

Departmental Disclosure Statement

Home and Community Support (Payment for Travel Between Clients) Settlement Bill
--

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Health.

The Ministry of Health certify that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

9 September 2015

Contents

Contents..... 2

Part One: General Policy Statement 3

Part Two: Background Material and Policy Information 5

Part Three: Testing of Legislative Content..... 7

Part Four: Significant Legislative Features 9

Part One: General Policy Statement

The Home and Community Support (Payment for Travel Between Clients) Settlement Bill implements a settlement (the **settlement agreement**) between the Crown, District Health Boards, providers of home and community-based care and support services (**HCS employers**), and certain unions (on behalf of home and community-based care and support employees (**HCS employees**)).

The Bill follows a claim filed with the Employment Relations Authority that claimed that time spent by HCS employees travelling between clients receiving home-based care and support is work for the purposes of the Minimum Wages Act 1983.

The Bill supports implementation of Part A of the settlement agreement (Payment for Travel) between the parties, which seeks to ensure an enduring, affordable, and sustainable solution for paying HCS employees for the time and costs of travelling between each of their clients.

In accordance with the settlement agreement, and as agreed between the parties, HCS employees will receive payment from 1 July 2015 for time spent travelling between clients. From 1 July 2015 to 29 February 2016, the payment will be calculated using a figure that represents the minimum wage for the weighted average of the time spent travelling between clients. From 1 March 2016, the payment will be calculated based on the employee's qualifying travel time (being the weighted average time per client visit assigned to the travel band applicable to the client's location—this will be prescribed by regulation).

The specific objectives of the legislation are to ensure that—

- HCS employees will be compensated in accordance with the Bill, at the minimum wage, for qualifying travel time from 1 March 2016; and
- HCS employees will be compensated, at no less than 50 cents per kilometre, for qualifying travel costs (also to be prescribed by regulation) from 1 March 2016; and
- HCS employees will abandon any claim under the Minimum Wage Act 1983 for payment for travel between clients undertaken by them before the enactment of this Bill and after its commencement are prevented from bringing a claim that travel between clients is work under the Minimum Wage Act 1983; and
- following commencement of the Bill, any prior agreement between an HCS employee and HCS employer relating to travel by the employee (including any agreement as to payment for first and last visits) would be unenforceable and replaced with the payment requirements as detailed in the Bill; but
- no HCS employee will be financially disadvantaged as a result of the operation of the settlement agreement and the Bill.

The Settlement Agreement is based on the paramount principles agreed between the parties that provide:

- for a commitment to transitioning to a regularised workforce within a timeframe that allows consideration of the fiscal and environmental constraints; and
- for a commitment to a support service model which is financially viable and can meet the on-going needs of the home and community populations; and
- for a support service model that ensures that overall no party to the Settlement Agreement is financially disadvantaged by Part A of the Settlement Agreement; and

- consistent with Cabinet Minutes (14) 10/14 and (14) 30/ 6 the parties will keep the Minister of Health informed of the implications of transitioning to a regularised workforce and the fiscal implications.

An important aspect of the Settlement Agreement is an agreement that HCS employers will be adequately funded, whether by the relevant District Health Board or Ministry of Health, to meet their obligations under the Settlement Agreement and this Act. The applicable funding will be transferred from the District Health Boards and the Ministry of Health to the contracted HCS employers and then on to qualifying HCS employees. If any issues arise as to the sustainability of the Settlement Agreement, as it relates to the payment to qualifying HCS employees as per this Act, the parties will address the issue in good faith and where necessary engage in a dispute resolution process as provided for in the Settlement Agreement.

Part B of the settlement agreement (Establishment of a Regularised Workforce and Review of the Home and Community Health Sector) is not included in the provisions of this Bill. However, it is important and relevant to the general policy development of this Bill.

During the negotiations between the parties, a wider discussion was held regarding the on-going sustainability of the current home and community-based support service model of service delivery. Discussions have led to agreement by all settlement parties to investigate and implement a transition towards a sustainable regularised home and community-based support service workforce.

