

New Zealand Public Health and Disability Amendment Bill

Government Bill

As reported from the Health Committee

Commentary

Recommendation

The Health Committee has examined the New Zealand Public Health and Disability Amendment Bill, and recommends that it be passed with the amendments shown.

The bill as introduced

This bill seeks to amend the New Zealand Public Health and Disability Act 2000 by repealing Part 4A of the Act.

Part 4A was introduced by the New Zealand Public Health and Disability Amendment Act 2013. It provides the legislative and policy framework for funded family care (FFC) policies. It prohibits the Crown or a district health board (DHB) from paying a person for providing support services to a family member, except in certain circumstances. It also prevents family members from making a complaint against the Crown on the grounds of human rights discrimination.

The part came about as a result of the Crown's unsuccessful appeal in *Ministry of Health v Atkinson*. This Court of Appeal case upheld previous judgments that the Ministry of Health had infringed on the human rights of family carers who cared for their adult children or spouses. The Attorney-General at the time confirmed that Part 4A was inconsistent with section 5 of the New Zealand Bill of Rights Act 1990.

Repealing Part 4A would remove the discriminatory elements of the current legislation for those who care for a disabled family member. The Crown and DHBs would be allowed to continue to implement lawful care policies. However, the bill would allow for future complaints about the policies to be made to the Human Rights Commission under the Human Rights Act 1993. It would also allow the Human Rights

Review Tribunal and courts to hear complaints of discrimination regarding these policies.

The Ministry of Health's implementation of FFC alternatives

The Ministry of Health intends to replace FFC with two options for those who wish to pay a family carer. These will be implemented by the ministry and would not be provided for by this legislation.

Under the ministry's proposed changes, family carers will be able to choose either to be employed by a Home and Community Support Services (HCSS) provider, or to be funded through a personalised budget called individualised funding. The intention is that the person needing care can choose the option that they feel best suits their needs. Where a person lacks the capacity to make this decision, a supported decision-making process is used. Under individualised funding the disabled person will act as the employer of the carer.

Proposed amendment to the commencement date

We are proposing only one change to the bill. We recommend amending the date on which this legislation would come into force from 1 September 2020 to 30 September 2020. This would align with the Ministry of Health's timing for transitioning the current recipients of FFC onto one of its two new options. It would also coincide with the associated revocation of the Funded Family Care Notice 2013 under section 88 of the primary Act.

Comments from submitters

During our consideration we heard a number of concerns from submitters, and received various suggestions for amendments to the bill. We consider that the changes proposed would more appropriately be dealt with as operational matters, rather than being set in legislation. However, we note several points below in order to acknowledge the concerns. We also wish to draw attention to them as matters that the Ministry of Health might consider as it phases out FFC and replaces it with alternative arrangements.

Accessibility to support services

Submitters expressed dissatisfaction with the process for accessing disability support.

To access disability support services, applicants must go through a needs assessment process set by the Ministry of Health. A number of submitters told us that the process is too lengthy and complicated. It first requires a written referral to a Needs Assessment and Service Coordination (NASC) organisation. The NASC then reviews the disabled person's eligibility for disability support services. Once approved, the NASC assesses the abilities, resources, goals, and needs of the disabled person. The choice of either going through a HCSS provider or choosing individualised funding is then made by the applicant.

We heard that when FFC recipients have sought advice on the new process from general practitioners, DHBs or NASCs, they have not been able to receive a comprehensive explanation.

Some submitters feel that FFC is too complicated to attempt entering into, and others simply do not know about its existence. One submitter highlighted the disparity among different demographics in New Zealand between those who receive FFC and those who receive the supported living payment through Work and Income New Zealand, which is generally paid at a lower rate than FFC.

Remuneration for Funded Family Care

Many submitters told us that they were not satisfied with the level of allocated support for FFC. The main objection was how the NASC organisation determines the level of support a person will need. The NASC makes a judgement about how many hours of care is needed based on how long it takes to do particular tasks, the difficulty of those tasks, and the level of help that family carers already provide to complete those tasks.

