

# Impact Summary: Repealing the legislative framework for Funded Family Care

## Section 1: General information

### Purpose

The Ministry of Health (the Ministry) is solely responsible for the analysis and advice set out in this Regulatory Impact Assessment except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing in-principle decision for the approach to the repeal of Part 4A of the New Zealand Public Health and Disability Act 2000 to be taken by or on behalf of Cabinet.

### Key Limitations or Constraints on Analysis

On 27 September 2018, the Government announced plans to change Funded Family Care (FFC), including its intention to repeal Part 4A of the New Zealand Public Health and Disability Act 2000 (Part 4A). Part 4A is the legislative protection for FFC. Part 4A came into force in 2013 after the Ministry was found to have discriminated against family carers on the basis of family status with its explicit policy of not paying family carers.<sup>1</sup> Part 4A was introduced to manage the legal and fiscal risks associated with FFC that involved the differential treatment of some family carers (and could, therefore, be seen as inconsistent with the NZ Bill of Rights Act 1990).

The purpose of Part 4A is to keep funding of support services provided by family members within sustainable limits and to affirm the principle that, in the context of funding support services, families generally have responsibility for the wellbeing of their family members.

To achieve this purpose Part 4A, amongst other things, requires the Ministry and District Health Boards (DHBs) to have family care policies, and allows those policies to specify which groups of family carers will be paid (with others not paid), the conditions that must be satisfied, to set the pay rates for family carers and place limits on the amount that will be funded. Part 4A also allows family care policies to differentiate on grounds that are prohibited under the Human Rights Act 1993 eg, marital status, disability, age and family status<sup>2</sup>, and prohibits post 2013 human rights claims on the basis of such discrimination.

The Ministry's FFC policy applies to disabled people who meet the disability support services (DSS) eligibility criteria, which is mostly people under 65 with a long-term physical, sensory and/or intellectual disability. The DHBs' FFC policies, known as Paid Family Care, apply to people who have long-term chronic health conditions, mental health and addiction or aged care needs. These policies provide for the payment of certain resident family carers to provide personal care and household management services to people with high or very high support needs, for an assessed and allocated number of hours. Both policies exclude spouses, partners and family of under 18 year olds from being paid to provide family care. The Ministry's policy also restricts payment of family carers to the minimum wage whereas DHBs pay family carers comparable rates to contracted support workers.

<sup>1</sup> Despite the Ministry's policy, family carers were sometimes paid under informal arrangements. The Accident Compensation Corporation had a policy of paying family members to provide Home and Community Support Services (HCSS) prior to 2013.

<sup>2</sup> Section 70E prevents unlawful discrimination claims on the grounds stated in section 21(1)(B), (h), (i) and (l) of the Human Rights Act 1993

Since the FFC policy was introduced, there have been ongoing national and international challenges to the policy, including litigation, petitions, correspondence and media coverage. All the litigation claims relating to discrimination under the existing FFC policy have been resolved.<sup>3</sup>

Independent targeted engagement with the health and disability sector was undertaken in October 2018 on options to improve FFC. Feedback from stakeholders strongly supported the repeal of Part 4A, in particular the inability to challenge FFC under human rights legislation and removing discriminatory aspects of FFC policies. In addition to the targeted consultation with the sector, the Ministry has consulted, and is working, with DHBs and other government agencies. Those other government agencies include the Accident Compensation Corporation (ACC), Crown Law, Ministry of Justice, the Treasury, the Department of Prime Minister and Cabinet, Ministry of Social Development (MSD), Oranga Tamariki, Office for Disability Issues, Ministry of Education, Te Puni Kōkiri, Ministry for Pacific Peoples, Ministry of Business, Innovation and Employment, Ministry for Women and the State Services Commission. The Ministry will continue to work with MSD, within data limitations, on the potential benefits to MSD clients as a result of the repeal of Part 4A and proposed policy changes.

This regulatory impacts analysis focuses on the approach to repealing Part 4A.

The overall objective is to develop the most appropriate response to the Government's intention to repeal Part 4A. The specific objectives of changes to the FFC policy and the criteria which options will be measured against are:

- improves consistency with human rights legislation
- minimises litigation risk
- improves living standards for disabled people and family carers
- minimises fiscal costs and risks to the government
- improves public trust and confidence
- aligns with the Government's strategic direction.

Options considered include doing nothing (the counterfactual), repealing Part 4A with and without a litigation bar, and repealing Part 4A with and without a compensation framework.

This statement has been written using two assumptions:

- that Cabinet will only agree in principle to repeal Part 4A if Cabinet first agrees to policy changes to expand eligibility for payment and increase pay rates and that funding is allocated in Budget 19. Those policy changes would remove the key discriminatory aspects of Part 4A and funding is required to implement them (as they cannot be funded within baselines).<sup>4</sup> If Cabinet does not agree to the policy changes and/or funding is not allocated then the Ministry recommends the repeal of Part 4A is delayed to mitigate unknown legal and fiscal risk

s 9(2)(f)(iv), s 9(2)(h), s 9(2)(j)

s 9(2)(h)

<sup>4</sup> The Budget bid is fund removing the exclusions on eligibility for payment to two currently excluded groups, increase pay rates to family carers under the Ministry FFC policy to be comparable with the pay of contracted support workers, and to fund provider overheads to allow the option of employing family carers through personal care and household management provider organisations (if required).

The Ministry is working on advice to Health Ministers on potential further operational changes to FFC. This includes advice on removing the requirement, under the Ministry's FFC policy, that a disabled person receiving FFC must be the employer of their funded family carer, and exploring alternative options. Other potential changes may include changes to:

- balance quality and safety
- secondary eligibility criteria (the level of support need and financial situation of families)
- the maximum hours of care available for FFC
- the role of FFC in supporting equitable outcomes, including gender and cultural considerations.

All of these potential changes will be considered in the context of broader cross government work, including the Carers Strategy Action Plan 2019-23 and the government response to the Welfare Expert Advisory Group (WEAG) report.

