

Office of the Minister for Disability Issues

Cabinet Legislation Committee

Disability Support Services Bill: Approval for Introduction

Proposal

- 1 This paper seeks approval for the introduction of the Disability Support Services Bill (the Bill).

Policy

- 2 It is essential that we have a fair and sustainable Disability Support Services (DSS) so that disabled people and their families can live their everyday life. I have stabilised DSS so that expenditure is managed within appropriated funding and necessary fiscal controls are in place. It is now time to look forward. The focus of my work on strengthening DSS is to clarify what DSS does, the difference it should make in disabled people's lives, and the range of support that it provides. The Bill accelerates this work and establishes a foundational legislative framework for DSS.
- 3 In April 2026, Cabinet agreed to the policy proposals [CAB-26-MIN-0115 refers] which are reflected in the Bill. The Bill will:
 - 3.1 Codify foundational elements of DSS, including that responsibility for the wellbeing of disabled people rests in the first instance with their family and whānau or other natural supports. The Bill will provide for secondary legislation and will also include transitional and savings arrangements to ensure continuity of existing funding policies, allocations, and funding decisions.
 - 3.2 Introduce certainty regarding employment agreements where a DSS user employs a carer, including a family member. Namely, that the Crown and its contracted providers are not employers (unless there is an intentional written employment agreement to that effect), controlling third parties or persons involved in a breach of any employment relationship. In addition:
 - 3.2.1 For three-years, care provided by a family carer beyond Crown-funded hours under a DSS policy or ministerial programme will not be treated as “work” for the purposes of the Minimum Wage Act 1983.
 - 3.2.2 There will be a three-year validation of employment agreements and other arrangements for people who lack decision-making capacity. This is to provide time to transition those arrangements to more suitable arrangements.
 - 3.3 Address fiscal and litigation risk arising from, or related to, the Supreme Court case *Fleming v Attorney-General* and *Humphreys v Attorney-General* [2025] NZSC 188. It will extinguish claims against the Crown that have been filed

but not yet determined or resolved and introduce a litigation bar against claims regarding discrimination or employment claims related to events prior to the Bill's introduction in the House of Representatives. The Bill will save the successful Supreme Court claims, as well as any remedies which flow from the judgment *Fleming v Attorney-General* and *Humphreys v Attorney-General* [2025] NZSC 188.

- 4 Aspects of the Bill are likely to be contentious. I anticipate that there will be focused attention and strong views on the provisions surrounding family care, as these engage issues of discrimination based on family/relationship status and access to justice. Reference to family responsibility, while a longstanding policy position, may also generate concern that current services will be reduced – that is not the intention.
- 5 The Bill is required to improve consistency and transparency of decision-making, clarify employment relationships, and manage Crown fiscal and litigation risks. I have exercised my authorisation from Cabinet to make decisions regarding policy detail and technical aspects. These are listed in **Appendix 1**.

Additional policy decisions

- 6 As already agreed, the Bill provides that family and whānau have responsibility in the first instance for the wellbeing of their members.
- 7 I want to make sure the Bill makes explicit that the level of support available from family and whānau, as well as from other sources, is factored into the level of support DSS provides to a disabled person.
- 8 DSS generally makes a lesser contribution where support for a disabled person's needs is available and met elsewhere, including within their family, whānau and community, and through other government supports. There are also circumstances currently where DSS eligibility and policy settings consider a disabled person's personal means before a service is provided. It is important to clarify that DSS funding policies should continue to account for these matters where appropriate.
- 9 I seek agreement for the Bill to provide that decisions about allocation of DSS-funded disability support should take into account, where appropriate, the resources and support available to an eligible person, including support available:
 - 9.1 within their family, whānau and community; and
 - 9.2 from other publicly funded sources.
- 10 I also seek agreement for the Bill to include enabling provisions for a new carer payment, as I discussed in my policy paper [SOU-26-SUB-0030 refers]. These provisions are intended to enable a transition away from the use of an employment model (currently undertaken through flexible funding arrangements) as a mechanism for paying a person who also provides 'natural support' to a DSS user.
- 11 These provisions should:
 - 11.1 specifically empower the establishment of a ministerial programme that provides for payments by or on behalf of the Crown to people who provide

care services to an eligible person in the context of a familial or social relationship

- 11.2 provide that making such payments does not constitute an employment relationship.

12 s 9(2)(f)(iv)

- 13 I expect officials to continue work on developing the carer payment while the Bill progresses through the House. This will include further work between agencies. I intend to return to Cabinet for decisions on the carer payment by the end of 2026.

Risk

- 14 The Bill addresses the most significant legal and fiscal risks arising from uncertainty in paid family carer relationships. s 9(2)(h)

- 15 There has been limited testing and analysis of the policy proposals regarding ongoing employment relationships, as well as the intended transition away from the employment of paid family care to the new carer payment due to the short timeframe. As a result, there remains a risk that the provisions may not achieve the policy intent and unintended consequences may arise. However, operational and policy work is also underway to put in place better processes surrounding disabled people who may lack decision-making capacity and will be designed to significantly reduce remaining risks and issues with paid family care to the Supreme Court's decision.

