

## Human Rights Review Tribunal Paid Family Caregivers case

You may have heard that the Human Rights Review Tribunal has made a declaration about the paid Family Caregivers case, which was heard in September 2008.

The claim was filed on behalf of the parents of disabled adult children who have provided long-term care for their children and two of those adult children. They were seeking a declaration from the Tribunal that the Ministry of Health policy not to fund the employment of parents, spouses and resident family members to provide paid care for disabled family members is discriminatory on the ground of family status, and is in breach of Part 1A of the Human Rights Act 1993 (HRA).

Currently Ministry of Health funded disability support services are provided to a disabled person to complement, not replace, their natural supports (such as those provided by parents, spouses and resident family members). It is not possible to fund the employment of those who provide natural support to disabled people within the current disability support services framework. The objectives behind the current policy are to:

- promote equality of outcomes for disabled people
- encourage the independence of disabled people
- avoid the risks that families become financially reliant on the income received for supporting their disabled family member
- avoid commercialising family relationships
- ensure that publicly funded services meet quality standards and can be monitored
- ensure financial sustainability.

The Government also recognises that families are the fundamental social unit in our society and do not want to disrupt that role by employing parents to care for their family members.

The Tribunal made a declaration, on Friday 8 January 2010, that the Ministry's policy of not funding the employment of specified family members to provide support services to their disabled family members discriminated on the ground of family status.

### **What does this mean?**

The Tribunal's decision has implications wider than the disability sector. It would affect people who receive and who deliver disability support services, and have implications on issues including needs assessments, standards, monitoring and quality control, access to services, employment and fiscal sustainability.

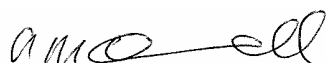
### **What happens now?**

The Solicitor-General makes the decision on whether or not to appeal. The Solicitor-General will consider the decision made by the Tribunal and the wider public interest when making his decision. The Ministry has 30 days to lodge an appeal (from 8 January 2010).

As it is not possible to fund the employment of those who provide natural support to disabled people within the current disability support services framework, any redesign of this framework would be a complex task that will take time to complete properly.

Crown Law on behalf of the Ministry of Health has made an application to suspend the effect of the declaration for 12 months from the expiry of all appeals. This allows time for the system to be re-designed should this prove necessary. It also means that there will be no immediate change in practice so disability support services will not be significantly disrupted in the interim.

We will keep you updated as things progress.

A handwritten signature in black ink, appearing to read 'Anne O'Connell', with a stylized flourish at the end.

Anne O'Connell  
Group Manager Disability Support Services  
Ministry of Health