5 When the United Nations reviewed New Zealand's progress in implementing the United Nations Convention on the Rights of Persons with Disabilities in 2012, the UN Committee's concluding observations (31 October 2014) noted that:

1. *The Committee notes that, in 2012, the New Zealand Court of Appeal affirmed that the policy of not paying some family carers to provide disability support services to adult disabled family members constituted unjustifiable discrimination on the basis of family status. The Committee is concerned that the Public Health and Disability Amendment Act 2013 reversed this court decision by denying carers' pay to some family members. The Committee is also concerned that these provisions also prevent some family members who are carers from making complaints of unlawful discrimination with respect to the Government's family care policy. The Committee notes that the independent monitoring mechanism has recommended reconsideration of this matter.*

2. *The Committee recommends that the State party reconsider this matter to ensure that all family members who are carers are paid on the same basis as other carers are, and recommends that family members who are carers be entitled to make complaints of unlawful discrimination in respect of the State party's family care policy.*

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## Section 2: Problem definition and objectives

### 2.1 What is the policy problem or opportunity?

The problem with the current FFC policy is that Part 4A is inconsistent with the Human Rights Act and NZBORA (right to freedom from discrimination, and for any limitations to rights and freedoms to be justified). Disabled people and their family carers are treated differently to other paid carers because Part 4A allows discriminatory policies and prevents legal challenges on the basis of discrimination. On 27 September 2018, the Government announced plans to change FFC, including its intention to repeal Part 4A.

s 9(2)(f)(iv), s 9(2)(h)

#### *What is the context for considering change?*

Part 4A has been the subject of ongoing national and United Nations challenges since it was introduced, including litigation (a small number of pre 2013 claims of discrimination), petitions, correspondence and media coverage. The previous Government faced criticism for introducing legislation under urgency and without consideration by Select Committee.

All three parties now in Government noted their intention to make changes to FFC in their election manifestos and policy development on potential changes to FFC has been underway since late 2017. On 19 September 2018, Cabinet agreed to announce that the Government intends to make changes to health FFC policies, including the intention to repeal Part 4A [SWC-18-MIN-0129 refers]. On 27 September 2018, the Government announced plans to change FFC, including its intention to repeal Part 4A.

Targeted engagement with the health and disability sector was undertaken in October 2018 on options to improve FFC. Feedback from stakeholders strongly supports the repeal of Part 4A, in particular the inability to challenge FFC under human rights legislation and removing discriminatory aspects of FFC policies.

Without any changes to the FFC policy, in particular Part 4A, high profile challenges to the policy will continue, with particularly strong emphasis on function d). Further, the wellbeing and living standards of disabled people and their natural support<sup>5</sup> will continue to be negatively affected by their inability to choose a resident family member to provide them with paid care. s 9(2)(f)(iv), s 9(2)(h)

#### *What is FFC?*

FFC refers to Ministry and DHBs' policies of paying certain resident family carers to provide personal care and household management services to people with high or very high support needs, for an assessed and allocated number of hours. All policies exclude spouses, and partners and family of under 18 year olds from being paid to provide services. The Ministry's policy also restricts payment of family carers to the minimum wage whereas DHBs pay family carers comparable rates to contracted support workers.

The allocation of hours of support is assessed by looking at what the disabled person can do, what natural supports<sup>6</sup> are available for the things they cannot do, and what extra support is required. That extra support is usually provided by a contracted support worker, but the disabled person (if eligible for FFC) and/or their family can choose for a resident family member to provide that support and be paid for it, subject to exclusions about who can be paid eg, spouses.

The Ministry's policy applies to disabled people who meet the DSS eligibility criteria, mostly people under 65 with a long-term physical, sensory and/or intellectual disability. As at 1 December 2018, there were approximately 409 Ministry-funded family carers. The DHBs' FFC policy, known as Paid Family Care, applies to people who have long-term chronic health conditions, mental health and addiction issues, or aged care needs. FFC accounts for a small proportion of HCSS spend for the Ministry and DHBs (approximately 2-3%). As at 1 March 2018, there were approximately 207 DHB funded family carers (comprised of 159 for aged care clients, 47 for long-term chronic conditions and one for mental health).<sup>7</sup>

#### *Background to the current FFC policy*

Prior to 2013 the Ministry and DHBs had explicit policies of not paying family carers. Part 4A came into force after the courts found that the Ministry discriminated against family carers on the basis of family status by not paying them.<sup>8</sup>

The development of the current policy, including Part 4A, was guided by several considerations:

- a) an overarching principle that: 'in the context of public funding of support services, families generally have primary responsibility for the wellbeing of their members'
- b) responding only to the particular discrimination identified in *Atkinson*, ie, the Ministry was formerly not paying parents and resident family members to provide home and community support for their disabled adult family members
- c) adopting a conservative policy initially because of the considerable uncertainties associated with any new policy, with the option of extending the policy in the future when there was greater experience to draw on
- d) managing fiscal risks by focusing support on paying families where there were high or very high needs, rather than paying all family carers, and limiting the amount they were paid
- e) using legislation to manage the legal and fiscal risks associated with the policy that necessarily involved the differential treatment of some family carers (and could, therefore, be seen as inconsistent with the NZBORA).

The preferred option was to base payments to family carers on the minimum wage, topped up to reflect the full costs of employment such as sick and annual leave and ACC levies but excluding the higher prices that are usually paid to providers for overheads when employing care and support workers. Initially, the rate was \$16 an hour, and was estimated to cost in the order of \$23 million (net) a year. This rate was considered close to that paid to employed support workers through a provider and therefore comparable to sector employees earnings at the time. A decision was also made to manage risks by amending the NZ Public Health and Disability Act 2000 to:

<sup>6</sup> Natural support is unpaid care provided primarily by family members. That support is freely given, but may also be based on a sense of obligation or duty.

<sup>7</sup> There were 409 DSS family carers at 1 December 2018 - It is unclear why uptake is lower for DHBs.

<sup>8</sup> The most significant litigation was the Court of Appeal's decision in May 2012 in *Ministry of Health v Atkinson and Others* which upheld the High Court's view that the Ministry's policy breached the Human Rights Act 1993 because it was discriminatory and therefore inconsistent with the New Zealand Bill of Rights Act 1990. It was discriminatory on the basis of family status, specifically that contracted carers were paid to provide care but family carers who provided the same care were not paid. The Crown's appeals to the High Court and Court of Appeal were dismissed and the Crown did not appeal to the Supreme Court.

- expressly permit some or all family carers to not be paid, or to be paid at reduced rates, to provide care to family members
- prohibit new claims and limit remedies for existing claims (other than the Atkinson and Spencer claims) to declarations of inconsistency with the right to freedom from discrimination affirmed by s 19 of the NZBORA.

Whilst minimum wage payments manage fiscal risk, they are inconsistent with human rights legislation by discriminating against certain groups in two ways. s 9(2)(f)(iv), s 9(2)(h)

Secondly, minimum wage payments are only applied to Ministry family carers and are below wage rates paid to family carers under DHB policies. This is because family carers are employed by HCSS providers under DHB policies, who pay rates comparable to the wider care and support workforce.

#### *What are the functions of Part 4A?*

Part 4A was passed under urgency in 2013. The Attorney-General at the time noted that Part 4A could potentially be in breach of the non-discrimination right guaranteed by s19(1) of NZBORA and concluded that the limitation in s70E cannot be justified under s5 of the NZBORA.