- 16 I also expect officials to continue to consider risks and possible mitigations throughout the Select Committee process.

Impact analysis

- 17 A Regulatory Impact Statement (RIS) was prepared for the policy proposals and provided to Cabinet with the April 2026 Cabinet paper (seeking policy decisions).
- 18 The RIS was reviewed by a panel of representatives from the Ministry of Social Development and Ministry of Business, Innovation and Employment, and was given a 'partially meets' rating against the quality assurance criteria for the purpose of informing Cabinet decisions. The Quality Assurance Panel noted that the RIS is well written and concise, and it clearly outlines the limitations of the analysis. It notes that while some consultation has been undertaken to inform the legislative framework, there has been no consultation to inform the response to the Supreme Court judgment. The RIS is as complete as possible given the uncertainties relating to some implementation timeframes and details of the legislative framework. It presents a

strong case for the recommended option; however, it provides limited detail on how the risks associated with this approach will be managed.

Compliance

- 19 The Bill complies with:
- 19.1 the principles of the Treaty of Waitangi
 - 19.2 the disclosure statement requirements (a disclosure statement as been prepared and a final draft is attached to this paper as **Appendix 2**)
 - 19.3 the principles and guidelines set out in the Privacy Act 2020
 - 19.4 relevant international standards and obligations.
- 20 The Treaty Provisions Officials Group has not been consulted as there are no specific Treaty provisions in the Bill.

Human rights

- 21 The Bill engages the right to freedom from discrimination (section 19) and the right to justice (section 27) in the New Zealand Bill of Rights Act 1990. These rights are engaged by how the Bill targets disability support funding, treats paid family care arrangements under employment law, and how it addresses historic legal uncertainty, including by limiting access to the courts for some past and pending employment claims. These matters sit within New Zealand's broader international human rights obligations, including the United Nations Convention on the Rights of Persons with Disabilities.
- 22 In my view, the Bill supports important policy objectives, including keeping care stable for disabled people, maintaining a clear and sustainable disability support system, and ensuring that decisions about care, funding, and responsibility are made by Parliament rather than through ongoing and fact-specific litigation. Funding allocations are made using consistent assessment methodologies focused on a person's needs and circumstances. The Bill advances these objectives through targeted measures, some of which are time-limited, and through safeguards designed to limit impacts on rights to no more than is reasonably necessary. The Attorney-General is assessing the Bill's consistency with the New Zealand Bill of Rights Act and may report to the House that the Bill appears to be inconsistent.

Legislation Design and Advisory Committee guidelines

- 23 The Legislation Design and Advisory Committee (LDAC) have provided feedback on three aspects of the Bill's design:
- 23.1 **Legislative hierarchy:** LDAC agrees that secondary legislation may provide helpful flexibility for technical details but considers the delegation broad and lightly constrained. It suggests clearer limits on scope and purpose, stronger safeguards, and a more structured hierarchy between primary legislation, regulations, and ministerial instruments to improve transparency, certainty, accountability, and to manage legal risk.

- 23.2 **Retrospectivity risk:** LDAC raises significant concerns about proposals that would limit or remove the ability to bring or continue certain claims, including unresolved claims, for past events. It highlights constitutional principles against interference with live proceedings and accrued rights, noting such measures are exceptional. LDAC observes that the Supreme Court has already authoritatively interpreted the legislative framework and Parliament's intent. LDAC noted that sometimes retrospectivity is justified if the policy reasons for enacting retrospective legislation in the first place would be undermined by leaving intact the litigants' potential victory. However, in this case, LDAC has not seen any evidence that this is the case. LDAC states that this does not appear to be one of the rare cases where retrospectivity is justified.
- 23.3 **Saving and amending existing DSS funding policies:** LDAC notes that savings or validation provisions may elevate fragmented pre-commencement funding policies into the new framework, reducing clarity and transparency and creating uncertainty about amendment. It suggests transitional arrangements allowing existing policies to operate temporarily until new settings are established and that these would come into force on a set future date rather than progressively as proposed.
- 24 I have considered this feedback and, while noting LDAC's concerns, am comfortable proceeding with the Bill as part of the wider work to strengthen DSS. I have directed officials to consider this feedback alongside submissions received by the Select Committee on these aspects of the Bill. I will come back to Cabinet if substantive changes are needed to achieve the policy objectives.

Consultation

- 25 Agencies consulted: Oranga Tamariki, Public Service Commission, Treasury, Te Puni Kōkiri, Inland Revenue Department, and the Ministries of Business, Innovation and Employment (and Accident Compensation policy), Disabled People, Justice, Health (and Health NZ), Education, Ethnic Communities, Pacific Peoples, Social Development, and Women. The Parliamentary Counsel Office and Department of Prime Minister and Cabinet were informed.

