IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON

I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI A TARA ROHE

[2025] NZERA 415
3360724 & 3360763

	BETWEEN	NEW ZEALAND PUBLIC SERVICE ASSOCIATION TE PŪKENGA HERE TIKANGA MAHI Applicant
	AND	HEALTH NEW ZEALAND – TE WHATU ORA Respondent
Member of Authority:	Shane Kinley	
Representatives:	Peter Cranney and Angus Wilson, counsel for the applicant Rebecca Rendle and Alana Harrison, counsel for the respondent	
Investigation Meeting:	26 and 27 June 2025 in Wellington	
Submissions:	At the investigation meeting	
Determination:	14 July 2025	

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] These matters have their genesis in restructuring processes which have been underway at Health New Zealand – Te Whatu Ora (HNZ) since late 2024. The New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi (PSA) has raised a number of matters related to HNZ's restructuring processes in relation to:

(a) whether HNZ has complied with clauses in collective agreements between the PSA and HNZ;

(b) whether the collective agreements allow for the disestablishment of positions;

(c) whether HNZ has breached the duty of good faith under s 4(1A)(c) of the Employment Relations Act 2000 (the Act) or the Code of Good Faith for the public health sector in sch 1B of the Act (the Code); and

(d) whether HNZ is required to comply with expectations in Te Mauri o Rongo – the New Zealand Health Charter (the Charter), being a statement of values, principles and behaviours made under ss 56(2) and 57 of the Pae Ora (Healthy Futures) Act 2022 (the Pae Ora Act). If so, has HNZ complied with those expectations.

[2] The PSA is seeking declarations of breach and that its interpretation of the collective agreements is correct, and compliance orders under s 137 of the Act.

[3] HNZ says it has complied with all statutory and contractual obligations, and will continue to do so. HNZ also says:

(a) the collective agreements between it and the PSA expressly allow for the disestablishment of positions, following consultation with affected staff;

(b) the Charter is a statement of expectation with no jurisdiction for the Authority to order compliance with it;

(c) there are no grounds for compliance orders, no jurisdiction to issue some of the compliance orders sought, and the Authority should exercise its discretion against ordering compliance.

[4] If breaches are found and the Authority finds it should exercise its discretion to order compliance, the parties agreed compliance should be reserved for a short period to enable the parties to address compliance steps by consent.

The Authority's investigation

[5] These matters have their genesis in restructuring processes which have been underway at HNZ since late 2024. Ten matters have been lodged and served since February 2025, with near identical statements of problem. Four of the matters have resolved between the parties, this determination addresses two matters and four other matters are currently at various stages in the Authority's processes.

[6] The number of proceedings which have been lodged reflects HNZ's approach to its overall restructuring process, which has occurred on a directorate by directorate approach, albeit with a common context of ongoing change processes since HNZ was

formed and HNZ's response to expectations from the government that it get "back to budget".

[7] Matter 3360724 involves the change process for Planning, Funding and Outcomes (PFO). Matter 3360763 involves the change process for Procurement, Supply Chain and Health Technology Management (PSC – HTM).

[8] For the Authority's investigation of these two matters, written witness statements were lodged from the PSA by Ashok Shankar (PSA Health National Sector Lead) and Nita Nooyen (PSA Health National Lead Organiser). For HNZ, written witness statements were lodged by Katherine (Kate) Coley (Head of HR – Hospital & Specialist Services and National Lead – Change & Workforce Transition), Richard Aldous (Interim Group Financial Controller), Jason Power (Acting National Director, PFO), Lisa Williams (Director, Planning and Outcomes) and Andrew (Andy) Windsor (National Director for PSC – HTM). All witnesses answered questions, under oath or affirmation, from me and counsel.

[9] At the conclusion of evidence I identified a number of points I considered it would be helpful for submissions to address. Following a recess, counsel then presented oral submissions with counsel for the PSA building upon an outline of submissions and providing relevant determinations and judgments relied upon, and counsel for HNZ speaking to and building upon written submissions. Counsel for the PSA also provided oral submissions in reply. Counsel for the PSA and HNZ both answered questions from me clarifying points raised in submissions, which assisted me to focus on the issues outlined below.

[10] As permitted by s 174E of the Act this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of both matters 3360724 and 3360763, and specified orders made. It has not recorded all evidence and submissions received.

The issues

[11] The issues requiring investigation and determination are:

(a) What are HNZ required to do to comply with cls 10.1, 10.3 and 10.4 of the collective agreements[1] between HNZ and the PSA in relation to consultation and decision-making options, and under the Healthy Workplaces Agreement (the HWA) attached to the Admin CA as Appendix 4, and has HNZ complied with the provisions of those clauses and the HWA?

(b) Do the PAKS CA and the Admin CA allow for the disestablishment of positions?

(c) Did HNZ breach the duty of good faith under s 4(1A)(c) of the Act in relation to determining the budgets for the directorates?

(d) Did HNZ breach the Code in relation to:

(i) making time to meet as and when required to search for solutions that will result in the productive employment relationships and the enhanced delivery of services under sch 1B, cl 4(2)(d)(ii)?

(ii) the obligation to be a good employer under sch 1B, cl 5?

(e) Is HNZ required to comply with the expectation in the Charter that workers are actively engaged in the co-design and delivery of high quality services, in the context of the consultation/change process? If so, has HNZ complied with that expectation?

(f) If HNZ has not complied with the requirements of collective agreements between it and the PSA, or HNZ has breached the duty of good faith, the Code or expectations under the Charter, should compliance orders requiring that no dismissals occur unless and until those obligations have been complied with be issued under s 137 of the Act?

(g) If compliance orders are issued, what should HNZ be required to do and by when?

(h) Should either party contribute to the costs of the other party?

[1] The two relevant collective agreements are the Policy Advisory knowledge and Specialist Workers Collective Agreement (the PAKS CA), which has a term from 21 December 2023 to 17 February 2025, and the National Health Administration Workers Collective Agreement (the Admin CA), which has a term from 1 January 2023 to 31 December 2024.

[12] While submissions for the PSA and HNZ addressed these issues sequentially, I consider it more appropriate to address issue [11] (b) first, as I consider this will more clearly and efficiently allow me to then address issue [11](a).

Do the PAKS CA and the Admin CA allow for the disestablishment of positions?