Some submitters believe that this assessment relies too heavily on calculating the hours worked and trying to quantify how long it takes to perform a particular task. We heard that this approach does not reflect the reality of caring for family members who need constant care and supervision. This is also reflected in the dissatisfaction of submitters about the maximum of 40 hours a week for paying family carers.

Although there has been an increase in the pay rate for care and support workers through FFC, some submitters said that the way the rate is determined is unfair. The pay bands range from \$20.50 to \$25.50 per hour and are judged on past length of service under the FFC model, combined with payment in recognition of care qualifications. Unpaid care experience is not recognised as length of service.

Submitters believe that the assessment of hours worked and the appropriate remuneration rate could be simplified to give comprehensive support to both the carers and the person needing care. Some submitters suggested allocating an allowance each week to cover the costs of care, based on how many people the carer looks after and the income the carer receives from other work.

Health and safety concerns

We recognise that the health and safety of disabled people and their carers is a significant concern for submitters. Caring for people having high or very high support needs relating to disability, long-term chronic health conditions, mental health and addiction, and aged care needs can often be a high-risk job. Some submitters felt that there were too many barriers to getting adequate resources to ensure an appropriate level of health and safety.

One issue we heard was that different agencies (ACC, DHBs, Work and Income New Zealand, and the Ministry of Health) all have different assessments for different scenarios. This results in numerous home evaluations which can feel intrusive for residents, and make them feel as if they have to justify their health and safety concerns.

We heard that some submitters feel that the process is too convoluted to go through, and they would rather choose to risk their health and safety and forgo the various assessment procedures. Submitters suggested agencies should work towards streamlining and combining this process across the agencies.

Submitters raised the issue of determining who should be held liable for injuries that occur in the act of care. We heard that under individualised funding arrangements the disabled person, as the employer, would be held liable for any accidents or injuries that occur. Submitters felt that this was unfair and that the person being cared for should not be held accountable, despite legally being the employer. In many cases the disabled person will not have the capabilities to assess whether health and safety is being adequately addressed. In some cases they may even be the cause of injuries or accidents that occur to family carers. Many submitters felt that this issue has not been addressed.

We acknowledge that the option of going through an HCSS provider makes this third-party provider the employer. This puts the onus on them to uphold responsibilities such as health and safety. The providers become responsible for ensuring that the employees are adequately supported to do the job that they have been tasked to do.

Appendix

Committee process

The New Zealand Public Health and Disability Amendment Bill was referred to the committee on 19 February 2020. The closing date for submissions was 2 April 2020. We received and considered 44 submissions from interested groups and individuals. We heard oral evidence from 13 submitters in a hearing by videoconference.

We received advice from the Ministry of Health.

Committee membership

Louisa Wall (Chairperson)

Hon Maggie Barry

Dr Liz Craig

Matt Doocey

Hon Ruth Dyson

Jenny Marcroft

Dr Shane Reti

Hon Michael Woodhouse

Hon Alfred Ngaro replaced Hon Michael Woodhouse for this item of business.

**New Zealand Public Health and Disability Amendment
Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Jenny Salesa

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the New Zealand Public Health and Disability Amendment Act **2019**.
- 2 Commencement** 5
This Act comes into force on ~~1 September 2020~~ **30 September 2020**.
- 3 Principal Act**
This Act amends the New Zealand Public Health and Disability Act 2000 (the **principal Act**).

*Amendment to New Zealand Public Health and Disability Act 2000***4 Part 4A repealed**

Repeal Part 4A.

*Consequential amendment***5 Consequential amendment to Care and Support Workers (Pay Equity) Settlement Act 2017** 5

- (1) This section amends the Care and Support Workers (Pay Equity) Settlement Act 2017.
- (2) In section 5, definition of **employer**, paragraph (b), delete “(for example, under a family care policy within the meaning of that term in section 70B of the New Zealand Public Health and Disability Act 2000)”. 10

Legislative history21 January 2020
19 February 2020Introduction (Bill 214–1)
First reading and referral to Health Committee