Part 4A has the following key functions:

- a) The purpose is to keep the funding of support services provided by family members within sustainable limits, in order to give effect to section 3(2) of the Act (which states that the objectives of the Act stated in section 3(1) are to be pursued to the extent that that they are reasonably achievable within the funding provided).
- b) Affirms the principle that families generally have primary responsibility for the well-being of their family members within the context of funded support services (stated in 70A(1))
- c) Permits paid family care policies to be implemented that are discriminatory (eg, family status and pay rates) and may inconsistent with the Human Rights Act 1993 (HR Act). This may be in breach of the right to freedom from discrimination as set out in section 19(1) of the NZBORA. This is laid out in Part 4A section 70D.
- d) Prevents claims under the HR Act and the NZBORA from being taken against family carer policies that have been implemented since 2013. However this may not be justifiable under section 5 of the NZBORA (which allows for justified limitations of rights and freedoms). Part 4A Section 70E includes this limitation.
- e) Requires the Crown and DHBs to have family care policies, restricting payment to family carers for the provision of support services in accordance with these policies.

In accordance with Part 4A, the Ministry and DHBs have had FFC policies since 2013 and 2014 respectively, and these policies exclude resident spouses, partners and family of under 18 year olds from being paid for providing care. The Ministry policy also limits the amount eligible family carers can be paid to the minimum wage.

The proposed policy changes, if agreed by Cabinet and if funding is made available, will treat family carers fairly in comparison with other care and support workers (subject to function d) and resolve the discrimination issues in function c) of the Act. Therefore function c) can be repealed.

The financial sustainability principle in function a) of the Act can be repealed as it is also in s 3(2) of the Act which governs all health and disability services, except ACC.

Function e) requiring FFC policies can be removed because there is no legislative mandate for policies anywhere else in the health and disability sector. Other policies existed prior to Part 4A and continue to be implemented in accordance with s 3(2).

Function b), the principle of primary family responsibility, can also be repealed. The principle in Part 4A only applies to services funded through Vote Health so its removal is unlikely to have a wider effect for

social support services. The principle of primary family responsibility is not confirmed elsewhere in health and disability legislation, or in more general Government policy statements.

The disability support system has always been based on the principle of natural support, with the role of publicly funded support to augment and enable this support. DSS support is allocated to meet the additional needs of a disabled person that cannot be met by their natural support networks. This is common across other supports in the social sector (e.g. Home and Community Support Services provided by the ACC). The principle of natural support is embedded in Needs Assessment and Service Coordination processes to determine the level of funded support for disabled people.

Despite function b) the Ministry is experiencing cost allocation increases across all DSS supports for families already using FFC (see Other Impacts section). Data provided by DHBs has shown that they are not experiencing any cost allocation increases under their paid family care policies. Therefore, subject to further analysis, function b) may be having little effect on DSS operational practices.

There could be opportunities to consider this principle and how families can be helped further as part of any future work on the Government's response to the Welfare Expert Advisory Group (WEAG), which was asked to consider interfaces between welfare and health. If Ministers wish to keep this principle it could be included elsewhere eg, policies, strategies if Part 4A is repealed.

*How much confidence is there in the evidence and assumptions for the problem definition?*

There is a broad range of evidence for the problem definition. The Ministry is confident in the evidence and the two assumptions noted above. The existing evidence includes:

- the Attorney-General noted when the Part 4A was being considered for introduction, that Part 4A could potentially be in breach of the non-discrimination right guaranteed by s19(1) of NZBORA and concluded that the limitation in s70E cannot be justified under s5 of the NZBORA
- the United Nations' Committee on the Rights of Persons with Disabilities recommendation that New Zealand reconsider allowing payments to all family carers and allowing complaints of unlawful discrimination (2014)
- targeted stakeholder consultation undertaken by the Ministry in 2018, including an online survey and 22 meetings and interviews with stakeholder groups and affected parties. Family carers (both paid and unpaid) made up the majority of survey respondents.
- a report published by the Carers Alliance<sup>9</sup> on paid family care, including FFC.<sup>10</sup> The report stated that reliance on family as the first line of support is no longer sustainable (eg, economic pressures including having to leave employment in order to care, people with support needs living longer at home). The report called for urgent action on several issues, including aligned, simplified legislation, strategies, policies and systems for paid family care, with the Ministry's FFC policy a priority
- 14 claims of discrimination filed since 2013 (based on the pre 2013 Ministry policy)
- a petition (Sushila Butt and 964 others), currently before the Health Select Committee, requesting the repeal of Part 4A and pay equity for family carers
- a significant number of media articles
- significant correspondence with the Minister of Health and the Ministry, and Official Information Act requests.

<sup>9</sup> A consortium of over 40 national not-for-profit organisations promoting better support and recognition for family, whanau, and aiga carers

<sup>10</sup> Commissioned from the Sapere Research Group, see <http://carers.net.nz/wp-content/uploads/2018/05/Paid-Family-Care-Discussion-Paper-FINAL-24-April-2018.pdf>



## 2.2 Who is affected and how?

*Whose behaviour do we seek to change, how is it to change and to what purpose?*

This analysis is focused on the approach to repeal Part 4A, not the potential policy changes.

- If Cabinet directs, the Ministry and DHBs will amend their FFC policies to remove key discriminatory elements, ie. Allow resident spouses and partners, and family of under 18 year olds to be paid for providing family care, and increase pay to comparable rates with support workers (this is subject to a Budget 2019 bid to fund these policy changes)
- Disabled people who currently or may in future benefit from care provided by resident family members that is paid, and that want to have :
  - the option to take discrimination claims and be heard
  - trust and confidence in the government
- Resident family carers to:
  - have the option to take discrimination claims and be heard
  - receive acknowledgement of their role
  - have trust and confidence in the government
- People who would like to be paid resident family carers but currently are not caring or are excluded from being paid under FFC to
  - acknowledge their role
  - improve equity: many family carers are women, Māori or Pasifika,<sup>11</sup> who are caring for parents or parents-in-law or a disabled child (including adult children) and are unable to make discrimination claims.

*Who wants this to happen? Who does not?*

There has been widespread concern about FFC and calls for change since its introduction in 2013 (see evidence of problem above). There is general agreement in the disability community that Part 4A was introduced through a process that was not fair.

Independent targeted stakeholder consultation was commissioned by the Ministry in 2018. This included an online survey and 22 meetings and interviews with stakeholder groups and affected parties. Family carers (both paid and unpaid) made up the majority of survey respondents, with others including disabled people and support service provider organisations. Feedback from stakeholders strongly supported the repeal of Part 4A, in particular the inability to challenge FFC under human rights legislation and removing discriminatory aspects of FFC policies.

