seeking to make out a

‘special case’ to further increase the fiscal amount allocated to address remuneration and other issues to NZRDA’s satisfaction.

[20] In addition, HNZ-TWO cites their flexibility in working on features of the remuneration package that have proved unacceptable to NZRDA including stepping back from an earlier indication that some graduate starting salaries would be effectively reduced to address comparability with rates agreed with STONZ and latterly trying to find a solution to retain some conditions. However, HNZ-TWO stress that changes to the salary scale and progression rules that NZRDA stringently object to including the removal of a higher qualification increment, are part of a package that supports overall salary increases.

[21] Further, in the last facilitation session the parties did some work on rostering guidelines; an intention statement seeking to retain in ongoing employment, doctors moving to senior roles and, provisions to accommodate NZRDA trainee GPs into the CEA on their existing conditions if as likely, they become HNZ-TWO employees’ during the document’s term.

### **Assessment**

[22] Having considered the parties’ submissions, observed their differences during facilitation and considered the intent of the statutory provision, I consider there is little to recommend the parties other than for them to pragmatically recognise and work within the imposed fiscal restraints that currently operate.

[23] In the context of the wider bargaining environment, the current offer made by HNZ-TWO is not objectively unfair or unreasonable as it delivers (on HNZ-TWO estimates) over the term of the agreement, a range of 3% to 29.3% salary increases for Registrars and 5.7% to 24% for House Officers on individual rates. HNZ-TWO point to this offer being an estimated, weighted average increase of 18 % or \$20,0000 per annum and that these figures preclude the impact of salary progression.

[24] A draft recommendation shared with the parties that led to them recommencing facilitation on 28-29 May, pointed to areas of mutual potential compromise but made it clear such could only be achieved within the fiscal position that is constricting HNZ-TWO’s approach. Unfortunately, despite some ‘re-packaging’ efforts so far, no agreement was reached.

[25] Overall, I am convinced that the fiscal restraint and wider factors disclosed by senior HNZ-TWO management to NZRDA during bargaining are a formidable reality. The uncontested fact is the New Zealand primary public health care system is already operating within a strained financial environment with expenditure on its diverse workforce not being the only issue. Set against this, I acknowledge the RMOs' strength of feeling of being underappreciated and overworked and, their fear that the overall salary and conditions package on offer are not sufficient to retain them in the New Zealand health sector or recruit to fill vacancies on an ongoing basis.

[26] The Authority in view of the ongoing negative public impact of this dispute, is making this recommendation publicly available. In doing so, the Authority strongly encourages the parties to be restrained in media comment and to expound their respective positions in a factual and balanced manner.

### **Recommendations**

[27] A recommended way forward to resolve the current dispute that the Authority makes pursuant to s 50H of the Act, is that the NZRDA recognise the imposed financial constraints identified by Health New Zealand-Te Whatu Ora and within these constraints, seek to conclude a settlement of the expired collective employment agreement. To this end, the Authority recommends the current settlement offer HNZ-TWO has placed before the NZRDA.

[28] To this end, the latest HNZ-TWO offer recommended by the Authority including the 5 June 2024 cover letter summarising that offer, should be provided in a timely manner to NZRDA members for a formal ratification vote pursuant to s 51 of the Employment Relations Act 2000, and consistent with the obligation to bargain and try and conclude a settlement in good faith.

[29] In the interim, the Authority also recommends that the current strike action be suspended until the outcome of a ratification vote is known.

[30] I also recommend that in the medium term, fairly urgent proactive steps need to be taken by NZH-TWO, to reduce the tension between the two junior doctors' unions by working on a common remuneration scale and common conditions to avoid a recurrence of parity disputes and to avoid the current perception of NZRDA, that creating such divisiveness is desirable when clearly it is not a sound approach to promote a cohesive and contented workforce.

[31] Despite having to make the above recommendations, facilitation is not yet ended and should a ratification vote not lead to a settlement path, the Authority is available to assist further on a continuing basis.

David G Beck  
Member of the Employment Relations Authority