Relevant law

[13] The Court has recently said, in relation to the application of principles of interpretation to employment agreements:[2]

> The proper approach is an objective one, the aim being to ascertain the meaning the written agreement would convey to a reasonable person having all the background knowledge that would reasonably have been available to the parties at the time of the agreement. This objective meaning is taken to be that which the parties intended. The context provided by the agreement as a whole and any relevant background informs meaning. Nevertheless, while context is a necessary element of the interpretive process, and the focus is on interpreting the document as a whole, rather than particular words, the text remains centrally important. If the language at issue, construed in the context of the whole agreement, has an ordinary and natural meaning, that will be a powerful, albeit not conclusive, indicator of what the parties meant. But the wider context may point to some interpretation other than the most obvious one and may also assist in determining the meaning intended in cases of ambiguity or uncertainty.

[14] Counsel referred me also to other relevant judgments which refer to:

a. the relational, not contractual, nature of the employment relationship;[3]
b. evidence of prior negotiation and subsequent conduct may be relevant where it tends to prove anything relevant to the notional reasonable person, but is inadmissible where it proves only a party's subjective intention or belief as to the meaning of the words;[4] and
c. the interpretive principle against the presumption of absurdity.[5]

[15] These principles are also applied in relation to issue [11](a).

Submissions of the parties

[16] The PSA says disestablishment is not authorised by either the PAKS CA or the Admin CA. This is central to the PSA's claims HNZ's approach to cl 10, particularly in relation to cls 10.4 and 10.5.1, is non-compliant as each employee was advised they

[2] *E Tū Inc v New Zealand Steel Ltd* [2024] NZEmpC 29 at [16].
[3] *Le Gros v Fonterra Co-Operative Group Ltd* [2023] NZEmpC 193 and *FMV v TZB* [2021] NZSC 102.
[4] *Bathurst Resources Ltd v L & M Coal Holdings Ltd* [2021] NZSC 85 at [75].
[5] *Hixon v Campbell* [2014] NZEmpC 213 at [110].

were either "reconfirmed", "impacted" or "substantially impacted". The last two categories of employees were also informed their roles were "disestablished".

[17] The PSA say the concept of disestablishment is a contractual one, referring to the Court's judgement in *McCulloch v New Zealand Fire Service Commission*, which it says there is no right to disestablish positions at common law.[6]

[18] Submissions for the PSA also referred to the history of change processes in the health sector since the 1980s, saying these had been intended to establish cooperative methodologies for change, although no direct evidence was provided related to this historical context.

[19] The PSA say HNZ did not identify surplus staffing as contemplated under cl 10 and the consultation process was not properly completed. The PSA say HNZ applied a generic amalgam restructuring process, rather than following the process in cl 10.

[20] The PSA acknowledges cl 10.5.1.10 of the Admin CA[7] refers to an employee's position being disestablished but say that comes at the end of the process only.

[21] HNZ said its key submission was that it could propose the disestablishment of roles under cls 10.2 and 10.3 of the PAKS CA and Admin CA, supported by prior, reasonable notice. HNZ says it is an "orthodox position" that consultation can include a proposal to disestablish positions. While accepting the consultation processes in cls 10.2 and 10.3 occurred prior to the implementation of change in cls 10.4 and 10.5, HNZ said the references in cl 10.4 to surplus staff must mean consultation could be on disestablishing roles and there was no restriction in the type of proposal which could be presented, rather cl 10.2 recognised changes proposed could be significant and cl 10.4.1 contemplated "substantial restructuring".

[22] In addition to cl 10.5.1.10 of the Admin CA, HNZ referred to cl 10.5.7 of the PAKS CA, which is the Severance clause. This clause has references to an employee's position becoming surplus to requirement, leading to employment being terminated, and employment being terminated as a result of redundancy, rather than express wording of positions being disestablished.

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[6] *McCulloch v New Zealand Fire Service Commission* [1998] 3 ERNZ 378 at 390.
[7] There appears to be a numbering issue with the Admin CA, with a second cl 10.5.1 relating to Severance following cl 10.5.6.

[23] HNZ presented an alternative interpretation of the Court's judgment in *McCulloch*, referring to portions of the judgment which said:[8]

> The defendant had the same right as every other employer to decide on commercial grounds that it could cope with a smaller number of employees, subject to complying with contractual duties as to consultation or otherwise by which it may have limited its own freedom of action. Subject thereto, after adopting a fair process of selection, it was open to it to have terminated the employment contracts of the surplus staff on such terms as the contracts provide for in such situations or, of course, on such terms more favourable to employees as it might see fit to adopt.

While the PAKS CA and the Admin CA do not expressly allow for the disestablishment of positions, they do not prevent the disestablishment of positions

[24] The Court has recently said in *Television New Zealand Ltd v E tū Inc*:[9]

> A party to a collective agreement is entitled to expect that the provisions of it are complied with and, if not, that they can obtain orders from the Authority or the Court.

[25] Given this non-controversial proposition, the PSA's proposition that the lack of an explicit reference to disestablishing positions, other than in cl 10.5.1.10 of the PAKs CA, means the PAKS CA and the Admin CA do not allow for positions to be disestablished or proposed to be disestablished, is understandable.

[26] HNZ has adopted language which does not directly reflect the provisions of the PAKS CA and the Admin CA, which use the language in cls 10.4 and 10.5 of requiring "a reduction in the number of employees", employees no longer being employed in their current position, and staff surplus or staffing surplus. The language used by HNZ is potentially problematic, where closer adherence to the language in the PAKS CA and Admin CA could arguably have avoided this dispute.

[27] Mrs Coley said the language adopted by HNZ had been used in all of the change proposals she had been involved in over 17 years in the health sector, including recent HNZ change processes following the formation of HNZ, referred to as "Simplify to Unify" and "Unify to Simplify". She said those processes had all proposed or consulted on positions being affected and proposed to be disestablished, with decisions determining what positions were affected and would be disestablished. She accepted however this did not prevent the PSA from raising the dispute over what the provisions of the PAKS CA and Admin CA permitted.

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[8] Above n 6 at 390.
[9] *Television New Zealand Ltd v E tū Inc* [2024] NZEmpC 93 at [97].

[28] I consider the ordinary and natural meaning of the provisions in cl 10 of the PAKS CA and the Admin CA, including the language in cls 10.4 and 10.5 referred to at paragraph [26] above, is not inconsistent with HNZ having the ability to propose disestablishing positions or, following due process, disestablishing positions. Neither are references in cl 10.2 to "significant change" and "affected employees" and in cl 10.3 to "If changes are proposed and such changes need to be preceded by consultation" inconsistent with HNZ having the ability to propose disestablishing positions or, following due process, disestablishing positions.

