

Report

Date: 18 June 2026

To: Hon Louise Upston, Minister for Disability Issues

File Reference: REP/26/6/446

Security Level: In Confidence

Draft Departmental Report – DSS Bill

Purpose

1. This paper accompanies an extract of the early draft of the Departmental Report on the Disability Support Services (DSS) Bill. This extract includes a draft summary of key themes, issues and potential responses to written submissions. It does not yet include a clause-by-clause analysis.
2. The paper summarises some general observations on the written submissions analysed so far and signals some potential changes to the Bill for your visibility.

Executive summary

3. This report provides early insights from written submissions on the DSS Bill and signals potential amendments ahead of consideration by the Social Services and Community Select Committee (Committee). It is intended to inform discussion rather than seek decisions, with further advice to follow once all written and oral submissions have been analysed.
4. A substantial volume of submissions (3,430) indicates strong public interest¹. Most submitters oppose the Bill in its current form. Overall feedback reflects significant concern about trust, clarity, fairness, and the long-term sustainability of the disability support system. While the Bill aims to formalise existing settings and improve transparency, many submitters remain uncertain about its implications, particularly

¹ A public petition opposing the Bill has also received over 14,000 signatures. The petition is due to be handed over at Parliament on 2 July 2026.

given historical inconsistencies and recent system changes. There is widespread misunderstanding of DSS and how it currently operates.

5. A key theme is concern that the Bill could enable future reductions in support, particularly through perceived expansion of income and asset testing. Although such mechanisms already exist in limited contexts and there is no policy intent to expand them, submitters are concerned about their potential application without consultation.
6. There are also strong concerns about impacts on families, with carers highlighting existing pressures and the risk that the Bill could implicitly increase expectations on them, despite no new obligations being proposed.
7. Submissions also raise concerns about Treaty of Waitangi / Te Tiriti o Waitangi (Treaty) alignment and responsiveness to Māori, noting the absence of explicit references to the Treaty and Māori perspectives. While submissions did not identify any immediate disproportionate impacts, there is a clear expectation for stronger engagement and visibility of Māori interests in the framework.
8. We are currently considering recommending some amendments to respond to legal, policy, and perception risks. Pending discussion with you, a small number may require Cabinet approval, including:
 - 8.1. s 9(2)(f)(iv)
 - 8.2. providing greater certainty by excluding income and asset testing for specified supports such as personal care and respite.
9. Other refinements, suitable for the Committee process, include clarifying principles around the role of family support, strengthening consultation expectations (while retaining flexibility), and clarifying wording in the litigation bar provision.
10. There may be further changes that require Cabinet approval, and an Amendment Paper may arise during our ongoing analysis of submissions and following oral hearings.
11. Next steps include a discussing proposed changes with you, completing submissions analysis, and providing a revised Departmental Report, including the clause-by-clause analysis in early July. Should they be required, Cabinet decisions on any substantive amendments would be anticipated to occur in August.

Recommendations

It is recommended that you:

- (1) **agree** to provide feedback to officials on the draft Departmental Report by Monday 22 June 2026 **agree | disagree**
- (2) **note** that we will provide an updated draft of the Departmental Report and seek your decision on proposed changes to the Bill by Thursday 2 July 2026

(3) **note** that we have highlighted some changes that may require Cabinet approval and an Amendment Paper

(4) **discuss** with officials the proposed changes and the draft Departmental Report at the DSS Officials Meeting on 25 June 2026.

