



Cabinet

CAB Min (13) 10/14

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Minute of Decision

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Family Carers Case: Implementation of Proposed Response and Consideration of Broader issues

Portfolio: Health

On 2 April 2013, following reference from the Cabinet Social Policy Committee (SOC), Cabinet:

Background

1 **noted** that in December 2012, SOC agreed to a preferred approach to responding to the Family Carers case that would be confirmed following a further report on the issues and risks associated with the preferred approach, and on the broader risks raised by the Family Carers case [SOC Min (12) 28/2];

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{redacted under Official Information Act 1982 Section 9(2)(g)(h) to maintain legal professional privilege}

3 **confirmed** that a fundamental tenet of government funded social support is that, in general terms, families have primary responsibility for the wellbeing of their members;

4 **noted** that implementing a cross-government policy of paying family carers in response to the Family Carers case would contradict the fundamental tenet set out in paragraph 3 above, and would result in risks for disabled people and family carers and considerable fiscal costs;

Legislation

5 **agreed** that the government legislate to reduce the significant risks and uncertainties arising from the Family Carers case, while still allowing the government to implement policies of paying family carers if it wishes to do so;

- 6 **agreed** that the proposed legislation reflect the following principles:
- 6.1 that the Crown or a DHB may adopt a policy under which providers of health or disability support services are not paid, or only paid in specified circumstances, or paid at reduced rates because they are a family member of the person receiving the services;
 - 6.2 that such a policy of the Crown or a DHB will not be unlawful whether or not it would otherwise amount to discrimination under the Human Rights Act 1993 or the New Zealand Bill of Rights Act 1990;
- 7 **agreed** that the proposed legislation place the following limits on claims:
- 7.1 not allowing further claims to be made against any existing or any new policy relating to the payment of family carers;
 - 7.2 allowing complaints that have already been lodged with the Human Rights Commission or claims that have already been lodged with the Tribunal to proceed, but that the only remedy available is a declaration of inconsistency;
- 8 **agreed** that the legislation include a savings provision allowing the nine plaintiffs in *Atkinson and Others v MoH* to have their claims resolved by the Courts if necessary, if they cannot reach a settlement with the Crown;
- 9 **agreed** that the limitations on claims that are outlined in paragraph 7 above apply from the date that the government's policy is announced;
- 10 **agreed** that the legislation be introduced through a Bill amending the New Zealand Public Health and Disability Act 2000;

Preferred response

- 11 **noted** that the preferred response to the Family Carers case agreed to by SOC involved MoH allocating funds to disabled adults to allow them to employ their parents or resident family members (other than spouses) to provide them with HCSS that are over and above the support that family carers are able to provide unpaid [SOC Min (12) 28/2];
- 12 **noted** that the preferred response allowed for the payment of family carers in "exceptional circumstances" where family carers fall outside the proposed targeting criteria, but where there is a very good case for paying them [SOC Min (12) 28/2];
- 13 **agreed** that the provision for payment in exceptional circumstances be achieved by detailed policy allowing the flexibility to consider particular circumstances where payment is clearly desirable;
- 14 **agreed** that the preferred response for MoH funded HCSS be implemented from 1 October 2013;

Broader issues

- 15 **noted** that there may be considerable interest in the response to the broader issues for Vote Health raised by the Family Carers case which are set out in paragraphs 2.1 and 2.2 above;

- 16 **agreed** that no further work be carried out on the broader issues raised by the Family Carers case, except for further work to explore issues for people with chronic health conditions who are funded by DHBs;
- 17 **noted** that MoH will consider, as part of its regular review of services, whether its current policy of not allowing family carers to be paid to deliver support other than HCSS continues to be necessary;

Fiscal implications

- 18 **noted** that the mid-point estimate of the fiscal cost of the preferred option (paragraphs 11 to 14 above) is \$23 million (net) per annum;
- 19 **noted** that the mid-point estimate of the fiscal cost will increase, potentially by up to an additional \$152 million (net) per annum, if:
- 19.1 the legislation referred to in paragraph 5 above is not passed; and/or
 - 19.2 decisions are made to pay further groups of family carers; and/or
 - 19.3 funding allocations are higher than the approximately \$16 an hour rate on which the preferred option is based;

Next steps

- 20 **invited** the Minister of Health to announce the government's policy on paying family carers on Budget Day 2013;
- 21 **noted** that the New Zealand Public Health and Disability Act Amendment Bill (the Amendment Bill) has a category 2 priority on the 2013 Legislation Programme (to be passed in 2013);
- 22 **agreed** that the Amendment Bill be introduced and passed as part of the Budget 2013 legislation package;
- 23 **invited** the Minister to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above proposals.

Reference: CAB (13) 169