[29] I do not consider the approach to the Court's judgment in *McCulloch* advocated for by the PSA is correct in these circumstances. Rather I prefer the approach reflected in the extract referred to by HNZ, as well as subsequent comments from the Court, after referring to public service contractual arrangements, that:[10]

> Where that contractual system is not in operation, *the mere fact of a review is not enough to justify the disestablishment of existing positions*. Rather, the **usual rule applies and it must be shown that the work being done by the holders of the positions is no longer needed by the employer**. (emphasis added)

[30] Submissions in reply for the PSA appeared focussed on the first sentence in the above quote, emphasised by *italicised* text. I consider these two sentences need to be read together and the second sentence, emphasised by **bold** text, supports the ability of HNZ to propose disestablishing positions and, following due process, to then disestablish positions.

[31] I have also considered the Court's judgment in *Secretary for Education v Public Service Association – Te Pukenga Here Tikanga Mahi Inc*, cited by HNZ, which said in relation to whether the parties needed to agree on options where a surplus of staff had been identified:[11]

> Either the collective agreement simply does not deal with what happens if there is no agreement or the clause includes an "agreement to agree" on the options. If, as suggested by the PSA, the intention of the parties was that, absent agreement, employees could not be made redundant, more explicit language would be required.

[32] I consider the question of whether the PAKS CA and Admin CA permit the disestablishment of positions to have an element of analogy to the question considered in the *Secretary for Education* case. Specifically, were the PAKS CA and Admin CA

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[10] Above n 6 at 390.
[11] *Secretary for Education v Public Service Association – Te Pukenga Here Tikanga Mahi Inc* [2024] NZEmpC 248 at [48].

intended to prevent HNZ from proposing to disestablish positions or, following due process, disestablishing positions, then a more explicit prohibition on this would be required.

[33] I find clause 10 does not prevent HNZ from proposing positions be identified as surplus, with the effect those positions are proposed to be disestablished. Neither does cl 10 prevent HNZ, following due process, from disestablishing positions which have been determined to be surplus, including where the position is subject to a "more to less" reduction in the number of positions needed.

What are HNZ required to do to comply with the relevant clauses of the PAKS CA and the Admin CA, including the HWA?

Approach to considering what HNZ was required to do and whether it has complied with its obligations

[34] The PSA claimed HNZ has not complied with cls 10.1, 10.3 and 10.4 of PAKS CA and the Admin CA, with those clauses being mirror clauses of each other, and the HWA. The parties agreed the obligations in cl 10 are sequential, so I adopt a sequential approach to identifying the relevant clauses, summarising the PSA and HNZ's submissions, and determining what HNZ was required to do under the relevant clauses and whether HNZ has complied with its obligations.

[35] The PSA says the obligations in relation to HNZ's consultation process need to be read consistent with the Code, the Charter, the Pae Ora Act and the HWA. As an overarching statement the PSA say HNZ's process was not done in a sequential manner, and as noted at paragraph [19] above surplus staffing was not identified as contemplated and the consultation process was not properly completed. The PSA say HNZ applied a generic amalgam restructuring process, rather than following the process in cl 10. More specific breaches are alleged by the PSA as discussed below. Where relevant I have addressed aspects of the PSA's overlapping claims while considering each step of the consultation process.

[36] The PSA also said the requirements of cls 10.1 to 10.3 were the first step of the consultation process, as evidenced by the final sentence of cl 10.3 reading "The above process shall be completed prior to the implementation of clause 10". HNZ accepted there were two stages to the consultation process, and I have adopted the staged approach below.

Obligations to seek or search for solutions, share information and allow meaningful participation (cls 10.1 to 10.3 of the PAKS CA and Admin CA)

[37] The PSA says HNZ has not complied with clause 10.1 which is headed "Statement of Intent" and requires HNZ to:

> consult when introducing changes in order to seek solutions that consider the interests of the various groups involved. Information will be shared freely within the organisation and will be communicated in time for affected employees (and the PSA) to be involved in the consultative process.

[38] The PSA says the obligation to seek solutions is similar to the requirements of cl 4(2)(d)(ii) of the Code to "search for solutions that will result in productive employment relationships and the enhanced delivery of services". Searching for solutions was said to import a stronger obligation, requiring HNZ to go out of its way to find solutions.

[39] Clause 10.2 was said by the PSA to provide context to other obligations on HNZ, particularly the requirement to "identify and give reasonable notice to employees who may be affected and the PSA to allow them to participate in the consultative process". This obligation is stated to arise "Prior to the commencement of any significant change". No specific breaches of cl 10.2 were alleged by the PSA.

[40] Clause 10.3 refers to "meaningful participation", "active involvement of the union in decision making" and "workers having real influence over their working environment". There are multiple references to persons being consulted having "sufficient opportunity to express their view", "Sufficiently precise information" needing to be provided, and "Sufficient time" being allowed to consider information and respond to proposals, subject to a caveat of the "overall time constraints within which a decision needs to be made".

[41] Clause 10.3 also specifies a process for consultation for the management of change which sets out five requirements, which I summarise as HNZ making a proposal which is not final, providing sufficient information and sufficient time for a response, HNZ genuinely considering responses and the "final decision shall be the responsibility of the employer".

[42] Clause 10.3 also refers to situations where directives are received from the government, saying in these situations "the consultation will be related to the implementation process of these directives". The PSA and its witnesses said this aspect of cl 10.3 was not mentioned, and HNZ and its witnesses acknowledged it was not

invoked, although pointed to the government's expectations that HNZ get "back to budget". Given this part of cl 10.3 was not formally invoked, I have not considered it further in interpreting what cl 10 required HNZ do in relation to the matters before me.

[43] The PSA says cl 10.3 is an "unusual prohibition on making changes until after consultation has occurred" and references in cl 10.3 that "consensus is a desirable outcome" impose an implied requirement to seek consensus or an "attempt to agree". The PSA say repeated references to the final decision being the responsibility of the employer did not mean HNZ has a "right" to make changes.

[44] The PSA are critical of HNZ's actions in relation to the socialisation of contextual information, saying this was "an extra-contractual process not required by the collective agreements". This was consistent with correspondence between the PSA (and other health sector unions) and the former Chief Executive of HNZ in October 2024, where the unions raised concerns about a new term being introduced when there are "well-settled legal obligations around consultation and change management". HNZ advised in reply it considered socialisation to be "early engagement discussions with the unions … to seek ideas, thoughts and feedback on options for [HNZ] to consider as we shape a formal consultation document". HNZ said it considered these actions, irrespective of label, to be "consistent with our understanding of the obligations under the various collective agreements (although acknowledging there are, of course, nuances and differences between each)".

