

Hon Judith Collins
Attorney-General
Parliament Buildings
Wellington

Tēnā koe,

Disability Support Services Bill: Seeking approval to draft ahead of Cabinet policy decisions

I am writing to seek your approval for the Parliamentary Counsel Office to commence work on drafting a Bill ahead of Cabinet Policy approval which may be progressed as Budget night legislation.

The urgency for this arises from the need to respond to recently identified Crown fiscal and litigation risks relating to Paid Family Carers, which are discussed further below.

The proposed Bill also addresses a longstanding need to define the purpose of the disability support system and related matters. The planned provisions would, if adopted, provide greater certainty and clarity for persons with disabilities and their whānau and families.

The fiscal and litigation risks stem from a December 2025 judgment by the Supreme Court in *Fleming v Attorney General* and *Humphreys v Attorney General* (the judgment). The Supreme Court found that the Ministry of Social Development was the employer of the two appellants who were paid family carers under the Disability Support Services system. The carers were paid via flexible funding allocated to Disability Support Services clients, who then used that funding to employ their family members to care for them. The funding policy did not intend or envision that the Crown would be the employer in those circumstances.

The Supreme Court judgment has commented on the boundary between state and family responsibilities for care. The Supreme Court has remitted, to the Employment Court, the assessment of unpaid wages with respect to Ms Fleming, using the Minimum Wage Act framework, including consideration of sleepovers and supervision. As a result, the judicial system is now essentially setting the precedents for who are employees of the Crown and how much the Crown must pay family carers.

A number of cases relating to flexible funding and family carers that have been stayed before the Employment Relations Authority will now progress.

I have been advised that the potential risks to the Crown could be over 450 million dollars

s 9(2)(h)

The Bill is proposed to also address the Crown's fiscal and litigation risk.

There is a very tight timeframe if the Bill is to be drafted and passed this Parliamentary year (and potentially on Budget night). Accordingly, I am writing to seek your agreement, in your role as Attorney-General, for the Parliamentary Counsel Office to begin working on the changes associated with Phase one ahead of the Cabinet policy approval (in accordance with the Cabinet Manual paragraph 7.52).

I look forward to your response, but I can meet you to discuss further before you reply if you consider that would be useful.

Ngā mihi,

Hon Louise Upston

Minister for Disability Issues