TE TAI ŌHANGA
THE TREASURY

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Date: 27 March 2026

To: Minister of Finance (Hon Nicola Willis)

Deadline: SOU 1 April 2026
(if any)

Aide Memoire: Strengthening Disability Support Services: Policy Decisions to Establish a Legislative Framework – PreCab Briefing

Purpose

This Aide Memoire provides our advice about the Minister for Disability Issues' paper, "Strengthening Disability Support Services: Policy Decisions to Establish a Legislative Framework," to support you at SOU on 1 April. We are providing our advice outside of the weekly "Briefing for Cabinet and Cabinet Committees" Treasury Report due to the legal sensitivity of the Cabinet paper.

Description

The paper proposes a new Disability Support Services (DSS) Bill,[1] 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" litigation[2] (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) [redacted]

The paper also outlines work underway to develop a new Carers' Support Package [redacted] s (9)(2)(g)(i) [redacted]

Comments

Overall, we support a DSS Bill, because it will clarify policy intent and address the significant fiscal risk created by the judgment. s 9(2)(j) [redacted]

1 This would repurpose an existing DSS Bill already on the 2026 Legislative Programme.

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

3 s (9)(2)(g)(i) [redacted]

There is, however, some risk associated with the Bill. A rapid Bill to create foundational DSS legislation risks enshrining DSS entitlements in legislation inflexibly s (9)(2)(g)(i) [redacted]. MSD will have to carefully consider these risks while working with the Parliamentary Counsel Office to draft the Bill.

s 9(2)(h) s 9(2)(j) [redacted] As such, there is also a decision requested of Cabinet for how to manage these claims; namely, whether to make the legislation:

- retrospective – extinguishing the pending claims and s 9(2)(j) [redacted] or
- prospective only – allowing these claims to progress and meeting the resulting costs of any judgements.

The paper outlines the legal implications of retrospectivity at paragraphs 56-57. Any decision by Cabinet should balance the legal and fiscal implications. We have focussed solely on the latter, as below.

The paper does not clearly outline the fiscal treatment of the s 9(2)(h) [redacted] pending claims if Cabinet chooses prospective legislation only – i.e. estimated costs and the extent to which MSD could manage those within baselines. s 9(2)(j) [redacted] decisions by the Employment Court. s 9(2)(j) [redacted]

Treasury Recommendation: Support a DSS Bill.

As part of a DSS Bill, we recommend Cabinet considers both the legal and fiscal implications of its decision about retrospectivity – including MSD's ability to absorb the one-off costs of any saved claims.

Fiscal Implications

s 9(2)(j) [redacted] to meet the cost of s 9(2)(h) [redacted] claims already filed with the Employment Relations Authority.

Alternatively, if Cabinet decides against legislation entirely, s 9(2)(j) [redacted]

Callum Finn Reason, Analyst, Social Sector, Communities and Learning, s 9(2)(a) [redacted]
Claire Howard, Unit Manager, Social Sector, Communities and Learning,

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4 MSD proposes to only consult select disability representatives in the preparation of the Bill, rather than the community as a whole.

5 MSD transferred $176 million from 2025/26 to 2026/27 due to projected underspends in Vote Disability Support Services s 9(2)(f)(iv) [redacted]