A Director-General of Health's reference group has been established to conduct a review of the health-funded home and community based support service in one work stream and in the second work stream to consider the viability of transitioning to a regularised workforce within 24 months of the signing of the settlement agreement. Any changes as a result of this review are to occur within the existing available and approved HCSS funding.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>Caring Counts, Human Rights Commission, May 2012 https://www.hrc.co.nz/files/1214/2360/8576/Caring_Counts_Report.pdf</p> <p>BERL Careerforce Report, Health and Disability Kaiawhina Worker Workforce, 2013 Profile; April 2014 http://www.careerforce.org.nz/wordpress/wp-content/uploads/2013-Health-and-Disability-Kaiawhina-Worker-Workforce-Profile.pdf</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
--	-----------

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>The RIS is accessible at:</p> <ul style="list-style-type: none">• http://www.health.govt.nz/ and• http://www.treasury.govt.nz/publications/informationreleases/ris	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES
<p>Yes, the advice from the RIA Team on the quality of the RIS was that the information and analysis summarised in the RIS meets the quality assurance criteria. However, the proposals for monitoring, evaluation and review are not well developed.</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
--	-----------

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
---	-----------

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three - Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
--

During policy development we consulted with departments responsible for New Zealand's international obligations including labour obligations. No inconsistencies were identified.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Treaty principles were considered during policy development. It was considered that the Bill was not inconsistent with the Treaty or Treaty principles.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice provided to the Attorney-General, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of the Bill. Such advice, or reports, are accessible on the Ministry's website at: http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:
--

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?
--

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

YES

Clauses 6 extinguishes certain claims in respect of whether travel between clients for qualifying HCS employees (as defined in the Bill) is work under the Minimum Wage Act 1983. These are claims that have been lodged or a potential claim before the commencement of the Bill.
--

An HCS employee is prevented from bringing a future claim that travel between clients is work under the Minimum Wage Act 1983 by clause 28.

3.4.1. Was the Ministry of Justice consulted about these provisions?

YES

The Ministry of Justice was consulted on these provisions doing the BORA vet process and whether the provisions were in breach of the BORA. We note our response at paragraph 3.3 and the advice from the Ministry of Justice.
--

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
---	-----------

3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO
--	-----------

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>The Bill gives effect to a Settlement Agreement reached between relevant parties, including the Crown, District Health Boards, providers of home and community-based care and support services and sector Unions (on behalf of home and community based care and support employees).</p> <p>The Settlement Parties have been consulted on a draft of the Bill to ensure that it adequately reflects the Settlement Agreement. This initially occurred in March 2015 and has continued throughout the drafting process. The settlement parties checked their interpretation of the settlement agreement against the proposed legislation and provided feedback.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>The policy details given effect by this Bill have been tested and assessed by the parties to the Settlement Agreement throughout the drafting process.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
---	----

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
---	----

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	YES
<p>Clause 6 extinguishes certain claims that have been lodged as they relate to a claim for wages payable under the Minimum Wage Act 1983 for an HCS's employee's travel between clients. Clause 6 also extinguishes claims potential claims that have not yet been lodged.</p> <p>This is necessary to adhere to the settlement reached by the settlement parties and approved by Cabinet in that it is forward looking and does not include any back claims.</p>	

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
--	----

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
---	----

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
--	----

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>Clause 25 enables the making of regulations to prescribe mileage rate, qualifying distance and qualifying travel time. Regulations are necessary to provide the mechanism of calculating payments to be made to qualifying employees as prescribed in the Bill. Before regulations can be made the Minister of Health must be satisfied that the prescribed qualifying distance and travel time is a fair approximation of the actual amount time an HCS employee would spend. Before recommending the making of any regulations the Minister of Health must also consult with all DHBs, and relevant HCS employers and any relevant unions.</p> <p>Clause 26 and 27 enables the Governor-General to amend Schedule 1 and Schedule 2 of the Bill (which lists former and current employers covered by the operation of the Bill) by Order in Council.</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
--	-----------