Some people believe that changes to the current operational policies for FFC and how they are implemented is where the key impacts will occur, rather than repealing Part 4A. The Ministry intends to undertake further operational policy work on these issues eg, employment relationship, cap on hours, training and quality assurance. Other stakeholders are concerned that family carers under the current policy will lose what they have already.<sup>12</sup>

<sup>11</sup> As at June 2018, approximately 8,600 people received SLP Carer (spouses and partners are not eligible for SLP carer). MSD does not have information on the reason that care is required but it does have data on the benefit that is being paid to care recipients. From this MSD can infer that SLP Carers are most commonly caring for parents or parents-in-law or a child (including adult children) with a disability.<sup>11</sup> The average SLP Carer recipient is 45 years of age and female. Of the people receiving SLP Carer, 38 percent are Māori, 30 percent are New Zealand European, 17 percent are Pacific and 15 percent are unspecified or other. The high numbers of Māori and Pasifika carers is consistent with the current Ministry and DHB FFC policies.

<sup>12</sup> Sapere Research Group <http://carers.net.nz/wp-content/uploads/2018/05/Paid-Family-Care-Discussion-Paper-FINAL-24-April-2018.pdf>

There has been further engagement to ensure that the views of Māori and Pacific People inform changes to FFC. Broadly, Māori and Pacific People support change in FFC. However, the changes to FFC and carer support in general, need to be culturally appropriate and mindful of the diversity of families, whānau and aiga and their circumstances which can change quickly. Choice, flexibility and simplicity are key themes that mirror those in the overall engagement.

## 2.3 Are there any constraints on the scope for decision making?

### Constraints

- The Government has already announced its intent to repeal Part 4A. This does not constitute a final decision, however there would be reputational risks if Part 4A is not repealed fully (the most controversial aspect being section 70E which prevents human rights claims).
- That Cabinet will only agree in principle to repeal Part 4A if Cabinet first agrees to policy changes to expand eligibility for payment and increase pay rates and that funding is allocated in Budget 19. **§ 9(2)(f)(iv), § 9(2)(h)**
- The unknown potential interdependencies with the yet to be published Welfare Expert Advisory Group (WEAG) report (and the future government response to the report) which is looking more broadly at how the welfare system supports people with health conditions and disabilities and their family carers. There is also unknown interdependencies with the New Zealand Health and Disability System Review which is currently underway.

### Out of scope

- ACC paid care.
- Veteran paid care.
- decisions on potential changes to operational policies – policy work is ongoing.
- change to the principle of financial sustainability for health and disability support services in section 3(1) of the Act.
- other policies allowing for the provision of health and disability support services. They are not required to be mandated by legislation.
- non Vote Health supports based on the principle of natural support, including family responsibility. Part 4A only applies to Vote Health support services and the objectives of the Act to fund and provide health and disability services to the extent that is reasonably achievable within the funding provided.

### *What interdependencies or connections are there to other existing issues or ongoing work?*

Repealing Part 4A is a small but specific part of a much broader issue of societal and government expectations regarding the role of family members to provide unpaid 'natural support'. Part 4A only exists as a response to litigation about the failure of the Ministry to allow family carers to be paid to provide allocated funded HCSS supports. Part 4A applies only to Vote Health support services and not any other government supports such as MSD benefits, and ACC payments. Therefore, repealing the principle of primary family responsibility for the wellbeing of family members in Part 4A is unlikely to be viewed as a change in government direction to the principle of natural support.

The broader issues of the expectations of family providing unpaid 'natural support'; assessment and allocation processes based on this principle; and the government's objectives for the financial wellbeing of family carers are likely to be dealt with in the Government response to the WEAG report, the

development of a Carers Strategy Action Plan 2019-2023 and long term policy work on the transformation of the disability support system.

In summary, the issues related to FFC have links to a number of cross-government initiatives, including the:

- development of the New Zealand Carers' Strategy and Action Plan 2019-2023 (MSD lead)
- New Zealand Disability Strategy and development of the new Action Plan 2019-2022 (Office for Disability Issues lead), particularly Outcome 7 'Choice and Control'
- WEAG report and future government response (MSD lead)
- Health and Disability System Review (MOH lead)
- Mana Whaikaha – Disability Support System Transformation (MOH lead)
- government response to the Inquiry into Mental Health and Addictions (MOH lead).

If Cabinet agrees to repeal Part 4A and the key policy changes, and funding is available to implement the changes, opportunities or requirements to link with these cross-government initiatives will be considered. Any impacts will be considered during implementation. There will also be cross-government consultation on the ongoing policy work on operational changes to FFC.

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### Section 3: Options identification

#### 3.1 What options have been considered?

Each of the five feasible options have been assessed against each of the six criteria that have been identified in table one below. Option 1 has been used as the counterfactual (do nothing) which the four other options have been considered against using a scale of:

✓✓	Significantly superior to the do nothing option
✓	Better than the do nothing option but with some issues
=	The same or equivalent to the do nothing option
X	Worse than the do nothing option
xx	Significantly inferior than the do nothing option

The criteria include consideration of the Treasury Living Standards Framework. To avoid repetition, the domains and capitals have been included in the pros and cons of the most aligned criteria, rather than purely in the alignment with government strategic direction criteria. Note there is no impact on natural capital.

**TABLE ONE: SUMMARY OF OPTIONS ANALYSIS (SEE TABLE TWO FOR MORE DETAILED ANALYSIS)**

Option/Criteria	A Improves consistency with human rights legislation	B Minimises litigation risk	C Improves living standards for disabled people and family carers	D Minimises fiscal costs and risks to government	E Improves public trust and confidence	F Aligns with the Government's strategic direction
1 Retain Part 4A (Do nothing)	=	s 9(2)(f)(iv), s 9(2)(h)	=	s 9(2)(f)(iv), s 9(2)(h)	=	=
<b>Modified Status Quo</b> – based on assumption that Cabinet will only agree in principle to repeal Part 4A if Cabinet first agrees to policy changes to expand eligibility for payment and increase pay rates and that funding is allocated in Budget 19. Otherwise the Government cannot mitigate the legal and fiscal risks of the policy changes.						
2 Repeal Part 4A but replace with a litigation bar for period 2013 to repeal date	✓	s 9(2)(f)(iv), s 9(2)(h)	✓	s 9(2)(f)(iv), s 9(2)(h)	✓	✓
3 Repeal Part 4A but replace with a litigation bar for period 2013 to repeal date and include compensation framework	✓	s 9(2)(f)(iv), s 9(2)(h)	✓	s 9(2)(f)(iv), s 9(2)(h)	✓	✓
4 Repeal Part 4A and potential for two remedies: no litigation bar and a compensation framework	✓✓	s 9(2)(f)(iv), s 9(2)(h)	✓✓	s 9(2)(f)(iv), s 9(2)(h)	✓✓	✓
5 Repeal Part 4A in full	✓✓	s 9(2)(f)(iv), s 9(2)(h)	✓	s 9(2)(f)(iv), s 9(2)(h)	✓✓	✓✓

s 9(2)(f)(iv), s 9(2)(h)

s 9(2)(f)(iv), s 9(2)(h)

