

Departmental Disclosure Statement

Care and Support Workers (Pay Equity) 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 certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

18 May 2017

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Part One: General Policy Statement

This Bill gives effect to elements of the Care and Support Worker (Pay Equity) Settlement Agreement. As part of that settlement, the parties agreed that certain matters would be provided for in legislation. The Agreement is publicly available on the Ministry of Health website:

<https://www.health.govt.nz/new-zealand-health-system/care-and-support-workers-pay-equity-settlement>

The settlement agreement followed a pay equity claim in the Employment Court that care and support workers were systematically underpaid because the work is predominately performed by women.

Care and support workers provide services funded by the Ministry of Health, ACC and district health boards that help people to continue living in their own homes, and in residential care units once they are no longer able to live at home. They include both aged care and disability support services.

A settlement was agreed between the Crown, Crown Agencies, and relevant unions in April 2017. The Agreement establishes a matrix of pay rates, linked to qualifications, to be phased in over the five-year term of the agreement. The parties to the settlement agreed that elements of it would be legislated.

The primary purpose of the settlement is to address historical inequities and achieve pay equity in the care and support sector.

In accordance with the agreement, the bill provides for:

- employees to receive the agreed pay rates and for training to be facilitated.
- employers to receive additional funding towards offsetting the additional costs imposed by the legislation.
- the terms of the agreement to apply to all care and support workers, regardless of whether or not they are union members.
- current pay equity claims to be extinguished and future proceedings barred for the term of the agreement.

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
<i>The Bill implements aspects of a Settlement Agreement between the Crown, Crown Agencies, and Unions. The Agreement is available at:</i> http://www.health.govt.nz/new-zealand-health-system/care-and-support-workers-pay-equity-settlement	

Relevant international treaties

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

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<i>The Ministry of Health prepared a Regulatory Impact Statement. It is available at:</i> https://www.health.govt.nz/new-zealand-health-system/care-and-support-workers-pay-equity-settlement	

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
<i>The opinion was provided on 10 April 2017, as follows:</i> “The Regulatory Impact Analysis Team (RIAT) have reviewed the RIS prepared by MoH and associated supporting material, and considers that the information and analysis summarised in the RIS meets the quality assurance criteria.”	

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
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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
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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?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<i>The potential costs and benefits are outlined in the Cabinet Paper and Regulatory Impact Statement, available at:</i> https://www.health.govt.nz/new-zealand-health-system/care-and-support-workers-pay-equity-settlement	

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?

Discussion with the Ministry of Health's legal team identified no relevant international obligations.

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?

Discussion with the Ministry of Health's legal team identified no Treaty implications.

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

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)?

NO

Employees will have access to the remedies in existing employment legislation.

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

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
<i>Union parties to the Settlement Agreement were provided with a copy of the draft Bill on 15 May 2017. Comments were received and changes proposed to the draft Bill where appropriate.</i>	

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?	NO
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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
<i>[If YES, identify the relevant provision(s). Then explain why the provision is necessary, and identify and explain the nature of any features that will mitigate the potential adverse effects.]</i> http://www.treasury.govt.nz/publications/guidance/regulatory/disclosurestatements/21.htm	

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
<i>[If YES, identify the relevant provision(s). Then describe the nature and extent of the power, explain why the power is necessary, and explain the nature of any safeguards that will apply to the power to ensure it is properly constrained and used appropriately.]</i> http://www.treasury.govt.nz/publications/guidance/regulatory/disclosurestatements/22.htm	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
<i>The Bill extinguishes pay equity claims by care and support workers. This was part of the settlement agreement, and compensated for by future benefits in the form of wage increases guaranteed for 5 years, and support to achieve formal qualifications.</i>	

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
<i>[If YES, identify the relevant provision(s). Then explain why the provision is necessary, and identify and explain the nature of any features that will mitigate the potential adverse effects.]</i> http://www.treasury.govt.nz/publications/guidance/regulatory/disclosurestatements/23a.htm	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
<p><i>[If YES, identify the relevant provision(s). Then explain why the provision is necessary, and identify and explain the nature of any features that will mitigate the potential adverse effects.]</i></p> <p>http://www.treasury.govt.nz/publications/guidance/regulatory/disclosurestatements/24.htm</p>	

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
<p><i>[If YES, identify the relevant provision(s). Then explain the nature of any safeguards that will apply to the power to ensure it is properly constrained and used appropriately.]</i></p> <p>http://www.treasury.govt.nz/publications/guidance/regulatory/disclosurestatements/24a.htm</p>	

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
<p><i>[If YES, identify the relevant provision(s). Then describe the nature and extent of the power, explain why the power is necessary, and explain the nature of any safeguards that will apply to the power to ensure it is properly constrained and used appropriately.]</i></p> <p>http://www.treasury.govt.nz/publications/guidance/regulatory/disclosurestatements/25.htm</p>	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
<p><i>[If YES, identify the relevant provision(s). Then describe the nature and extent of the power, explain why the power is necessary, and explain the nature of any safeguards that will apply to the power to ensure it is properly constrained and used appropriately.]</i></p> <p>http://www.treasury.govt.nz/publications/guidance/regulatory/disclosurestatements/25.htm</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
<p><i>[If YES, identify the relevant provision(s). Then describe its nature and purpose, and explain why the provision is necessary.]</i></p> <p>http://www.treasury.govt.nz/publications/guidance/regulatory/disclosurestatements/26.htm</p>	