[45] Mr Shankar and Mrs Nooyen's evidence reinforced the PSA's discomfort at the socialisation process, with both saying it wasn't provided for under the PAKS CA or Admin CA, and did not meet the consultation obligations. Mr Shankar referred to the information provided during this time as "speed-dating" and "cursory" opportunities which were not serious engagement.

[46] HNZ says cl 10.1 as a "Statement of Intent" should be viewed as an interpretative aid to inform the remainder of cl 10, rather than creating standalone obligations. Alternatively, HNZ says it has met the obligations to consult when introducing change and in sharing information. HNZ said it consulted extensively, both as part of pre-engagement and as part of a formal consultation period after the PFO and PSC – HMT change proposals were released. HNZ says the purpose of pre-engagement was to "seek solutions", with engagement with unions and staff including in October and November 2024 expressly inviting ideas which were then considered and reflected

in formal consultation processes which commenced for PFO and PSC-HMT with the release of proposals for consultation in December 2024.

[47] HNZ say it has met all of the requirements of cls 10.1 through 10.3, particularly obligations to provide information freely and in time, both during pre-engagement, though the consultation proposals, when providing financial information and responding to information identified by the PSA as being missing. HNZ says it had, as a matter of fact, met the consultation requirements of cl 10.3 by presenting proposals which had not yet been finalised, providing sufficient information and sufficient time for feedback, and considering feedback before making a final decision. HNZ referred to the number of comments it received through What Say You (WSY), its internal feedback tool, other feedback and submissions, including from the PSA, as evidencing compliance with consultation process.

[48] HNZ said its key submission was that it could propose the disestablishment of roles under cls 10.2 and 10.3 of the PAKS CA and Admin CA, supported by prior, reasonable notice. HNZ says it is an "orthodox position" that consultation can include a proposal to disestablish positions. While accepting the consultation processes in cls 10.2 and 10.3 occurred prior to the implementation of change in cls 10.4 and 10.5, HNZ said the references in cl 10.4 to surplus staff must mean consultation could be on disestablishing roles. HNZ said there was no restriction in the type of proposal which could be presented, rather cl 10.2 recognised the changes proposed could be significant and cl 10.4.1 contemplated "substantial restructuring".

[49] HNZ said the 8.5 week consultation period was reasonable, notwithstanding the period included Christmas and New Year holidays and shut-down periods. HNZ said it agreed to a 1.5 week extension at the request of the PSA and the overall period needed to reflect the "overall time constraints within which a decision needs to be made".

HNZ has followed the process required under cls 10.1 to 10.3 when proposing change and making a decision on a proposal

[50] Both the PSA and HNZ described a process which included HNZ consulting when introducing change, providing information freely and in a timely manner, seeking solutions, identifying and giving reasonable notice to potentially affected staff, enabling meaningful participation, and following a prescribed process of consultation for the management of change, before HNZ makes final decisions on a proposal. I consider

these are the essential elements required by cls 10.1 to 10.3 of the PAKS CA and the Admin CA.

[51] While the PSA were critical of HNZ for using language which is not contained in cls 10.1 to 10.3 and undertaking an "extra-contractual" step which was described as "socialisation", I do not consider these points impact on what HNZ was required to do under the PAKS CA and Admin CA. While I have noted the language used by HNZ does not directly reflect the provisions of the PAKS CA and the Admin CA, I have found the language used is not determinative and HNZ are not prevented by cls 10.1 to 10.3 from proposing to disestablish positions or, following due process, disestablishing positions (as discussed at paragraphs [26] to [33]).

[52] Neither do I consider HNZ are prohibited from undertaking a socialisation process, as it was originally described, or pre-engagement prior to commencing a formal consultation process. I consider the engagement HNZ undertook with the PSA and other unions from mid-2024 through to October and November 2024 went further than the specific contractual obligations in cl 10.1 of the PAKS CA and the Admin CA to "consult when introducing change in order to seek solutions" and to share information in a free and timely manner.

[53] Arguably this engagement was consistent with the concepts reflected in the duty of good faith in s 4(1A)(b) and (c) of the Act, particularly requirements to be active and to provide access to information. Part of the challenge in relation to the interactions at this time between HNZ and the PSA and other unions was the context of broader health sector financial issues, with the reported deficits of HNZ and the expectations of the government that HNZ get "back to budget" through the HNZ reset process. While I was not asked to directly determine whether the budget constraints HNZ was operating under were reasonable, there is merit in HNZ's submissions that doing so would be outside my jurisdiction. These budget constraints appear however to have impacted in part on the PSA's view of what process should occur. The scale of potential changes was certainly recognised by all witnesses as being very significant, so it is unsurprising the process was challenging for all.

[54] I consider however HNZ has demonstrated that it consulted when introducing change and was seeking solutions as required by cl 10.1 of the PAKS CA and the Admin CA. Minutes of meetings between HNZ, the PSA and other unions on 2 and 21 October 2024 (the Kāhui Kōkiri meetings) indicated both that those meetings were part of an

engagement process and there would be further engagement. While the PSA participants at the Kāhui Kōkiri meetings, including Mr Shankar, were clear they did not accept and would be challenging the financial context of whether change processes were needed, they were also able to advocate for voluntary redundancy and attrition as priorities to achieve HNZ's goals. I consider this is consistent with seeking or searching for solutions.

[55] Similarly, the socialisation or pre-engagement processes for PFO and PSC – HMT clearly invited kaimahi (workers) to share ideas about opportunities and challenges presented by the HNZ reset process, and how those specifically impacted on the PFO and PSC – HMT Directorates. HNZ provided evidence of the number and examples of feedback received, which I consider were consistent with seeking or searching for solutions. For example, Mr Power said in the PFO socialisation phase ideas were received about cost savings, organisational structure, work programmes and prioritisation, and ways of working. Mr Windsor said in the PSC – HMT pre-engagement themes including opportunities to simplify work arrangements, create more value and to build on accountability, competence and capability.

[56] The PSA's concerns about the provision of information were particularly focussed on whether adequate financial information was provided and its concerns with HNZ setting budgets without consultation. These issues are addressed separately at paragraphs [78] to [88] below.

[57] I also consider HNZ's process when progressing formal change proposals in PFO and PSC – HMT met the requirements of prescribed process in cl 10.3 of the followed of PAKS CA and the Admin CA. Specifically, I consider HNZ met the requirements to present a proposal which has not yet been finalised, to provide sufficient information and time for an informed response and to genuinely consider feedback before final decisions were made.

