



Report

Date: 25 March 2026
To: Hon Louise Upston, Minister for Disability Issues
File Reference: REP/26/3/223
Security Level: In Confidence

Final Cabinet paper for lodgement: Strengthening Disability Support Services

Purpose

Your approval is sought to lodge a Cabinet paper seeking agreement to accelerate action to further stabilise and strengthen the Ministry of Social Development's (MSD) funded Disability Support Services (DSS) through development of a DSS Bill and new support for DSS carers.

Recommended actions

It is recommended that you:

- (1) **agree** the attached Cabinet paper, "Strengthening Disability Support Services – Policy decisions to establish a legislative framework for funded disability support", be submitted for the Cabinet Social Outcomes Committee meeting on 1 April 2026. **agree | disagree**

Justine Cornwall

Justine Cornwall
GM, Disability Support Services Policy

Date

Hon Louise Upston
Minister for Disability Issues

Date

Executive Summary

1. The draft Cabinet paper Strengthening Disability Support Services: Policy decisions to establish a legislative framework was circulated for agency consultation from 18 March to 23 March 2026 and Ministerial consideration from 18 March to 25 March 2026.
2. There were no comments on the paper from the National Party or New Zealand First. Your office has received comment from the Minister for Workplace Relations and Safety's office.
3. We received feedback from the following agencies: Oranga Tamariki, The Treasury, Te Puni Kōkiri (TPK), and the Ministries of Business, Innovation and Employment (and for Accident Compensation policy), Disabled People, Justice, Health (and Health NZ), Education, Ethnic Communities, Pacific Peoples, Social Development, and Women.
4. There are two substantial areas that came through the agency feedback that we would like to highlight to you: concern about continuing the employment model for paid family carers, and possible inconsistency with the New Zealand Bill of Rights Act 1990 (BORA). On these matters we received requests from agencies for significant additional detail to be included in the Cabinet paper. We have endeavoured to address this within the length constraints of a Cabinet paper (see below) and will provide further relevant material on these issues in the aide-memoire to support you at the Cabinet Social Outcomes Committee.
5. The Ministry of Health and Oranga Tamariki s (9)(2)(g)(i) [REDACTED]
[REDACTED]
[REDACTED] This is not the intent of the Bill nor would it be consistent with the proposed scope of the Bill. We have noted in the paper the need to continue to work closely with officials from other agencies to support them to assess what if any actions they made need to consider with respect to their activities.
6. Other feedback noted population impacts, the basis for taking immediate action with the DSS Bill, potential pressure on the courts, and limited consultation with affected communities. Several agencies were interested in being involved in development of new support for DSS carers.

The employment model is not appropriate for paying family carers

7. The Ministry of Business, Innovation and Employment (MBIE) provided feedback that using an employment model for the relationship between a disabled person and their family carer is generally not appropriate. The Bill will address the Crown's liability and most associated fiscal risk arising from the recent Supreme Court Judgment (the judgment). However, the employer liability will stay with the disabled person who employs their family carer using flexible funding. It is important to note that this is not a new risk, it's a continuation of the status quo and we acknowledge the unsatisfactory aspects but have a plan to address these as set out below.
8. We have commenced work to develop an alternative model for funding family carers, s 9(2)(f)(iv) [REDACTED] This will take time to develop and cost the policy advice and, if agreed by Cabinet, design the model and prepare for implementation. We have reinforced in the paper that there is a plan s 9(2)(f)(iv) [REDACTED]

s 9(2)(f)(iv) so that more appropriate arrangements are in place for family carers.

9. MBIE also raised concerns regarding the proposal regarding a 'carve out' of paid family carer arrangements from the Minimum Wage Act 1983. [OBJ] We have agreed with MBIE to recommend that the carve-out is . [OBJ] This is justified on the grounds that it will take time to develop and design an alternative model for family carers, and then to transition them out of existings [OBJ]. s 9(2)(f)(iv)

10. s 9(2)(f)(iv) This will include developing a specific Ministerial programme with the involvement of carer and affected disabled people's representative organisations. Communications on the DSS Bill will signal that an enduring model is being developed. Changes made to the cabinet paper on these points have been discussed with MBIE and they have indicated that the paper better addresses their concerns in this regard.

11. On advice from MBIE, it is proposed that MSD and its supporting agencies are not 'persons involved in a breach' for liabilities for penalties and arrears under the Employment Relations Act 2000. This protects the Crown against any other employment-related claims that parties might be able to establish (e.g. under the Holidays Act, Wages Protection Act, etc). It reinforces that the Crown is not liable for the employment relationship between the disabled person and the carer. This new recommendation has been added into the Cabinet paper.

12. s 9(2)(h) We consider these risks to be much less significant than the risks arising from abruptly ending the use of employment to pay family carers or maintaining the status quo. The limitation of the Crown of 'persons involved in a breach' would protect the Crown from being drawn into penalties in these matters.

Inconsistency with BORA

13. The Ministry of Justice (MoJ) has provided feedback on our initial BORA analysis. [OBJ]

s (9)(2)(g)(i)

14. We acknowledge that there are elements in the proposals which include treating people differently based on needs and circumstances. However, we consider this differential treatment is justified under section 5 (demonstrably justified) and section 19(2) of BORA (measures taken in good faith for the purpose of assisting or advancing persons or groups of persons disadvantaged do not constitute discrimination).

15. The justification is focused on:

- 15.1 the Supreme Court judgment creating uncertainty that may lead to a break down in care arrangements which would directly and negatively impact on the wellbeing of DSS users, which would be contributed to by creating uncertainty regarding the employment status of family carers and loss of confidence in the disability support system
- 15.2 directly undermining Government's ability to target resources where it considers they are needed, based on assessment of needs and circumstances and within available funding
- 15.3 a potential reduction in services to disabled people if the costs arising from employment claims have to be met from within existing funding.