TABLE TWO: DETAILED ANALYSIS OF		ED IN TABLE ONE ABOVE		E	F
Option/Criteria	A	C		Improves public trust and confidence	Aligns with the Government's strategic direction
1	=	=		=	=
<b>Retain Part 4A (Do nothing)</b>	Part 4A will continue to prohibit claims of discrimination (since 2013) despite inconsistency with human rights law	Human and social capital will remain the same: living standards (unless wider government changes occur), same choice of carer and risk of residential care, limited (MSD only) financial acknowledgement of the opportunity cost of caring.		There will continue to be criticism, and possibly heightened criticism because of Government announcement, for barring claims of discrimination and excluding certain groups from being paid for providing care. Criticism especially likely by the United Nations, disability and carer communities and media.  Goes against Government's announcement that it intends to repeal Part 4A.	Goes against Government's announcement that it intends to repeal Part 4A.  Does not contribute to Government priority outcome 'to ensure everyone who is able to, is earning, learning, caring and volunteering' as does not encourage more carers.  Contributes to Government priority to govern responsibly by carefully managing the government's books.  Social, cultural and equity benefits not realised for women, Māori and Pasifika carers and disabled family they support  Does not support NZ Disability Strategy outcomes – disabled people having the highest attainable standards of health and wellbeing, and having choice and control over their lives  Does not support NZ Carers Strategy – New Zealand is a society that values individuals, families, 13pprox or aiga who support others who need help with their everyday living.

**Modified Status Quo** – based on the assumption that Cabinet will only agree in principle to repeal Part 4A if Cabinet first agrees to policy changes to expand eligibility for payment and increase pay rates and that funding is allocated in Budget 19. Otherwise the Government cannot mitigate the legal and fiscal risks of the policy changes

s 9(2)(f)(iv), s 9(2)(h)

s 9(2)(f)(iv), s 9(2)(h)

<p>2</p> <p><b>Repeal Part 4A but replace with a litigation bar for period 2013 to repeal date</b></p>	<p>✓</p> <p>Legislation will continue to prohibit claims of discrimination for defined period so inconsistency with human rights for that period</p>		<p>✓</p> <p>Human and social capital and income: more carers can receive payment and at comparable rates so their income and living standards are likely to improve<sup>13</sup>, financial stress reduced. Modelling suggests an increase of 483 Ministry FFC clients and 240 DHB clients over four years. In the 2019/20 financial year the current cohort of DSS family carers will receive an average earnings increase of \$6,500 before tax.</p> <p>Disabled people requiring care (or their advocate) have more options about who cares for them (intrinsic value), with potential decrease in need for residential care</p> <p>Better financial and social acknowledgement of family carers</p> <p>Widening the eligibility for payment of family carers may serve as a means for some unemployed/underemployed individuals to join the workforce and could lead to family members who are at the end of their tenure as a paid carer (eg, client has moved into residential care) in the Home and Community Support Services sector. This opportunity is especially true for carers who decide to pursue NZQA qualifications.</p> <p>Where people are not already providing unpaid care, there may be more carers available in rural areas, care in a culturally appropriate manner and know and are able to communicate well with the disabled person they care for.</p> <p>Risk that caring relationships may continue longer than is desirable eg, client's condition has worsened to an extent that the carer cannot adequately look after them, due to the fact that the carer derives a steady income and does not wish to transition to another job. Conversely a disabled person may wish to continue with their family carer when it is in their best interests to receive other help.</p> <p>Having a family member provide care may, from the disabled persons' point of view, limit their social connections with a wider group of people.</p>		<p>✓</p> <p>Although discrimination on grounds of eligibility to receive payment and receive comparable pay will be repealed, a litigation bar may still be viewed critically and potential gains minimised because of its inconsistency with human rights law.</p> <p>The United Nations, the disability sector, media etc will continue to criticise the Government.</p>	<p>✓</p> <p>Repeals Part 4A in line with the governments stated intention but litigation bar maintains a key discriminatory element of the current policy</p> <p>Helps contribute to Government priority outcome 'to ensure everyone who is able to, is earning, learning, caring and volunteering' as encourages future family carers and acknowledges role of carers</p> <p>Partially contributes to Government priority to govern responsibly by carefully managing the government's books</p> <p>Social, cultural and equity benefits may be realised from repeal for women, Māori and Pasifika carers and disabled family they support. However, historical grievances will not be remedied.</p> <p>Partially supports NZ Disability Strategy outcomes – disabled people having the highest attainable standards of health and wellbeing, and having choice and control over their lives. The inability to claim discrimination for a period restricts subjective wellbeing and choice and control.</p>
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<sup>13</sup> There is currently no way of knowing the income of people prior to taking up FFC.

<sup>14</sup> The magnitude if this impact is uncertain due to data limitations.

s 9(2)(f)(iv), s 9(2)(h)

s 9(2)(f)(iv), s 9(2)(h)

		Family carers risk taking significant amounts of time to care for a loved one resulting in a certain amount of isolation.		
3	✓	As above but provides extra income through compensation.	As above but compensation framework acknowledges inconsistency and provides remedy.	As above.
4	✓✓	As above. Offered opportunity for legal redress.	As above but compensation framework acknowledges inconsistency and provides remedy.	As above. Does not contribute to Government priority to govern responsibly by carefully managing the government's books.
<p><b>3</b></p> <p><b>Repeal Part 4A but replace with a litigation bar for period 2013 to repeal date and include compensation framework</b></p>	<p>✓</p> <p>Legislation will continue to prohibit claims of discrimination for defined period so inconsistency with human rights for that period. However, acknowledgement of human rights breach.</p>	<p>✓</p> <p>As above but provides extra income through compensation.</p>	<p>✓</p> <p>As above but compensation framework acknowledges inconsistency and provides remedy.</p>	<p>✓</p> <p>As above.</p>
<p><b>4</b></p> <p><b>Repeal Part 4A and potential for two remedies: no litigation bar and a compensation framework</b></p>	<p>✓✓</p> <p>A compensation framework allows the government to acknowledge human rights inconsistency.</p> <p>Inconsistencies with human rights legislation removed.</p>	<p>✓✓</p> <p>As above.</p> <p>Offered opportunity for legal redress.</p>	<p>✓✓</p> <p>As above but compensation framework acknowledges inconsistency and provides remedy.</p>	<p>✓</p> <p>As above.</p> <p>Does not contribute to Government priority to govern responsibly by carefully managing the government's books.</p>

s 9(2)(f)(iv), s 9(2)(h)

s 9(2)(f)(iv), s 9(2)(h)