[58] HNZ provided comprehensive change proposals for both PFO and PSC – HMT, which were released on 13 December 2024. While the timing was not necessarily ideal and concerns about this had been raised by the PSA in advance of the release of these proposals, HNZ did agree (eventually) to extend the timeframe for feedback to 8.5 weeks. I consider this was long enough to meet the requirement of providing sufficient time for responses. Both Mr Power and Mr Windsor also provided evidence of considering the feedback received before making final decisions, which were

eventually released on 15 May 2025 and involved some changes from the original proposals and in the case of PFO re-consultation with a small number of individuals.

[59] For completeness, the PSA referred to cl 10.3 as involving an "attempt to agree" clause, due to references to consensus being desirable which it said imposed an implicit requirement to seek consensus. The PSA did not clearly suggest HNZ had failed to comply with this requirement, however, cl 10.3 does not explicitly involve an "agreement to agree" obligation, as discussed by the Court in the *Secretary for Education* case.[12] Rather it appears to be a version of an "endeavour to agree" clause recognising "consensus is a desirable outcome". I consider HNZ have made sufficient efforts to attempt to reach agreement as part of considering consultation feedback.

[60] For the reasons set out above, I find HNZ has complied with requirements of cls 10.1 to 10.3 of the PAKS CA and the Admin CA.

Obligations in relation to staff surplus situations (cls 10.4 and 10.5.1 of the PAKS CA and Admin CA)

[61] The PSA says the breaches of cls 10.4 and 10.5.1 of the PAKS CA and the Admin CA relate to HNZ following an approach different to that in these clauses, which is non-compliant as each employee was informed they were either "reconfirmed", "impacted" or "substantially impacted", with employees in the last two categories also informed they were "disestablished". The PSA said the five options to be applied in staff surplus situations under cl 10.5.1 are reconfirmation, attrition, redeployment, retraining and severance, with these options to be invoked and decided on a case-by-case basis in accordance with cl 10.4.

[62] The PSA also referred to the sequential nature of the obligations in cls 10.4 and 10.5, including the requirement in cl 10.4.2 to notify affected employees and the PSA of a staffing surplus at least one month prior to giving notice of severance, strict information provision requirements in cl 10.4.3, and the aim in cl 10.5.2 of minimising the use of severance. The PSA did not however specifically claim that these clauses had been breached.

[63] HNZ says it has complied with cl 10.4 of the PAKS CA and the Admin CA, specifically having in accordance with cl 10.4.1 completed consultation on a "substantial restructuring" and having determined it requires "a reduction in the number

[12] Ibid at [48] to [53].

of employees, or, employees can no longer be employed in their current position". HNZ accepts the next steps are to be invoked in accordance with cl 10.5.1, says it has reconfirmed eligible employees under cl 10.5.3 and has informed those employees of this.

[64] HNZ says for other workers it has consulted on a process for expressions of interest (EoI) for other employees, in accordance with cl 10.5.1, but it has paused this EoI process pending the investigation meeting for the matters covered by this determination. Until the EoI process is complete, HNZ says it is premature to say it has breached cl 10.5.1 and says it is committed to complying with cls 10.4 and 10.5.1. HNZ also says reconfirmation may be an option under cls 10.5.1 and 10.5.3 for employees in a "more to less" situation including where attrition or early exits mean there is no longer a "more to less" situation. HNZ referred to the PFO consultation document which included an intention to "work with all employees on an individual basis to explore all possible options including redeployment, reconfirmation, retraining etc".

HNZ has not breached the requirements of cls 10.4 and 10.5.1 of the PAKS CA and Admin CA

[65] Both the PSA and HNZ described a process which included HNZ determining it requires a reduction in the number of employees, or, employees can no longer be employed in their current position, and moving to a process of considering options on a case by case basis under cl 10.5. I consider these are the essential elements required by cl 10.4.1 of the PAKS CA and the Admin CA.

[66] The PSA's claim that HNZ had followed a non-compliant approach is essentially based on its view that, other than one reference in cl 10.5.1.10 of the PAKs CA, the PAKS CA and the Admin CA do not allow for positions to be disestablished or proposed to be disestablished. I have found at paragraph [33] above, clause 10 does not prevent HNZ from proposing positions be identified as surplus, with the effect those positions are proposed to be disestablished, nor does cl 10 prevent HNZ, following due process, from disestablishing positions which have been determined to be surplus.

[67] While HNZ's language or terminology could have more directly followed that of cls 10.4 and 10.5.1 of the PAKS CA and the Admin CA, I find it has not breached the requirements of those clauses. I also accept HNZ's position it would be premature to determine HNZ had breached cl 10.5.1 in circumstances where it has paused the EoI

process. There is no evidence HNZ will not comply with the requirements of cl 10.5.1 should it now proceed with the EoI process.

Does the HWA impose additional obligations under the Admin CA and if so has HNZ met those obligations?

[68] The PSA says the HWA in Appendix 4 of the Admin CA requires the achievement of a "match between demand and capacity" which has not been complied with. The PSA says this reference needs to be read in the context of Sch 1B and the Health Charter.

[69] HNZ says the full clause in the HWA is relevant, which follows a commitment "that all employees should have healthy workplaces" by stating, including chapeau:

> Achieving health workplaces requires:
>
> - Effective care capacity management; having the appropriate levels of staff, skill mix, experience, and resources to achieve a match between demand and capacity …

[70] HNZ says this clause was developed to ensure HNZ could match staffing resources with patient demand and was not intended to be applied in the context of change management processes. HNZ says a reference to section 10 (Management of Change) of the Admin CA was for a limited purpose of clarifying that workers opinions would be sought consistent with section 10 when new innovations, improvements or changes were required. This does not mean either the Care Capacity Demand Management (CCDM) programme or HWA apply in a consultation or change management process. As a matter of fact, HNZ say "Neither the PFO nor PSC proposal impact on the levels of staff, skill mix, experience and resources to achieve a match between demand and capacity".

[71] I am not satisfied the plain meaning of the full clause of the HWA referenced by the PSA, or other aspects of the HWA, impose any additional obligations which HNZ needed to meet in relation to the PFO or PSC – HMT change processes.

[72] When I asked Mrs Nooyen why she thought the HWA imposed additional obligations and how the PSA saw those operating, she pointed to concerns being raised in the PSA submission for the PFO change process, which included the following:

> - There is a consistent message that work will devolve to the districts and responsibility will sit with the Deputy Regional Commissioners. There is no evidence that the finding required to support the work in the districts has been provided to the districts in their respective budgets.

- There is no evidence to support that the districts have the staffing resource, skills and knowledge to deliver these services.