yes | no

Hon Louise Upston
Minister for Disability Issues

Date

Justine Cornwall
General Manager, Policy
Disability Support Services

Date

Introduction

12. This report accompanies an extract of the early draft of the Departmental Report on the DSS Bill (Bill). The clause-by-clause section is currently being prepared.
13. We are providing this now to:
 - 13.1. give early sight of themes from written submissions ahead of oral hearings
 - 13.2. signal key areas of potential changes to the Bill and provide initial advice to you on these and the appropriate mechanism required for any changes.
14. This report does not seek decisions. We are waiting to receive and analyse the remaining written submissions on the Bill and oral submissions before finalising our advice and recommendations.
15. The changes to the Bill signalled in this report are informed by:
 - 15.1. written submissions
 - 15.2. ongoing advice from and conversations with internal and external lawyers and the Ministry for Business, Innovation and Employment (MBIE)
 - 15.3. technical changes that were not possible during tight drafting process.
16. We anticipate that most of the changes will be managed through the Select Committee process. A small number of changes may require Cabinet approval and an Amendment Paper. This was indicated previously to you in advice updating you on timeline regarding the Bill [REP/26/6/418 refers].
17. We will discuss with you the key areas of potential changes to the Bill at the DSS Officials Meeting on Thursday 25 June.

Overview of written submissions

Breakdown of written submissions

18. Public submissions were open from 22 May 2026 to 12 June 2026
19. 3,430 submissions in total have been received by the Social Services and Community Select Committee (Committee).
20. The early draft Departmental Report reflects a full analysis of 1,379 submissions and a review of submissions from key stakeholders.
21. We will finalise our analysis of written submissions when we have received the balance of submissions from the Committee.

General observations from written submissions

22. Overall, most submitters do not support the Bill in its current form. However, many acknowledge and support the need for legislation for DSS.
23. Submissions reflect concern about trust, clarity, sustainability, and fairness in the disability support system. While the Bill aims to provide greater structure and

transparency, many submitters remain worried about its long-term implications for disabled people, families, and equity outcomes.

24. The Bill intends to formalise current DSS settings, as these have never been made clear. Submissions reflect an understandable misunderstanding of how DSS currently operates, given the historic lack of clarity and transparency.
25. Submissions indicate that some fundamental aspects of how DSS works are not well understood, including that:
 - 25.1. DSS is, and has always been, a contribution to care
 - 25.2. DSS is not an entitlement-based system
 - 25.3. the existing support a disabled person has, including family and whanau, is already considered as part of the needs assessment and funding allocation process
 - 25.4. certain supports in DSS are subject to means testing.

Disabled people are worried that existing services might change or reduce

26. Submitters expressed concern that the proposed Bill could lead to future reductions in disability support, even though the Bill itself does not change current services or funding allocations.
27. Many submissions highlighted a lack of trust in DSS and public services, shaped by past experiences, including recent changes to flexible funding (March 2024), historical inequities, and experiences such as abuse in care.
28. Fears about cuts to funding, including through perceived or potential means testing, were common. While the Bill is intended to improve transparency and consistency in funding decisions, submitters worry it may create conditions for future reductions.
29. Provisions allowing for ministerial programmes to include income and asset testing are included in the Bill because these are features of existing policy.² These provisions have been a focus for many submitters. Many believed that income and asset testing are not a feature of DSS and that they never have been. Indeed, many people who receive support from DSS will never encounter them.
30. Submitters were worried that income and asset testing could be introduced without consultation, and that this could reach extended families, including of adults. Some were worried that the Bill would restrict access to benefits.
31. There is an understandable level of misunderstanding of the provision that retains existing DSS policies for three years while ministerial programmes are established. Some submitters assume that in three years' time DSS will have an entirely new set of policies and settings. This is contributing to concerns about future changes to services.

² Note that as a technical amendment in the departmental report, we propose to clarify that a ministerial programme may rely on an entitlement card issued under regulations made under s 437 of the Social Security Act – DSS uses the Community Services Card as a proxy for financial need.

This is not correct. The ministerial programmes will reflect current programmes and services, but will have been transferred into the new form.

32. The Bill is designed to stabilise DSS and reduce disruption, not reduce support. It introduces a clearer legal framework, following identified weaknesses in financial management and sustainability. Ministerial programmes provide for a higher degree of parliamentary oversight and scrutiny of decision-making than is currently the case.
33. Recent government investment is evidence of continued commitment. However, past inconsistency and poor transparency have contributed to ongoing uncertainty for disabled people and their families.
34. The Bill also intends to make existing settings more transparent and easier to understand by enabling them to be transitioned into ministerial programmes as secondary legislation.

