

# Departmental Disclosure Statement

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New Zealand Public Health and Disability Amendment Bill
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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.

8 October 2019.

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## **Part One: General Policy Statement**

The New Zealand Public Health and Disability Amendment Bill proposes to repeal Part 4A of the New Zealand Public Health and Disability Act 2000. Part 4A provides the legislative and policy framework for Funded Family Care policies. This allows the Crown and district health boards to have family care policies to pay resident family members to provide personal care and household management supports to their eligible ill or disabled family members.

When Part 4A was introduced in 2013 the then Attorney-General concluded that the limitation to rights and freedoms in Part 4A could not be justified under Section 5 of the New Zealand Bill of Rights Act 1990. This is because Part 4A allowed the exclusion of certain resident family members from being paid for providing Funded Family Care and prohibited claims to the Human Rights Commission about family care policies.

The repeal of Part 4A will remove the discriminatory elements of the current legislation. It will allow the Crown and district health boards to continue to implement lawful family care policies. It will enable future complaints about the policies to be made to the Human Rights Commission on the basis of human rights discrimination under section 21 of the Human Rights Act 1993, and to allow the Human Rights Review Tribunal and courts to hear complaints.

This legislative change will ensure consistency with human rights law and uphold New Zealand's commitments under the United Nations Convention on the Rights of Persons with Disabilities.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>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?</b>	<b>YES</b>
<p><i>'Paid Family Care Discussion: Funded Family Care and other schemes in New Zealand'</i>, Sapere Research Group for Carers New Zealand and the NZ Carers Alliance, April 2018, available at:  <a href="http://carers.net.nz/wp-content/uploads/2018/05/Paid-Family-Care-Discussion-Paper-FINAL-24-April-2018.pdf">http://carers.net.nz/wp-content/uploads/2018/05/Paid-Family-Care-Discussion-Paper-FINAL-24-April-2018.pdf</a></p> <p><i>'Targeted engagement on Funded Family Care and Paid Family Care'</i>, Sapere Research Group for the Ministry of Health, 20 November 2018, available at:  <a href="https://www.health.govt.nz/publication/targeted-engagement-funded-family-care-and-paid-family-care">https://www.health.govt.nz/publication/targeted-engagement-funded-family-care-and-paid-family-care</a></p>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>YES</b>
<p>The Bill will help ensure New Zealand's family care policies are consistent with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), which was ratified by New Zealand on 25 September 2008. The Committee on the Rights of Persons with Disabilities has twice raised concerns about the family care policy (Part 4A of the New Zealand Public Health and Disability Act 2000). First in the <i>'Concluding observations on the initial report of New Zealand'</i> on 31 October 2014, under Article 5 Equality and non-discrimination, available at: <a href="https://www.hrc.co.nz/files/2814/4046/9752/G1419535.pdf">https://www.hrc.co.nz/files/2814/4046/9752/G1419535.pdf</a>. And in its 2018 List of Issues for the next periodic review, see <i>'The New Zealand Government's response to the list of issues prior to submission of the combined second and third periodic review of New Zealand'</i> Article 5 Equality and non-discrimination, available at: <a href="https://www.odi.govt.nz/united-nations-convention-on-the-rights-of-persons-with-disabilities/second-periodic-review/">https://www.odi.govt.nz/united-nations-convention-on-the-rights-of-persons-with-disabilities/second-periodic-review/</a>.</p>	

<b>2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?</b>	<b>NO</b>
<p>There was no Parliamentary examination in relation to this proposal, the repeal of Part 4A of the New Zealand Public Health and Disability Act 2000 is to improve consistency with the UNCRPD and the New Zealand Human Rights Act 1993.</p>	

### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p><i>Impact Summary: Repealing the legislative framework for Funded Family Care</i>, Ministry of Health. Paper will be available at:  <a href="https://www.health.govt.nz/about-ministry/legislation-and-regulation/regulatory-impact-statements">https://www.health.govt.nz/about-ministry/legislation-and-regulation/regulatory-impact-statements</a></p>	

<b>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?</b>	<b>NO</b>
The Ministry of Health's internal RIA panel provided independent quality assurance. The RIA did not meet the threshold for Treasury RIA Team assessment.	

<b>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?</b>	<b>NO</b>
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### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
See the <i>'Impact Summary: Repealing the legislative framework for Funded Family Care'</i> . Paper will be available at: <a href="https://www.health.govt.nz/about-ministry/legislation-and-regulation/regulatory-impact-statements">https://www.health.govt.nz/about-ministry/legislation-and-regulation/regulatory-impact-statements</a>	

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

## 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?**

The Bill is intended to repeal Part 4A of the New Zealand Public Health and Disability Act 2000 to remove discriminatory elements of the current legislation and restore New Zealand's obligations under the United Nations Convention on the Rights of Persons with Disabilities.

### 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?**

No inconsistencies have been identified. Stakeholder engagement with Māori has been undertaken to ensure that the Treaty principles of partnership, participation, and protection are adhered to.

### 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?**

**NO**

The Bill will ensure consistency with the New Zealand Bill of Rights Act 1990.

### 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**

### 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

<b>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?</b>	<b>YES</b>
<p>The following departments and agencies have been consulted on the policy proposals for the New Zealand Public Health and Disability Amendment Bill: Accident Compensation Corporation, Crown Law, Ministry of Justice, New Zealand Treasury, the Department of the Prime Minister and Cabinet, Ministry of Social Development, Oranga Tamariki, Office for Disability Issues, Ministry of Education, Te Puni Kōkiri, Ministry for Pacific Peoples, Ministry for Business, Innovation and Employment, Ministry for Women and the State Services Commission.</p> <p>Targeted engagement with key stakeholder groups including affected families was undertaken by an independent facilitator in October 2018 to inform the development of policy options. This included an online survey which received 911 responses, and 22 meetings and interviews with stakeholder groups and affected families.</p>	

## Other testing of proposals

<b>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?</b>	<b>NO</b>
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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
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### 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
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### Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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### 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
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### 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
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### 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
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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### 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
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