[73] Mrs Nooyen also said the HWA was not all about CCDM, with references in the HWA that differed to those in the clinical collective agreement, to:

> A wider team approach to planning and evaluating service capacity and service delivery will ensure the right people with the right skills are providing the right care (role) at the right time in the right place.

[74] I accept the PSA has a genuine concern that positions have been proposed to be disestablished through, at a minimum, the PFO change process with functions to be devolved to regional delivery, yet decisions on whether any new positions will be required within the regions have not yet been made. It is not clear this necessarily will have an impact on "Effective care capacity management", which is the focus of the "match between demand and capacity" in the full clause referred to by the PSA and HNZ.

[75] No clear and direct documentary evidence was provided by the PSA which supported the claimed difference in provisions between the clinical collective agreement, which Mrs Nooyen inferred was relevant to CCDM. As a result, I am not satisfied the relevant clause of the HWA should be read as applying in the broader manner advocated for by the PSA.

[76] For completeness, if the relevant clause of the HWA applied more broadly to impose additional obligations, then I consider further evidence would be required to establish whether HNZ had met those obligations or not. To the extent the required match between demand and capacity is being met in a different part of HNZ (ie the regions), then there may also be an opportunity for affected staff to be redeployed to a role in the regional structures. HNZ said affected staff could apply to roles in the regional structures, should such a position be open, as part of the EoI processes for PFO and PSC – HTM staff.

Did HNZ breach the duty of good faith under s 4(1A)(c) of the Act in relation to determining the budgets for the directorates?

Relevant law

[77] Section 4(1A)(c) of the Act provides that the duty of good faith:

> … requires an employer who is proposing to make a decision that will, or is likely to, have an adverse effect on the continuation of employment of 1 or more of his or her employees to provide to the employees affected—

(i) access to information, relevant to the continuation of the employees' employment, about the decision; and
(ii) an opportunity to comment on the information to their employer before the decision is made.

[78] Section 4(4) of the Act provides the duty of good faith applies to the following matters:

(b) any matter arising under or in relation to a collective agreement while the agreement is in force:
(c) consultation (whether or not under a collective agreement) between an employer and its employees, including any union representing the employees, about the employees' collective employment interests, including the effect on employees of changes to the employer's business:
(d) a proposal by an employer that might impact on the employer's employees, including a proposal to contract out work otherwise done by the employees or to sell or transfer all or part of the employer's business:
(e) making employees redundant:

Submissions of the parties

[79] The PSA says HNZ's decisions to allocate funding envelopes to various departments or directorates, including PFO and PSC – HMT, were breaches of s 4(1A)(c) of the Act as those decisions were likely to have an adverse effect on the continuation of employment of HNZ's employees, including the PSA's members. The PSA referred to a letter from the former Chief Executive of HNZ to the PSA and other unions, dated 9 October 2024, which acknowledged the right to relevant information under s 4(1A)(c) of the Act applied to detailed financial information about HNZ's financial situation. Given this acknowledgement the PSA said the claimed breach "could be conceded, as this was pretty straight forward".

[80] The PSA referred to engagements including at the Kāhui Kōkiri meetings between HNZ, the PSA and other unions in October 2024, which it characterised as speed-dating with the inference insufficient information was provided and insufficient dialogue occurred, as part of the claimed breach of s 4(1A)(c) of the Act. Minutes from the Kāhui Kōkiri meeting of 21 October 2024 were cited where the HNZ co-Chairperson stated that "decisions have been made to allocate [HNZ's fiscal envelope] to various departments". The PSA also said evidence from HNZ's witnesses, particularly Mr Aldous, of internal consultation over budget setting with "lots of employees" showed there was an opportunity for broader consultation with the PSA and other unions.

[81] HNZ does not accept the good faith obligation under s 4(1A)(c) of the Act requires it consult before determining operational budgets, as it says no proposal exists

at that time which might impact employees. HNZ said proposals crystallised when PFO and PSC – HMT identified likely impacts on the continuation of employment due to the need for departments or directorates to operate within their budget allocations, and it then complied with good faith obligations under s 4(1A)(c) of the Act. HNZ also said it had consulted with relevant staff as part of the budget-setting process and it consulted on achieving its cost savings target as part of pre-engagement and during the formal consultation processes.

[82] HNZ referred to the Court of Appeal's judgment in *Auckland City Council*, which included the following comments about when consultation is required:[13]

> There can be no dispute that the parties to an employment relationship must deal with each other openly and fairly. They must communicate and, where appropriate, consult in the sense of imparting and receiving information and argument with an open mind when that still realistically can influence outcomes. To adopt an approach calling for mandatory consultation at specified times risks inflexibility. What is practicable in the exigencies of particular business operations and workplaces must be kept in mind. Similarly the issue in question may affect the nature and timing of the provision of information and consultation. Redundancy of particular positions presents different issues than does the formulation of business plans.

[83] HNZ also referred to the Court's judgment in *Birthing Centre Ltd v Matsas* which found, in relation to the Court of Appeal's observations in *Auckland City Council*:[14]

> the Court's point as to flexibility of timing of consultation about a proposal, in the context of the enhanced obligations contained in s 4(1A) and, if appropriate, s 4(1B) and s 4(1C), remains valid …

HNZ did not breach the duty of good faith under s 4(1A)(c) of the Act in relation to determining the budgets for the directorates

[84] I find that HNZ were not required to consult over the setting of budgets and has met the duty of good faith under s 4(1A)(c) of the Act when consulting over the change proposals for PSC – HMT and PFO, including proposed budgets and savings. The Court of Appeal's judgment in *Auckland City Council* also referred to consultation obligations arising "once the resolutions were passed"[15], reflecting the factual assessment required of when proposals exist under s 4(4)(d) of the Act or good faith obligations arise in relation to proposed decisions under s 4(1A)(c) of the Act.

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[13] *Auckland City Council v NZ Public Service Assoc Inc* [2004] 2 NZLR 10 at [24].
[14] *Birthing Centre Ltd v Matsas* [2023] NZEmpC 162 at [69]. The Court of Appeal declined leave to appeal the Court's findings in this respect - *Birthing Centre Ltd v Matsas* [2024] NZCA 139 at [51].
[15] Above n 13 at [29].

[85] I do not consider the references in the letter from the former Chief Executive of HNZ to the PSA and other unions, referred to at paragraph [79] above, can be taken as an acknowledgement HNZ had breached s 4(1A)(c) of the Act. That letter responded to requests from the PSA and other unions for HNZ to provide financial information and the opportunity to comment on it, and to pause "any subsequent decisions about the allocations of redundancies, cuts and cost savings" or "any implementation of a change programme".