Families are doing their best for disabled people in their lives

35. A major theme across submissions is the pressure on families and carers. Many described lifelong caregiving responsibilities that impact their wellbeing, finances, and broader lives. There is strong concern that the Bill could increase expectations on families to provide care. The Bill does not introduce any new obligations for families.
36. Submissions also highlight that not all families are able to provide constant care, and that safety, sustainability, and choice are critical. Work is underway to better support carers, including improved assessment tools, consultation on respite care, and development of a new support package aligned with the New Zealand Carers' Strategy.

People are confused about the different ways the government funds disability support

37. There is widespread confusion about how disability support is funded and allocated. Many submitters appeared to believe DSS is an entitlement-based system, where assessed need should directly determine funding levels. In reality, DSS is an eligibility-based system operating within appropriated funding. This means people may be assessed as eligible but are not guaranteed specific levels of support.
38. The Bill aims to clarify this distinction and improve transparency of how the system works. This may not align with public expectations of a rights-based framework, however, shaped by the UN Convention on the Rights of Persons with Disabilities (UNCPRD).

Submitters questioned the Government's commitment to Māori and believe that the Bill is inconsistent with the Treaty of Waitangi

39. Concerns were also raised about the Bill's alignment with the Treaty of Waitangi / Te Tiriti o Waitangi (Treaty) and its responsiveness to Māori. Submitters argued the Bill does not adequately reflect Māori values, lived experiences, or collective approaches to care, and lacks explicit Treaty provisions.
40. The Bill is a high-level framework and does not change current services. However, the absence of explicit Treaty provisions may create uncertainty. A Treaty Impact Analysis

found no immediate disproportionate impacts but highlighted the need for ongoing monitoring and stronger Māori engagement going forward.

The disability community feel strongly that they should have been consulted in the development of the Bill

41. Submitters raised consistent concerns about the lack of consultation on the Bill, including the Committee process. This includes the written submission timeframe being too short, limiting the disability community's ability to provide informed feedback. Barriers to accessible formats and processes further constrained engagement.
42. There was strong support for co-designing any revised Bill with the disability community. Submitters also questioned whether the development process met New Zealand's obligations under the UNCRPD, particularly Article 4(3), which requires close consultation and active involvement of disabled people in decision-making.
43. Overall, submissions highlighted high expectations for participation, transparency, and inclusivity in decisions relating to DSS.
44. The Bill was developed under tight timeframes following Cabinet direction to accelerate work establishing a legislative framework for DSS in response to risks arising from the Supreme Court decision. These risks included legal uncertainty, potential expansion of funding or employment obligations, and unplanned pressures on the system that could disrupt continuity of care. The need to mitigate these risks required policy development and drafting to proceed at pace, limiting opportunities for broad public consultation across all aspects of the Bill and reducing access to engagement through fully accessible formats. Significant elements of the Bill design were also legally sensitive.
45. While the UNCRPD emphasises close consultation with disabled people, it does not prescribe specific processes or timeframes and must be applied in context. In this case, the urgency of responding to legal and system risks constrained consultation during policy development. Ongoing consultation with disabled people, whānau, and representative organisations will remain important in future policy development and implementation work for DSS.

Availability of information to help submitters understand the litigation risk

46. Several submitters noted that it is difficult to fully assess the scale and nature of potential litigation and fiscal risks to the Crown where legal advice was withheld. Views differed, with some – including members of the legal profession – suggesting a narrower interpretation of the relevant Supreme Court decision may be available that would lead to lower fiscal and legal risk than that reflected in publicly released material, while others assumed broader impacts.
47. There are limits on what information can be disclosed, as legal and negotiation privilege must be maintained under the Official Information Act 1982 to protect the Crown's legal position, particularly where litigation is ongoing or anticipated. In balancing transparency with these protections, MSD has drawn on internal and external legal advice, including from Crown Law, and worked with agencies such as the Treasury,

MBIE, and the Ministry of Justice to assess litigation risks and wider implications, including access to justice.