<p>5</p> <p><b>Repeal Part 4A in full</b></p>	<p>✓✓</p> <p>Inconsistencies with human rights</p>		<p>✓</p> <p>Human and social capital and income: more carers can receive payment and at comparable rates so their</p>		<p>✓✓</p> <p>Action to restore inconsistency with human rights legislation and enable disability</p>	<p>✓✓</p> <p>Consistent with Government's announcement of its intention to repeal Part 4A.</p>

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	<p>legislation removed</p>		<p>income and living standards are likely to improve, financial stress reduced.</p> <p>Disabled people requiring care (or their advocate) have more options about who cares for them, with potential decrease in need for residential care.</p> <p>Better financial and social acknowledgement of family carers.</p> <p>Where people are not already providing unpaid care, there may be more carers available in rural areas, care in a culturally appropriate manner and that now the needs of, are able to communicate well with, the disabled person they care for.</p>		<p>community access to courts.</p> <p>Consistent with Government's announcement of its intention to repeal Part 4A.</p> <p>The disability sector and carers will get opportunity to be heard and views taken into account at Select Committee.</p> <p>Positive response to UN Committee concerns.</p> <p>Family carers funded through Vote Health are currently excluded in the Care and Support Workers (Pay Equity) Settlement Act 2017 (Pay Equity settlement). The majority of both care and support workers and family carers are women, so there is a gender equity consideration to improving opportunities for women to earn through providing funded support.</p>	<p>Social, cultural and equity benefits may be realised from repeal for women, Māori and Pasifika carers and disabled family they support.</p> <p>Helps contribute to Government priority outcome 'to ensure everyone who is able to, is earning, learning, caring and volunteering' (family carers able to be paid for caring role) as encourages future family carers and acknowledges role of carers.</p> <p>Partially contributes to Government priority to govern responsibly by carefully managing government finances (subject to policy changes being made and funded).</p>
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### 3.2 Which of these options is the proposed approach?

*Which is the best option? Why is it the best option? How will the proposed approach address the problem or opportunity identified?*

After assessing the options under both a human rights framework and cost benefit analysis, there are two potential approaches to resolve the problem.

*The first approach is to repeal Part 4A in full – no litigation bar or compensation framework.*

This approach is consistent with the Government's announcement of its intention to repeal Part 4A and removes the discriminatory aspects of the current FFC policy that are inconsistent with human rights legislation. In particular, this option removes the legislative protection that permits discriminatory policies based on family status and prevents legal challenges on the basis of that discrimination, thereby treating disabled people and their family carers differently to paid carers. The repeal will help restore the disability sector's trust and confidence in the Government. Recent targeted consultation has been clear that affected parties want Part 4A repealed.

If Part 4A is repealed the living standards of disabled people and their family carers should improve because disabled people have more choice about who cares for them, and if a resident family carer is chosen to provide that care the household income rises. Family carers currently ineligible to be paid will also be acknowledged socially and financially for the care they provide. This supports the Government's priority to "ensure everyone who is able to, is earning, learning, caring and volunteering". Other benefits of this approach include disabled people being able to stay in their own home, have carers that understand their support, cultural and spiritual needs and carers who know how to communicate best with them. Many of these carers are also women, Māori and Pasifika.

s 9(2)(f)(iv), s 9(2)(h)

The Ministry cannot fund the policy changes within baselines. If funding for the policy changes is provided, over time there is potential for savings to the Government from disabled people entering residential care later (if at all). However, this benefit cannot be calculated accurately in monetary terms as it is dependent on uptake and the case by case needs of the disabled person.

Repealing Part 4A and the subsequent policy changes are also likely to lead to savings for Vote Social Development as carers may become financially independent and no longer need SLP Carer (or have their SLP abated) due to income derived from being a family carer. However, this benefit also cannot be calculated accurately in monetary terms.

There is also a risk of costs for DSS in general. Greater uptake of FFC may lead to allocation increases for other DSS supports. Further analysis needs to be done to assess whether allocation increases over the last five years is purely due to FFC uptake or if there are other factors at play too, and the magnitude of any factors.

The repeal of Part 4A will remove the specific legislative protection for FFC under the Act. Family care policies will then be treated the same as other health and disability support policies under the Act in the pursuit of funding and providing health and disability services to the extent that is reasonably achievable within the funding provided. Consequently there are no areas of incompatibility with the Government's *'Expectations for the design of regulatory systems'*.

*The second approach is to repeal Part 4A but retain a litigation bar for claims from 2013 to date of repeal*

This approach is partially consistent with the Government's announcement of its intention to repeal Part 4A. This option removes most of Part 4A but would retain the litigation bar on claims for 2013 to the date of repeal to mitigate litigation risk and fiscal costs, and therefore is inconsistent with human rights legislation and the recommendation of the United Nations.

The policy changes make the provision in Part 4A that allows discriminatory policies redundant but a litigation bar prevents access to the Human Rights Commission and courts. The litigation bar would treat disabled people and their family carers differently to paid carers by restricting their access to justice. The policy changes may help restore the disability sector's trust and confidence in the Government but the litigation bar may reduce that impact. This approach would have the same impact on the living standards of disabled people and family carers as the first approach.

s 9(2)(f)(iv), s 9(2)(h)

[Redacted text block]

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	HCSS services if families reduce the level of natural support they currently provide	
DHBs	Increased risk of injury to elderly carers	Unknown
Wider government	None – Part 4A relates only to Vote Health support services	None
Other parties	Costs to providers of implementing policy changes covered in Budget Bid if future decisions are made to change the employment relationship under the Ministry FFC policy.	§ 9(2)(f)(iv), § 9(2)(h), § 9(2)(i)
<b>Total Monetised Cost</b>		<p>There is uncertainty about the likely total monetised cost which will be made up of:</p> <ul style="list-style-type: none"> <li>• § 9(2)(h), § 9(2)(f)(iv), § 9(2)(i)</li> <li>■</li> <li>■</li> </ul> <p>DSS allocation increases (may be up to 28% cost increase across support packages based on previous data) which is built into the above Budget bid. DHB allocation cost increase risks are unknown.</p>
<b>Non-monetised costs</b>	Social and/or health outcomes may not be consistently improved for disabled people.	Medium: Risk of co-dependency of family carers on FFC income, or risks of abuse of FFC policies (e.g. lack of alignment with supported decision making principles or use of FFC when this is not the preference of the disabled person or in their best interests).