[86] I consider HNZ's letter was affirming a general obligation to share information "as part of our upcoming change management process", rather than accepting a requirement to consult before setting budgets. HNZ's response went on to state there was not yet a change management process, invited the PSA and other unions to comment on the financial information provided, and advised:

> as usual, any consultation documents would include meaningful information on that specific proposal so that the unions and potentially affected employees can provide targeted feedback at that stage. That could, of course, include further feedback in relation to the financial situation.

[87] While the PSA consider the engagement at the Kāhui Kōkiri meetings to be "speed dating" which was insufficient to meet the requirements of s 4(1A)(c) of the Act, I consider HNZ's characterisation of those meetings as part of the socialisation or pre-engagement process to better reflect the overall process. The presentations by HNZ's ELT members at the Kāhui Kōkiri meetings certainly appear to have been relatively brief however there were also clear opportunities for questions to be asked by the PSA and other union representatives during the Kāhui Kōkiri meetings. Suggestions were made for how HNZ could address its financial challenges, there was discussion of the options to achieve savings including through voluntary redundancies[16] and attrition. There are also clear references to ongoing discussion as consultation proposals were released.

[88] HNZ were also clear when releasing the PFO and PSC – HMT consultation documents the changes were proposals seeking feedback and to achieve proposed savings. While there were inconsistent references to budgets having been set, proposed budgets and proposed reductions in FTE to achieve cost savings, I do not consider the inconsistency amounts to a breach of the duty of good faith. I consider the PSA and

[16] Differing views about voluntary redundancies were expressed between union participants at the two Kāhui Kōkiri meetings. At the meeting of 21 October 2024 Mr Shankar was recorded as saying it would be good if compulsory redundancies could be avoided, which may mean "options such as voluntary redundancy and attrition to help [HNZ] achieve its goals".

affected staff were provided sufficient information related to HNZ's proposals and an opportunity to provide feedback prior to decisions on change proposals being made.

Did HNZ breach the Code?

[89] This issue involves consideration of whether HNZ breached the Code in relation to:

(a) making time to meet as and when required to search for solutions that will result in the productive employment relationships and the enhanced delivery of services under cl 4(2)(d)(ii) of the Code?

(b) the obligation to be a good employer under cl 5 of the Code?

Submissions of the parties

[90] The PSA says the Code has significance reflected in its purpose statement in cl 2 of the Code which includes references to high quality public health services, safety and parties engaging constructively. The PSA says the general requirements in cl 4 of the Code go well beyond what a normal employment relationship requires and the overall provisions of the Code preserve significant democratic rights designed to give greater control to the workforce, with corresponding duties, and with constraints on HNZ's managerial prerogative.

[91] The PSA say HNZ has not met with its members or the PSA to search for solutions that will result in the productive employment relationships and the enhanced delivery of services, as required under cl 4(2)(d)(ii) of the Code. The PSA also says the good employer obligations under cl 5 of the Code require, at a minimum, compliance with the duty of good faith under s 4(1A)(c) of the Act, the PAKS CA and the Admin CA, and cl 4(2)(d)(ii) of the Code.

[92] The PSA acknowledged an overlap between its claim the Code had been breached and other claims, however, stressed the obligation to "search for solutions" required a qualitatively higher level of engagement than what had occurred. The PSA also said the parties together were obliged to search for solutions which would enhance services.

[93] HNZ accepts it is subject to the Code but says the Code does not contain any provisions which say it applies to a redundancy or change management process, denies the obligation to search for solution applies during such a process and in any event says it did meet with the PSA and its staff to search for solutions. HNZ disagreed the Code's

obligation to search for solutions imported a stronger requirement than the PAKS CA and the Admin CA's obligation to seek solutions. HNZ also says it has complied with its good employer obligations.

Standalone breaches of the Code have not been demonstrated

[94] The PSA referred to a full Court consideration of the status of the Code in *Service & Food Workers Union Nga Ringa Tota v Auckland District Health Board*.[17] While substantively that judgment was focussed on collective bargaining obligations and the legislative status of the Code, I consider it to be helpful in relation to observations that under s 100D of the Act the Code is subject to the provisions of the Act and any other enactment. This supports the PSA's submissions that the Code may be grounds for a standalone breach by HNZ of its obligations.

[95] I am not satisfied however that any such standalone breach is established on the facts or that sufficient evidence has been provided of obligations in the Code which go beyond those in the PAKS CA and the Admin CA. I do not accept HNZ's submission the Code does not apply to redundancy or change management processes, given the reference in cl 4(2)(d)(iii) of the Code to meet "to ensure any change is managed effectively". I consider however HNZ has met that obligation based on the evidence of the number of meetings with the PSA and other unions, both in relation to HNZ's broader change process and the specific PFO and PSC – HMT change processes subject to this determination.

[96] I further consider the obligations under cl 4(2)(d)(ii) of the Code to "meet as and when required to search for solutions that will result in the productive employment relationships and the enhanced delivery of services" need to be construed in light of the obligation in cl 4(2)(d)(iii) of the Code to meet "to ensure any change is managed effectively". In a change process there will inevitably be a tension with maintaining productive employment relationships and enhancing the delivery of services. For the Code to impose constraints on the ability of employers to propose change far clearer language would be required.

[97] Given I have found HNZ has met the duty of good faith under s 4(1A)(c) of the Act (at paragraph [84] above) and has not breached the requirements of the PAKS CA

[17] *Service & Food Workers Union Nga Ringa Tota v Auckland District Health Board* [2007] ERNZ 553.

and the Admin CA (at paragraphs [50] to [60] and [65] to [67] above), it follows HNZ has not breached the good employer obligations under cl 5 of the Code.

[98] For completeness I also considered whether the phrase "search for solutions" imposes any different obligations to the phrase "seek solutions". I was not referred to and did not identify any direct precedent on this point, so considered the dictionary meanings of these wordings from the Merriam-Webster online dictionary. The first definition of "search" is "to look into or over carefully or thoroughly in an effort to find or discover something". The second definition of "seek" includes "to go in search of". I consider the two phrases are synonyms, with no additional obligations under the Code.

What obligations does the Charter impose on HNZ and has it breached any requirements under the Charter?

[99] This issue relates to whether HNZ is required to comply with the expectation in the Charter that workers are actively engaged in the co-design and delivery of high-quality services, in the context of the consultation/change process. It also addresses, if the expectation imposes obligations on HNZ, whether HNZ has complied with that expectation.