16. Accordingly, we stand by our assessment is that the proposals are justified under section 5 and section 19(2) of BORA, and necessary to both assist and advance disabled people and their carers and are therefore not inconsistent with the BORA. We have referenced the MoJ's concerns in the Cabinet paper but we have not modified any of the relevant proposed recommendations.

17. We will include material on the MOJ concerns and our position in the Aide Memoire to support you at the Cabinet Social Outcomes Committee. We are also directly engaging with officials at MOJ to better understand their concerns and how they can be addressed through the legislation drafting and accompanying Cabinet Paper process.

Addressing other feedback raised by agencies

Policy proposals on retrospectivity, litigation bar and the right to justice

18. The Ministry of Disabled People commented that the Cabinet paper does not recognise that retrospectivity would remove the ability for some family carers to benefit from the additional support. The disadvantages of the approach have been discussed in the Regulatory Impact Statement.

19. Te Puni Kōkiri (TPK) agreed that new cases filed after the Bill is introduced should be subject to the retrospectivity provisions and argued for all current and pending claims from family carers are saved. TPK is concerned that if cases are extinguished, then it takes away people's rights and undermines public confidence in the justice system. This reflects one of the options on treatment of current and pending cases outlined in the Cabinet paper.

20. Treasury questioned the evidence for the potential funding implications if retrospectivity and extinguishing the claims are not agreed to by Cabinet and the implications for MSD's baseline and to what threshold would costs could no longer be met by MSD. Other Agencies also asked us to provide more detail on the imperative to act now and the rationale for the litigation bar. We have clarified in the cabinet paper that the proposals take a precautionary approach to get ahead of what we consider to be highly probable fiscal risk, rather than wait until family carers seek individual court determinations of their claims. s (9)(2)(g)(i)

s (9)(2)(g)(i)

21. The Treasury was also concerned that the DSS Bill may require new funding or reprioritising of current work priorities for implementation. We have made it explicit in the Cabinet paper that there are no direct financial implications arising from implementing the proposed policy decisions (aside from costs that may be associated with successful claims s 9(2)(h)). Work on transitional and other related operational matters will be phased within resources available. We have noted that we will provide advice on costs of, and seek agreement to, the DSS carers support package later this year.

More recognition of the contribution of family carers

22. Oranga Tamariki commented that the framing of resetting expectations that families are responsible for caring for their disabled family members in the first instance could be read as meaning the Crown will not care for disabled people even where families are unable or unwilling to care for them. It also noted the possibility this could mean disabled people (including children) are at risk of abuse or neglect by family members who don't want to or can't provide care. We do not support this interpretation. We have added a clarification in the Cabinet paper to highlight where it is not appropriate for families to provide care or they are not able to. While the description of 'in the first instance' implies some consideration by DSS of the needs and circumstances of a disabled person, we agree that the qualification will avoid confusion of the intent.

23. Some agencies have expressed interest in working collaboratively on the DSS carer support package as it could have implications for the populations they serve. s 9(2)(f)(iv)

We intend to work with relevant agencies as we progress our policy work on carer supports and have noted this in the Cabinet Paper.

24. The Ministry for Disabled people sought clarification on whether the carer package will be managed within baseline and will be counted against a disabled person's funding allocation. If so, the Ministry was concerned this would mean that the support available to disabled people would be reduced. s 9(2)(f)(iv)

Advice on costs will be provided alongside recommendations for policy decisions on the DSS carer support package in December 2026.

Clarifying that proposals apply just to DSS and not to wider agencies

25. Agencies including Health and Oranga Tamariki misinterpreted elements of the proposals as applying to them, specifically some of the legislative provisions, including employment status of Oranga Tamariki caregivers, and the proposed carer support package. We have made clear in the paper that these provisions only apply to DSS users, and carers of DSS users.

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

s 9(2)(f)(iv)

Working together to address wider implications on the Crown

27. Agencies including Ministry of Health, MBIE (for ACC policy), Ministry for Women and Oranga Tamariki have expressed an interest in working closely with DSS on different aspects of the proposals. We have noted this and will involve wider agencies as part of our work on Phase 2 legislation and development of the new support package for carers. We have also noted these implications in more detail in the Regulatory Impact Statement.

s 9(2)(f)(iv)

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

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

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

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

Pressure on the courts system

29. MoJ raised resourcing impacts on the Family Court arising from increased applications for orders under the Protection of Personal and Property Rights Act 1988. We have already engaged officials from MoJ on this point and will continue to work them. We note that time has been built in to enable us to manage the transition to more appropriate arrangements, particularly where disabled people lack decision making capacity, which will mitigate impacts relating to demand on the Court system. We also note that the proposed litigation bar and retrospective provisions will have the effect of reducing the impact on other parts of the courts system.

Extent of consultation

30. Some agencies commented on the lack of opportunity for consultation with affected communities, including references to that being inconsistent with the obligation in the Convention on the Rights of Persons with Disabilities to actively involve and closely consult representative organisations of disabled people on matters that impact on them.
31. The restrictions on consultation have been noted in the paper. There is an explicit commitment to involve the community in the further development of proposals, including work on eligibility settings and the future approach to supporting carers.

Next steps

32. If you agree, the attached Cabinet paper will be submitted for the Cabinet Social Outcomes Committee meeting on 1 April 2026. The deadline to lodge the Cabinet paper is by 10 am, 26 March, 2026.
33. We will provide an Aide-mémoire by 27 March 2026 to support you at the Cabinet Social Outcomes Committee. This will include talking points and a summary of feedback from Ministerial and departmental consultation.

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