

Title of paper	Strengthening Disability Support Services: Policy decisions to establish a legislative framework
Minister and agency	Hon Louise Upston, Minister for Disability Issues Ministry of Social Development (MSD)
Description	This paper proposes a new Disability Support Services (DSS) Bill, to be introduced before the General Election 2026, to achieve two objectives: - Establish foundational legislation for DSS, which currently has no dedicated legislative framework; and - Respond to recent “paid family carers” litigation¹ (the judgment) in which the Supreme Court found that two family members providing care to their respective disabled relatives are employees of MSD, s (9)(2)(g)(i) The paper also outlines work underway to develop a new Carers’ Support Package, s 9(2)(f)(iv) s (9)(2)(g)(i)
Comments	Overall, we support a DSS Bill. The proposed legislation seeks to clarify policy intent and address the significant fiscal risk created by the Supreme Court judgement. s 9(2)(j) Treating paid family carers as employees of MSD would significantly expand DSS’s role, which currently operates as a devolved model without carers employed directly by MSD. We recommend you provide feedback to Hon Upston about the following two issues: Foundational DSS legislation A rapid Bill to create foundational DSS legislation risks enshrining DSS entitlements in legislation inflexibly s (9)(2)(g)(i) We recommend you seek assurances from Hon Upston that the Bill will not increase cost pressures for DSS. Retrospective legislation The paper outlines a choice for Cabinet, to make the legislation: - Retrospective - extinguishing s 9(2)(h) pending claims filed with the Employment Relations Authority, s 9(2)(j) - prospective only – saving existing claims. s 9(2)(j) MSD’s view on the legal implications of the choice above is outlined in paragraph 52. Our advice to you, outlined below, focusses instead on the fiscal implications. Cabinet should consider both the legal and fiscal implications in making a decision. The paper does not clearly outline the fiscal treatment of the s 9(2)(h) pending claims – i.e. to what extent DSS could manage costs within baselines or if they would impact OBEGALx.⁴ To support Cabinet’s decision on retrospectivity, we recommend you ask

¹ *Fleming v Attorney-General* [2025] NZSC 188.

² s (9)(2)(g)(i)

³ s (9)(2)(g)(i)

⁴ s9(2)(j)

	Hon Upston to include detail in the paper about the fiscal impact of existing claims, including to what extent costs can be met within DSS baselines or require additional funding.
Consulting Minister's due date	12pm, Wednesday 25 March
Cabinet or Cabinet Committee	SOU, 1 April 2026
Fiscal implications	s 9(2)(j) [REDACTED] to meet one-off costs of s 9(2)(h) claims already filed with the Employment Relations Authority. Alternatively, if Cabinet decides against legislation entirely, s 9(2)(j) [REDACTED] [REDACTED]
Recommended action	As above, we recommend you provide feedback to Hon Upston, requesting: - Assurances that enshrining DSS entitlements in legislation will not increase cost pressures for DSS, and - Information in the paper about the fiscal treatment of the costs of any existing claims, to inform Cabinet's decision about retrospectivity.