Relevant law

[100] Section 56(2) of the Pae Ora Act provides that the Charter is "a statement of the values, principles, and behaviours that … health entities are **expected to demonstrate**; and … workers throughout the health sector are **expected to demonstrate**" (emphasis added).

Submissions of the parties

[101] The PSA says HNZ has not complied with the behaviour in the Charter that "Workers are actively engaged in the co-design and delivery of high-quality services". While acknowledging overlap with the good employer obligation under cl 5 of the Code and obligations in the PAKS CA and the Admin CA, the PSA said there was a theme of all being "in it together", which "should have affected the quality of consultation obligations".

[102] HNZ says the Charter is "a statement of expectations and does not override [HNZ's] management prerogative and ability to make final decisions in change processes after consultation". HNZ says its managerial prerogative is reflected in cl 10.3 of the PAKS CA and the Admin CA, including acknowledgement "consultation

requires neither agreement nor consensus, but the parties accept consensus is a desirable outcome". Given its view the Charter is a statement of expectations, HNZ says compliance with it cannot be ordered. In any event, HNZ says it did actively engage with workers in the co-design and delivery of high-quality services, as part of both pre-engagement and consultation on the PFO and PSC – HMT change processes.

The Charter does not impose binding obligations on HNZ which compliance can be ordered with

[103] The behaviour or expectation, which the PSA sought a declaration of breach of and potentially compliance orders in relation to, is presented in the Charter under the pou (pillar) of Whanaungatanga. In considering this pou or value, the principles which are stated to be relevant are:

- The workforce and their unions are meaningfully involved in decision-making.
- We value strong workplace relationships; those between our organisations; organisations and unions, kaimahi and the individuals, whānau and communities we serve.
- High quality working conditions are available for our teams to provide high quality services.

[104] I consider the principle of meaningful involvement in decision-making can be linked to the organisational behaviour expectation that workers are actively engaged in the co-design and delivery of high-quality services. The PSA referred to discussion of "co-design" by the Court in *Television New Zealand Ltd*[18] which endorsed the Authority's interpretation of the collective agreement in that matter, reflected in the follow finding:[19]

> Clause 10.1.1 envisages a collaborative effort by both parties but something 'co-designed' by them may not always be possible or reasonably practicable and such a scenario is contemplated by cl 10.1.2 which allows TVNZ to invoke the redundancy provision at cl 10.3(i) in the event that no agreement is reached. As such, the ability for TVNZ to manage its business affairs need not be constrained or held up for want of consensus.

[105] I consider there is a reasonable argument that co-design is **expected** under the Charter and, reflecting the Court's finding in *Television New Zealand Ltd*, this arguably requires a process which "involves more than TVNZ devising an advanced proposal for change, engaging in what might be termed garden-variety consultation on it and then making a decision".[20]

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[18] Above n 9 at [26].
[19] *E Tū Incorporated v Television New Zealand Limited* [2024] NZERA 276 at [30].
[20] Above n 9 at [27].

[106] However, as co-design is not explicitly required under the PAKS CA and the Admin CA, the question is whether the behaviour expected under the Charter is binding and enforceable, or capable of having compliance ordered with it. The PSA did not identify any basis from the Pae Ora Act for this expectation to be binding and enforceable.

[107] Section 58 of the Pae Ora Act requires HNZ to report at least once every five years on how the Charter has been given effect throughout the health sector. In contrast, in the immediately following ss 59 and 60 related to a code of expectations for consumer and whānau engagement in the health sector there is an explicit statement that health entities "must act in accordance with the code".

[108] I consider for the Charter to be binding and enforceable a similar statutory provision would be required. In the absence of a clear statutory provision, I find the Charter does not impose binding obligations on HNZ which compliance can be ordered with.

[109] For completeness, while not addressed in submissions, neither is there clear jurisdiction for the Authority to order compliance with the Pae Ora Act in s 137 of the Act.

Compliance orders are not required to be considered

[110] Given the findings above that no breaches have been established on the part of HNZ, compliance orders are not required to be considered and I do not address the issues identified at paragraph [11](f) and (g) further, beyond the following observations.

[111] While the PSA sought compliance orders, it submitted the starting point should be declarations of breach, with compliance reserved for a short period to enable the parties to address compliance steps by consent. The PSA said this was appropriate as what compliance might be appropriate would depend on what breaches had been established.

[112] While HNZ did not accept it had breached any obligations, had I found breaches established and exercised my discretion to order compliance, it supported compliance being reserved for a short period of time to enable the parties to discuss this.

[113] Had I found breaches established and it was appropriate to exercise my discretion to order compliance, I consider reserving compliance would have been a reasonable approach.

Costs

[114] The parties can usually anticipate the Authority will determine costs, if asked to do so, on its usual "daily tariff" basis unless circumstances or factors require an adjustment upwards or downwards.[21] The Authority's presumption with disputes about the application, interpretation or operation of a collective agreement is that parties will bear their own costs.[22] This matter has involved elements of such a dispute under s 129 of the Act.

[115] The PSA initially said that costs should lie where they fall, before clarifying it accepted costs should be reserved.

[116] HNZ said costs should be reserved and the lack of specificity in the PSA's claims and remedies sought had impacted on the time and costs for HNZ in relation to these and earlier related proceedings. HNZ referred to directions I made in these and earlier related proceedings seeking clarity on the compliance orders the PSA sought, as well as requests for the PSA to clarify what specific breaches were alleged and whether the PSA's claims should proceed as disputes under s 129 of the Act.

[117] In response the PSA said HNZ were able to respond to its claims without the greater specificity sought and greatly overstated the impacts on it, particularly given the number of other proceedings which had been able to be resolved between the parties. The PSA reiterated the reason it had not specified the compliance orders sought was its view that what compliance might be appropriate would depend on what breaches had been established, so needed to be reserved for discussions between the parties.

[118] While my preliminary view is that costs should lie where they fall, given this matter has elements of a dispute under s 129 of the Act, I reserve the issue of costs and encourage the parties to attempt to resolve any issue of costs between themselves.

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[21] For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1

[22] Employment Relations Authority, *Practice Direction of the Employment Relations Authority Te Ratonga Ahumana Taimahi*, February 2024, page 5, paragraph 6ii, available at: https://www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf.

[119] If the parties are unable to resolve costs, and an Authority determination on costs is needed, HNZ may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum PSA will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[120] As the investigation meeting for this matter took most of two days, my preliminary view is the notional daily rate for two days is the appropriate starting point for a determination of costs.

Shane Kinley
Member of the Employment Relations Authority