Key potential amendments to the Bill

48. We are considering recommending some amendments to the Bill, following consideration of the written submissions to the Committee, as well as ongoing advice and engagement with MBIE and internal and external legal counsel.
49. Most of these amendments are either technical, to correct drafting issues or fall within the existing scope of policy decisions on the Bill and so can be managed through the Committee process.
50. A small number of these amendments may require Cabinet approval and an Amendment Paper.

Amendments that may require Cabinet approval and an Amendment Paper

s 9(2)(f)(iv)

51. s 9(2)(f)(iv)

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57. s 9(2)(f)(iv)

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59.1. s 9(2)(f)(iv)

59.2.

60. s 9(2)(f)(iv)

Safeguards around potential use of income and asset testing

61. Many submitters proposed either that income and asset testing should not be allowed for by ministerial programmes, or that a programme including them should be subject to Parliamentary confirmation.
62. You have emphasised to the public that there are no plans to expand the use of income and asset testing in DSS, which are a longstanding feature of how DSS allocates funding for certain supports.
63. To provide greater certainty to disabled people you could reflect this commitment in the Bill in a targeted way. For example, you could exclude the possibility of introducing income and asset testing, or the use of an entitlement card, in relation to specific supports such as personal care and respite.
64. There would be some complex and substantial policy issues to work through to develop this provision, and some trade-offs to consider. For example, it places constraints on the financial controls available to future governments and may intersect with other financial support settings, for example through Work and Income
65. Such a provision would also pre-empt more considered policy work on funding model and allocation settings across the system. It would also require a detailed analysis of how effective means testing would be to manage costs.
66. Restricting the use of means testing in the Bill would require Cabinet authority and an Amendment Paper.
67. An alternative option to respond to concerns regarding means testing could be to include a provision in the Bill that mandates consultation on any proposal to expand the

use of means testing. A provision of this nature could be progressed through the Committee.

Key amendments to the Bill that can be made through Committee

Consultation on changes to settings

68. Many submitters raised concerns that the Bill does not guarantee consultation to align with commitments under the UNCRPD. Principle 4(3) provides:

In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.

69. The approach in the Bill aligns with the Social Security Act 2018 model and relies on administrative rather than statutory consultation. In practice, DSS matters normally involve consultation unless urgency prevents it.
70. Not including a provision for mandatory consultation in the Bill provides flexibility to consult as appropriate and not be constrained where there is an urgent need to make a change to a programme.
71. While a mandatory consultation provision would limit flexibility, we note that targeted consultation could be done quickly as the need arises. Ministerial programmes need Cabinet policy approval, and therefore changes could still be made within months.
72. If you wish to include a provision for consultation in the Bill, we recommend providing that the Minister, as they consider appropriate, consults with key stakeholders. This would align with the UNCRPD, existing practice and other legislation while retaining flexibility to make technical changes that do not impact on service provision or that are urgent.
73. We have set out the other options that were considered for how to respond to concerns about consultation at a high-level in the Appendix.

Reorienting the principle that DSS takes account of support available to an eligible person

74. Many submitters recommended either removing, or including limits on, two principles in the Bill. These principles are:
- 74.1. that family have responsibility in the first instance for the wellbeing of their members
- 74.2. a disabled person should use their resources or other services before receiving support from DSS³.

