

Sensitive

Office of the Minister for Disability Issues

Cabinet Social Outcomes Committee

s 9(2)(j)

Proposal

- 1 This paper seeks Cabinet agreement to s 9(2)(j)
- 2 This follows the Supreme Court decision in December 2025 in *Fleming v Attorney-General and Humphreys v Attorney-General* [2025] NZSC 188 that established that Ms Fleming and Mr Humphreys are employees of MSD for the care they provide to their adult disabled family members.

Relation to government priorities

- 3 This proposal requires Cabinet approval in line with Cabinet Office circular *CO (18) 2: Proposals with Financial Implications and Financial Authorities*.

Executive Summary

- 4 The DSS Bill [CAB-26-MIN-0115 refers], as currently drafted, saves the claims of Ms Fleming and Mr Humphreys due to their success in the Supreme Court and extinguishes any pending claims by other family carers that have been filed in the ERA and Employment Court, but not resolved or determined, before the commencement date.
- 5 s 9(2)(j)
- 6 There are a total of s 9(2)(h) pending claims by other family carers. Since the introduction of the Bill, s 9(2)(h) s (9)(2)(g)(i)
- 7 s 9(2)(h) Any such decision would entitle

the claimants to seek remedies for backdated benefits and costs in the employment context.

- 8 s 9(2)(j) [REDACTED]
- 9 It is important to note that these are backdated claims. Should the pending claims be successful and employment status is granted, the employment relationship with MSD remains and MSD is responsible for their current and future remuneration.
- 10 s 9(2)(j) [REDACTED]
- 11 s 9(2)(j) [REDACTED]

Background

- 12 With Cabinet's agreement in April 2026 [CAB-26-MIN-0115 refers], I have accelerated work to strengthen Disability Support Services (DSS) by developing a DSS Bill (the Bill) that will establish a foundational framework to address existing vulnerabilities in the system, provide an enduring platform that sets the parameters for how appropriated funding is used, and mitigate the risk of ongoing litigation.
- 13 The Bill clarifies that there is shared responsibility in the care of disabled people between the State and natural supports where those are available. This includes support ordinarily expected to be provided by family, whānau or broader social networks, or other funders of disability support.
- 14 I do not consider that employment is an appropriate model for paying family carers and it was never the policy intent for the Crown to be the employer of family carers. The employment relationship is inappropriate, impracticable to administer, and raises operational challenges and fiscal risks.
- 15 I have directed MSD to develop a new support model for carers to address the underlying drivers of ongoing litigation. It will enable an alternative mechanism for paying DSS family carers, so that they can transition from an employment relationship to more suitable arrangements.
- 16 The Bill also addresses the specific issues arising from the judgment that established an employment relationship between two paid family carers and the Crown. The Bill clarifies that families have responsibility in the first instance for the wellbeing of family members (where available and if it is appropriate to do so).
- 17 As currently drafted, the Bill also includes provisions to extinguish other pending claims that have been filed, but not yet resolved or determined, before the commencement date.

18 s 9(2)(h) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Analysis

19 s 9(2)(h) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

20 Any future decisions by the courts on hours “worked” by the family carers will set a precedent on the balance of responsibility between families providing care to disabled family members and the Crown. s 9(2)(j) [REDACTED]
[REDACTED]
[REDACTED]

21 s 9(2)(j) [REDACTED]
[REDACTED]
[REDACTED]

22 s 9(2)(j) [REDACTED]
[REDACTED]
[REDACTED]

23 s 9(2)(j) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

s 9(2)(j) [REDACTED]

1 s 9(2)(j) [REDACTED]
[REDACTED]
[REDACTED]

1.1 s 9(2)(j) [REDACTED]
1.2 [REDACTED]
1.3 [REDACTED]
1.4 [REDACTED]
1.5 [REDACTED]

24 s 9(2)(j) [Redacted]
[Redacted]
[Redacted]

Cost-of-living Implications

25 This proposal has no cost-of-living implications.

Financial Implications

26 s 9(2)(j) [Redacted]
[Redacted]
[Redacted]
[Redacted]

27 s 9(2)(j) [Redacted]
[Redacted]
[Redacted]

28 s 9(2)(j) [Redacted]
[Redacted]
[Redacted]

Legislative Implications

29 As outlined in the paper, this proposal is related to the DSS Bill that was approved by Cabinet and introduced to the House on 18 May 2026 [CAB-26-MIN-0171 and LEG-26-MIN-0083 refer].

Use of external resources

30 s 9(2)(j) [Redacted]
[Redacted]
[Redacted]

Consultation

31 The following agencies were consulted on this proposal: Crown Law, Department of Education, Inland Revenue, Oranga Tamariki, The Treasury and the Ministries of Business, Innovation and Employment; Disabled People; Health; and Justice. The Department of Prime Minister and Cabinet and the Public Service Commission were informed. Crown Law's advice on the proposal is included as Appendix 1.

Communications

32 s 9(2)(j) [Redacted]
[Redacted]
[Redacted]

Proactive Release

33

s 9(2)(j)

Recommendations

The Minister for Disability Issues recommends that the Committee:

- 2 **note** that following the Supreme Court decision in *Fleming v Attorney-General* and *Humphreys v Attorney-General* [2025] NZSC in December 2025, family carers deemed to be employees of the Ministry of Social Development (MSD) can seek remedies for other benefits and costs in the employment context, dated back to the deemed start date of their employment.
- 3 s 9(2)(j)
- 4 **note** that the DSS Bill, as currently drafted, saves the claims of the two paid family carers who are subject to the Supreme Court decision and extinguishes other claims that have been filed, but not yet resolved or determined, before the commencement date.
- 5 **note** that s 9(2)(h) claimants who previously filed claims are seeking employment status and associated remedies for unpaid wages, other benefits and costs in the Employment Relations Authority (ERA) and Employment Court.
- 6 s 9(2)(h)
- 7 s 9(2)(j)
- 7.1 s 9(2)(j)
- 7.2
- 8 s 9(2)(j)
- 8.1 s 9(2)(j)
- 8.2
- 8.3
- 8.4

8.5 s 9(2)(j) [REDACTED]
[REDACTED]

9 s 9(2)(j) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

10 s 9(2)(j) [REDACTED]
[REDACTED]
[REDACTED]

s 9(2)(j) [REDACTED]

11 **agree** that the proposed changes to appropriations for 2026/27 above be included in the 2026/27 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply.

12 s 9(2)(j) [REDACTED]
[REDACTED]

Authorised for lodgement.

Hon Louise Upston

Minister for Disability Issues

Appendix 1: Letter from Solicitor-General dated X

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Appendix 2: Simpson Grierson advice dated X

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Appendix 3: Simpson Grierson memorandum dated X

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