Expected benefits of proposed approach, compared to taking no action

Disabled people	Ability to receive care from their family member if they choose	See family carers below. Disabled people will benefit from increased income opportunities for their family carer under FFC, through improved financial wellbeing of the wider family (benefits may include, for example, family resilience and decreased stress due to financial strain, health and wellbeing benefits due to increase income). Also benefits in disabled people receiving culturally appropriate care by someone who knows how and can communicate with them.
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Budget Sensitive and Subject to Legal Privilege

<p>Family carers</p>	<p>Current paid family carers: increased income, acknowledgement of care provided.</p>	<p>s 9(2)(f)(iv), s 9(2)(g)(i)</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>
	<p>Unpaid family carers: who will be eligible in future for FFC if policy changes are made</p>	<p>s 9(2)(f)(iv), s 9(2)(g)(i)</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>
<p>Ministry of Health and DHBs</p>	<p>Savings from residential care. Clients may be offered this support if they would be unable to live in their chosen living environment (in the family home) without FFC and would otherwise need residential level care. However, in reality this may be difficult to assess and people with high and very high disability support needs are likely to be eligible for FFC.</p>	<p>There is uncertainty about the likely savings from FFC for residential care services due to data limitations and difficulty predicting likely uptake. However, based on current annual costs of residential care:</p> <ul style="list-style-type: none"> <li>• There are currently 409 disabled people with high and very high needs supported by DSS FFC, which would require funding of \$36.4m per annum based on the average annual cost of \$89,000 per person with high and very high needs</li> <li>• There are currently 207 DHB clients supported by FFC, which would require funding of \$10.35m per annum based on the average annual cost of \$50,000 per person for aged care clients</li> <li>• Any residential care savings for future FFC recipients are not able to be quantified accurately as this will depend on a range of factors including social determinants of disability support need and uptake of FFC.</li> <li>• Based on the current average hours of FFC, there is a marginal benefit to the Government of \$53,000 per annum per client for DSS clients and \$30,000 per annum for aged care clients (before tax of carer) for every year that residential care is delayed.</li> </ul>
<p>Ministry of Health and DHBs</p>	<p>Savings to current Home and Community Support Services (HCSS) costs</p>	<p>Savings to HCSS are not able to be quantified as this is dependent on FFC uptake, but for any new FFC clients transferring from HCSS, this may include:</p> <ul style="list-style-type: none"> <li>• Savings to In Between Travel costs (of other care and support workers providing home and personal care)</li> <li>• Savings to employer or provider overheads, which would depend on any future change to employment arrangements and FFC uptake (HCSS providers include additional 20% overhead costs, however if family members are employed through other arrangements or continue to be employed by their disabled family member, there may be savings).</li> </ul>
<p>Wider government</p>	<p>Financial independence of family carers</p>	<p>Unknown due to data limitations. Family carers might become financially independent and no longer receive a benefit. As at June 2018, approximately 8,600 people received the SLP Carer benefit.</p>
<p><b>Total Monetised Benefit</b></p>	<p>There is uncertainty about the likely total monetised benefit given this depends on FFC uptake and other social factors.</p>	<p>The majority of benefits from repealing Part 4A and funding changes to policies which currently discriminate on the basis of family status will be non-monetised. There is considerable uncertainty in estimating the potential total monetised benefit from new FFC clients, which may include:</p> <ul style="list-style-type: none"> <li>• Savings from residential care (subject to uptake, and will be realised if FFC clients would otherwise require residential care)</li> </ul>

## Budget Sensitive and Subject to Legal Privilege

		<ul style="list-style-type: none"> <li>Savings from HCSS overhead and In Between Travel Costs, however there is uncertainty as this may result in a net cost if HCSS providers employ family carers in future or if any savings are offset by the additional 28% cost allocation increase observed for current FFC clients.</li> <li>Savings to MSD benefits (likely to be a transfer of costs from MSD SLP Carer and other benefits to FFC, however this depends on uptake and personal circumstances).</li> </ul>
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<b>Non-monetised benefits</b>	Ability to make claims of discrimination	High: equity and ability to challenge policies, consistency of human rights for disabled people and their families.
	Reputation of the Ministry of Health	Medium: Likely to improve relationships with the disability and carer sectors, and improve trust and confidence.
	Disabled people able to remain living with family if they choose to receive FFC and the alternative would be residential care.	High: Benefits include social connectedness and ability to remain living with family or whanau if this is the choice of the disabled person.
	International reputation of New Zealand and wider government	Medium: Consistency with the United Nations Convention for the Rights of Persons with Disabilities will improve New Zealand's reputation for upholding Human Rights.

### 4.2 What other impacts is this approach likely to have?

#### Potential risks of proposed approach

The risk of paid family care policies in general is that they may undermine the principle of natural support, including:

- The expectation that care and support which was previously provided freely will now be paid, leading to increased support allocation costs; and / or
- That families will refuse to continue to provide ongoing care unless they receive payment (leading to increasing cost of contracted provider support, increased paid family care cost, or lack of care and poor outcomes for disabled people).

Evidence shows that since FFC was introduced people receiving DSS FFC have, on average, been allocated a higher overall service package (across all services, not just FFC) than what they were allocated prior to commencing FFC:

- Over the past 5 years to December 2017, the average service allocation increase based on weekly hours was circa 200%;
- This has equated to a net cost increase across allocation packages of 54% over the 5 years to December 2017;
- However, the net cost increase has reduced to an average of 28% during the past 2 years (2016/17 and 2017/18), which is likely due to improved consistency of support needs assessment processes.

Further analysis needs to be done to assess whether the DSS allocation increases over the last five years is purely due to FFC uptake and a withdrawal of natural support, or if there are other factors at play too eg, social determinants, and the magnitude of any factors. However, an analysis of DHB's FFC administrative data has shown there is no significant correlation between the uptake of FFC and an increase in HCSS allocation or supports. Therefore, there is uncertainty in assessing the risk of increased total cost to DSS if there is increased uptake of paid family care policies due to the policy changes and if Part 4A is repealed or repealed with a litigation bar. The potential for cost allocation



increase has been included in the bid submitted to Budget 2019 to secure funding for the policy changes to DSS and DHB policies.