³ Clause 8 sets out 2 principles that the Ministry and contracted providers must take into account when making decisions about the provision of DSS-funded disability support services. The principles are that—

75. Submitters were concerned that, as currently worded, the provisions may mean an unbounded obligation on family to provide care, the impacts of providing care are not considered, and may restrict choice of living arrangements for disabled people.
76. We continue to consider these provisions are required. However, we recommend making clarifications that reduce the potential for misinterpretation.
77. We propose reorienting the second principle to focus on DSS's contribution, more closely in line with the General Policy Statement and clarify that allocation of DSS-funded disability support services should:
- 77.1. take resources and support into account where and to the extent appropriate
- 77.2. and have regard to the preferences of the eligible person in doing so.
78. We have not proposed to include further guidance regarding where, and to what extent, it is appropriate for DSS to take account of family support on the basis that it could limit future decision-making.

s 9(2)(h)

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- families, whānau, and other culturally recognised family groups, where appropriate, have responsibility in the first instance for the wellbeing of their members; and
 - before being provided with DSS-funded disability support services, an eligible person should, where appropriate, use their resources and any other support that is available to them, including from—
 - other publicly funded sources; and
 - their family, whānau, or other culturally recognised family group; and
 - their community.

Other changes to employment provisions to clarify and strengthen them

84. We will likely recommend that you agree to some minor and technical changes to employment provisions in the Bill in the Department Report. These are not anticipated to require an Amendment Paper.
85. This follows further work between MBIE and MSD. The changes include minor amendments to make it clear what an intentional employment relationship is, providing for clarity across the clauses that the employment relationship is between the disabled person and their carer. The aim of these changes is to further clarify and strengthen the Crown fiscal and litigation risks arising from employment-related matters.
86. We do not propose to include further detail in the Bill regarding the new support package. We will continue to work with Inland Revenue on the payment component regarding the best approach to taxation, which can be clarified in the next omnibus tax bill.

Next steps

Select Committee Process

87. Officials will brief you on the proposals in this paper at the DSS Officials meeting on 25 June 2026.
88. Oral hearings are scheduled for 23-25 June 2026.
89. The Departmental Report will be updated following the completion of analysis of written submissions and the oral submissions.
90. A revised draft of the Departmental Report will be provided to you on 2 July 2026, including the full clause by clause analysis. This will need to be provided to the Clerk of the Committee by 10am Monday 6 July.
91. It is anticipated that the Committee will consider the Departmental Report on the 8 July 2026

Cabinet paper seeking further decisions

92. Should you agree that certain proposed changes to the Bill will need Cabinet approval we are planning a paper to be considered by the Cabinet Legislation Committee and subsequently Cabinet by 3 August 2026.
93. We will provide advice on these changes and a draft Cabinet paper by 10 July 2026.

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Appendix: Other options considered for responding to concerns about consultation

Option	Pros	Cons
Option one (recommended): The Bill provides for consultation as the Minister considers appropriate with key stakeholders.	Would address calls for mandatory consultation requirement. Aligns with UNCRPD.	Risk of judicial review around who is what is 'key stakeholders'.
Option two: create a minister appointed advisory committee that provides advice on ministerial programmes.	Would address calls for mandatory consultation requirement. May align with UNCRPD depending on nature.	Unusual provision in primary legislation. Advisory groups are normally appointed based on knowledge and skill rather than providing representation. May be preferable to look at sector input in the development of phase 2 legislation from a wider perspective. Likely to cost around \$200,000 per annum.
Option three: require the Ministry to establish an advisory committee to consult with on the development of a ministerial programme.	Would address calls for mandatory consultation requirement. May align with UNCRPD depending on nature.	Sector may prefer to be a ministerial group to ensure a minister considers their views on a ministerial programme. Likely to cost around \$200,000 per annum.
Option four: Provide for consultation in the DSS Bill on means testing.	Would respond to concerns about risk of means testing introduced without consultation.	Would not address calls for mandatory consultation requirement.
Option five: Public consultation.	Most inclusive. Aligns with UNCRPD.	High cost that may outweigh benefit. Would need to extend 3 year transition period to 4 years to accommodate the time involved in such an approach.
Option six: Create an advisory group or use an existing advisory group to review ministerial programmes but not put it in legislation.	May align with UNCRPD depending on nature. Does not impact on the potential development of sector mechanisms in phase 2.	Does not address calls for mandatory consultation requirement Likely to cost around \$200,000 per annum.