

25 March 2021

Office of the Remuneration Authority  
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### **Elected member childcare allowance: Submission to remove eligibility criteria exclusions based on family status**

Hamilton City Council is seeking the Remuneration Authority's consideration of an amendment to the policy on childcare allowances to remove the current exclusion based on family status and make access to the childcare allowance more equitable.

Hamilton City Council considers the introduction of the childcare allowance in July 2019 to have been a positive leap forward in reducing barriers for people, in particular women, to enter elected positions in local government. In the spirit of removing barriers for previously underrepresented groups to enter elected positions, we are seeking the removal of the exclusion based on family status to improve equity of access to this allowance.

As it stands, section 14 of the *Local Government Members (2020/21) Determination 2020* specifically excludes childcare provided by someone who ordinarily resides with the member, or a family member who is within two degrees of relationship with the elected member as eligible for reimbursement. This excludes a spouse, civil union partner, de-facto partner, and any relative connected with the member within two degrees of relationship whether by blood or adoption.<sup>1</sup>

Family status is a prohibited ground of discrimination under the *Human Rights Act 1993* (HRA). The meaning of "family status" includes being married to or being in a civil union or de facto relationship with a particular person; or being a relative of a particular person.<sup>2</sup> In addition, the *Bill of Rights Act 1990* (BoRA) affirms every person's right to freedom from discrimination.<sup>3</sup> On these grounds, treating someone who provides childcare for an elected member while on official business differently depending on their relationship to the member, is *prima facie* discrimination.

While it is common for family and whaanau to provide childcare free of charge, the assumption that all family and whaanau can do so without compensation is limited and creates unfairness.

The maximum amount that can be reimbursed as a "contribution towards" childcare under this policy (\$6,000 per child, per annum) roughly amounts to 317 hours (nearly 8 weeks) per year.<sup>4</sup> This, in itself, is acknowledgement of the amount of childcare that may be required so that the elected member can remain engaged in local authority business. For family members who need to forfeit paid employment to provide this care, this represents an additional barrier to the elected member if they need to compensate them but cannot be reimbursed for this childcare.

The *United Nations Convention on the Rights of the Child*, which New Zealand ratified in 1993, states that:

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<sup>1</sup> [Local Government Members \(2020/21\) Determination 2020](#), section 14.

<sup>2</sup> Human Rights Act 1993, [section 21\(1\)\(l\)](#).

<sup>3</sup> Bill of Rights Act 1990, [section 19\(1\)](#).

<sup>4</sup> Based on the adult minimum wage of \$18.90 per hour.

*in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*<sup>5</sup>

In efforts to meet New Zealand's international obligations, Cabinet approved a work programme which includes considering the impacts of policy and legislation on children.<sup>6</sup> Removing the family status distinction in this regulation would give elected members the flexibility to make childcare decisions in the best interests of their child and family.

We also seek the following eligibility to be made clear in the regulation:

- recognition that a parent or guardian of a child may be as a birth, whāngai, foster, or adoptive parent or guardian;
- recognition that a member *who usually has responsibility for the day-to-day care of the child* can include a grandparent;
- replacing the text *“(other than on a temporary basis)”* with *“any time during the member’s tenure”* to reflect the reality that some elected members may become responsible for the day-to-day care of a child in a way that may be considered “temporary” under the current wording but nevertheless places them in a comparable situation to other elected members with responsibility for children who are eligible for the allowance.

We have drafted suggested amendments to the wording of section 14. This is provided in Appendix A.

In the application of the policy on childcare allowances, Hamilton City Council also seeks guidance from the Remuneration Authority on the following points:

- the threshold for what does and does not qualify as having ‘day-to-day care of the child’
- the appropriate rates of payment for eligible childcare arrangements; and
- the required evidence of childcare having been provided and payment for that childcare.

Equity of access to the childcare allowance is further restricted by the fact that it is optional for local authorities to adopt this policy and pay childcare allowances to eligible elected members. While many councils have adopted the childcare allowance, we are aware that some local authorities have not, which can cause inequity. Hamilton City Council would support the allowance being made mandatory to assist elected members across the country who need support for the children they care for.

While we acknowledge that the Remuneration Authority may anticipate some risks that are associated with our proposed changes, we submit that these should be considered with their mitigations and weighed against the benefits of removing the exclusion. The benefits are likely to include the following.

- Elected members who are parents would have greater flexibility to make childcare decisions in the best interests of their child/ren.
- Removing an additional barrier for parents and caregivers who serve or seek to serve on Councils, which in turn is likely to promote diversity in local government.
- Make the childcare allowance policy more consistent with BoRA and HRA.

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<sup>5</sup> United Nations Convention on the Rights of the Child (entered into force 2 September 1990) (ratified in New Zealand 6 April 1993), [article 3.1](#).

<sup>6</sup> Further information on this work programme, including a link to the Child Impact Assessment Tool is available at: <https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/resources/child-impact-assessment.html>.

- Minimising the risk of legal claims by removing the grounds to challenge this policy as discriminatory under the HRA.
- Meet and advance New Zealand’s international obligations including under the United Nations *Universal Declaration of Human Rights* and *Convention on the Rights of the Child*.

We submit that the necessary risk mitigations to protect the allowance from being mis-used are already present within section 14 of the *Local Government Members (2020/21) Determination 2020*. These are:

- that the expenses must be for “childcare provided while the member is engaged on local authority business”<sup>7</sup>;
- that “the member provides evidence satisfactory to the local authority of the amount paid for childcare”<sup>8</sup>; and
- that the maximum allowance is set at a total of no more than \$6,000 per annum, per child.<sup>9</sup>

This is the official view of Hamilton City Council adopted by Council resolution on 18 March 2021. Hamilton City Council requests that this matter be considered as part of the review of local government elected members remuneration and entitlements for the 2021/22 year.

If you have any queries or would like to discuss this submission, please contact our Policy and Bylaw Lead, Frances Cox-Wright, at [Frances.Cox-Wright@hcc.govt.nz](mailto:Frances.Cox-Wright@hcc.govt.nz).

Yours faithfully



**Richard Briggs**  
**Chief Executive**

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<sup>7</sup> [Local Government Members \(2020/21\) Determination 2020](#), section 14(1).

<sup>8</sup> Ibid, section 14(2)(d).

<sup>9</sup> Ibid, section 14(3).

## Appendix A – Suggested amendments to wording of section 14

### 14 Childcare allowance

- (1) A local authority may pay a childcare allowance, in accordance with subclauses (2) and (3), to an eligible member as a contribution towards expenses incurred by the member for childcare provided while the member is engaged on local authority business.
- (2) A member is eligible to be paid a childcare allowance in respect of childcare provided for a child only if—
  - (a) the member is a (birth, whāngai, foster, or adoptive) parent or guardian of the child, or is a person (including a grandparent) who usually has responsibility for the day-to-day care of the child any time during the member's tenure ~~(other than on a temporary basis)~~; and
  - (b) the child is aged under 14 years of age; and
  - (c) ~~the childcare is provided by a person who—~~
    - (i) ~~is not a family member of the member; and~~
    - (ii) ~~does not ordinarily reside with the member; and~~
  - (d) the member provides evidence satisfactory to the local authority of the amount paid for childcare.
- (3) A local authority must not pay childcare allowances to a member that total more than \$6,000 per annum, per child.
- (4) ~~In this regulation, *family member of the member* means—~~
  - (a) ~~a spouse, civil union partner, or de facto partner;~~
  - (b) ~~a relative, that is, another person connected with the member within 2 degrees of a relationship, whether by blood relationship or by adoption.~~