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## Section 5: Stakeholder views

### 5.1 What do stakeholders think about the problem and the proposed solution?

Targeted engagement with the health and disability sector was undertaken in October 2018 on options to improve FFC. Feedback from stakeholders strongly supports the repeal of Part 4A, in particular the inability to challenge FCC under human rights legislation and removing discriminatory aspects of FFC policies. The targeted engagement was done with an online survey as well as 22 meetings and interviews with stakeholder groups and affected parties. Family carers (both paid and unpaid) made up the majority of survey respondents.

A report published by the Carers Alliance on paid family care, including FFC, stated that reliance on family as the first line of support is no longer sustainable (eg, economic pressures including having to leave employment in order to care, people with support needs living longer at home). The report called for urgent action on several issues, including aligned, simplified legislation, strategies, policies and systems for paid family care, the Ministry FFC policy a priority.

Other government agencies that have been consulted on the proposal to repeal Part 4A and the preferred policy changes include; the ACC, Crown Law, Ministry of Justice, the Treasury and Department of Prime Minister and Cabinet, MSD, Oranga Tamariki Office for Disability Issues, Ministry of Education, Te Puni Kōkiri, Ministry for Pacific Peoples, Ministry of Business, innovation and Employment, Ministry for Women and the State Services Commission. The Ministry will continue to work with MSD on the transfer of costs between Votes (if any) as a result of the repeal of Part 4A and proposed policy changes.

There are concerns from health and disability sector groups, including providers, about the implementation of the proposed policy changes and future operational policy work still be done (eg, employment relationship, cap on hours, training and quality assurance). The Ministry will continue to work with MSD, within data limitations, on the potential benefits to MSD clients as a result of the repeal of Part 4A and proposed policy changes.

There has been further engagement to ensure that the views of Māori and Pacific People inform changes to FFC. Broadly, Māori and Pacific People support change in FFC. However, the changes to FFC and carer support in general, need to be culturally appropriate and mindful of the diversity of families, whānau and aiga and their circumstances which can change quickly. Choice, flexibility and simplicity are key themes that mirror those in the overall engagement.

## Section 6: Implementation and operation

### 6.1 How will the new arrangements be given effect?

#### Legislative change and implementation

A request for inclusion in the 2019 Legislation Programme has been submitted by the Minister of Health. The timeframe for legislative change will be dependent on other legislative priorities. The Ministry also recommends that legislative change is not progressed if funding for policy eligibility and pay rate changes does not receive funding through Budget 2019, as this will result in high legal litigation and fiscal risks that cannot be effectively managed.

If Budget 2019 funding is secured, repeal of Part 4A could come into force in mid to late 2020. Budget 2019 funding was based on implementation for policy changes commencing on 1 December 2019. Policy changes to key discriminatory policies can in theory be implemented prior to the repeal of Part 4A however funding cannot be met within current baselines: eligibility for FFC payment to partners and spouses of eligible disabled people, family members of eligible disabled people under the age of 18, and increased pay rates for DSS FFC carers to be comparable with other care and support workers. Depending on funding decisions, these changes to FFC policies could be considered for implementation in late 2019 or early 2020.

The Ministry and DHBs are responsible for implementation, and will review operational policies and procedures if policy and legislative changes are agreed by Cabinet and funded through Budget 2019. The Ministry will work with DHBs to implement policy changes, if agreed by Cabinet, and consider further operational policy changes. The Ministry will provide guidance to DHBs to encourage a nationally consistent approach to supporting family carers. Updated guidance will be provided to Needs Assessment and Service Coordination and Home and Community Support Service providers.

There are several ways that the views of Māori and Pacific People will inform the implementation of the changes and broader carer support. Engagement already undertaken and to continue includes:

1. The targeted stakeholder engagement carried out in September and October 2018 included Māori and Pacific People in meetings and the online survey.
2. Further analysis of the survey responses by participants who identified as Māori and Pacific People has recently been completed and is now being considered.
3. The Ministry is consulting with the following Māori and Pacific groups and will continue to engage with them in relation to any changes:
  - a. Te Ao Mārama - Māori Disability Advisory Group
  - b. Te Arero (Needs Assessment and Service Coordination)
  - c. Māori Disability Information and Advisory Service
  - d. Te Tumu Whakarae (Māori General Managers of District Health Boards)
  - e. Faiva Ora Leadership Group – Pacific Peoples Disability Advisory Group
  - f. Regional DHB Pacific Advisory Groups
  - g. Pacific General Managers of DHBs
  - h. Pacific Disability Information and Assessment Service

More broadly, the Ministry is working closely with the Ministry of Social Development and other agencies in the preparation of the draft New Zealand Carers' Strategy Action Plan 2019-23. This will have a particular focus on Māori, Pacific People, and young and older carers. Early engagement toward the development of the Plan collected valuable information from Māori and Pacific People which was shared with the Ministry of Health.

Any future litigation claims if full repeal is chosen by Cabinet will be managed on a case-by-case basis, in line with the approach agreed between the Ministry and Crown Law for pre-2013 discrimination claims.

### **Communications**

Subject to Cabinet decisions in this paper and related Budget 2019 decisions, communication relating to FFC will include the Government's decision to repeal Part 4A, change eligibility, increase pay rates for DSS FFC, and consider further policy change and stakeholder engagement.

The Ministry will also develop communications to help stakeholders understand what policy change will mean for them, and the intended implementation timeframes.

## **Section 7: Monitoring, evaluation and review**

### **7.1 How will the impact of the new arrangements be monitored?**

DSS financial and service monitoring will take place, with close monitoring of uptake and changes to allocation for other DSS supports to assess fiscal risk. The data on uptake is captured in the DSS database called Socrates – this will enable regular reports to be provided on the number of new applications. DHBs will continue to be funded for FFC through a Crown Funding Agreement variation, with a possible phasing to funding through Population Based Funding Formula (PBFF) overtime. This arrangement allows the Ministry to closely monitor the uptake and implement the changes.

The close monitoring of uptake is important as there is no completely accurate method to estimate uptake of these policy changes. However, feedback from NASCs will provide key information on uptake. Further consideration of safety and quality of FFC will be given prior to implementation (e.g. safeguarding the choice of disabled people, ensuring carers have access to support or training).

### **7.2 When and how will the new arrangements be reviewed?**

The initiative will be evaluated to check whether the health and support needs of disabled people are being met, that the costs are similar to professional carers and that safeguarding of the choice of disabled people is occurring.

The Ministry will monitor feedback from carers and disabled people about whether they feel better supported compared to the current situation. This monitoring may include an evaluation of funding and other matters 12 – 24 months post implementation. However, as the FFC population is very small and diverse, the Ministry anticipates it will be hard to derive any statistically significant conclusions about quality of care or outcomes for disabled people that this initiative will have.