Binding on the Crown

- 26 The Act binds the Crown.

Creating new agencies or amending law relating to existing agencies

- 27 No new agencies will be created by the Bill.

Allocation of decision-making powers

- 28 The Bill does not involve the allocation of decision-making powers about an individual's rights, obligations or interests between the Executive, the Courts, and Parliament.

Associated regulations

- 29 The Bill contains no regulation-making powers but does provide for deemed regulations as below.

Other instruments

- 30 The Bill enables the Minister to make ministerial programmes and ministerial directions as secondary legislation under the Legislation Act 2019. Ministerial programmes and ministerial directions are deemed regulations because they are not made using the normal regulation-making process.
- 31 Ministerial programmes provide flexibility to tailor support for specific groups, address technical matters, respond quickly to emerging issues, and trial new approaches. Ministerial programmes and ministerial directions must be published and can be disallowable by Parliament. The principles in the Deemed Regulations Report of the Regulations Review Committee were considered. The explanatory note for the Bill sets out the reasons for using deemed regulations.
- 32 The Bill provides for existing policies to be saved and available under the Bill when passed. This allows time to develop ministerial programmes and to minimise any disruption to current services.

Definition of Minister/department

- 33 The definition of Minister and Ministry from the Legislation Act 2019 will apply to the Bill.

Commencement of legislation

- 34 The Bill will come into force on the day after the date of Royal assent.
- 35 The following provisions are explicitly retrospective: schedule 1 clauses 2, 7 and 11 (version 1.39 of the Bill). The following provisions impact the legal consequences of past events and therefore may have retrospective effect: schedule 1 clauses 4, 8, 9, 10 and 12 (version 1.39 of the Bill).

Parliamentary stages

- 36 I intend to introduce the Bill in the week commencing 18 May 2026 and for it to be enacted before the House rises in September 2026.
- 37 I intend to refer this Bill to the Social Services and Community Committee, and instruct the Committee to report back to the House by 19 August 2026.

Proactive Release

- 38 I intend to proactively release this paper within 30 working days as required by CO (23) 4, with appropriate redactions. The Bill and Disclosure Statement will be available when introduced to the House.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that the Disability Support Services Bill (the Bill) holds a category 2 priority on the 2026 Legislation Programme (must be passed before the 2026 General Election to meet a specific deadline)
- 2 **note** that the Bill will:
 - 2.1 set out the purpose of DSS and provide an authorising framework for DSS system policy settings and funding, that –
 - aims to strengthen the system by improving the consistency, fairness, and transparency of decision-making
 - clarifies that responsibility for care of disabled people rests in the first instance with their family and whānau, if that support is available
 - 2.2 clarify existing employment relationships within the DSS system if a disabled person employs a carer, including a paid family member, and validating existing employment and agent arrangements for three years
 - 2.3 mitigate the Crown's fiscal and litigation risks arising from, or related to, the Supreme Court case *Fleming v Attorney-General* and *Humphreys v Attorney-General* [2025] NZSC 188
- 3 **note** that the Minister for Disability Issues was delegated authority to act on any matters requiring further policy decisions in relation to policy detail and technical aspects and to resolve any minor or non-controversial amendments that arose during drafting, which has informed drafting of the Bill [CAB-26-MIN-0115 refers]
- 4 **agree** that the Bill include provision to make explicit that decisions about provision of DSS-funded disability support should take into account, where appropriate, the resources and support available to an eligible person, including support available:
 - 4.1 within their family, whānau and community; and
 - 4.2 from other publicly funded sources
- 5 **agree** that the Bill include provisions that:
 - 5.1 specifically empower the establishment of ministerial programmes that provide for payments by or on behalf of the Crown to people who provide care to an eligible person in the context of a familial or social relationship
 - 5.2 mean making such payments does not constitute an employment relationship
- 6 **agree** that the Parliamentary Counsel Office can continue to make minor changes to the Bill to settle technical matters in line with Cabinet's previous policy decisions and incorporate feedback from their quality assurance processes up until the Bill is introduced in the House of Representatives

I N C O N F I D E N C E

- 7 **approve** the Bill for introduction, subject to final approval by Government caucus and sufficient support in the House of Representatives
- 8 **note** that Minister for Disability Issues intends to introduce the Bill in the week beginning 18 May 2026
- 9 **note** that the Government propose that the Bill be:
 - 9.1 referred to the Social Services and Community Committee for consideration with a report back to the House by 19 August 2026
 - 9.2 enacted before the House rises in September 2026.

Authorised for lodgement

Hon Louise Upston

Minister for Disability Issues

Appendix 1: Use of delegated authority to make decisions regarding policy detail and technical aspects

	Decision	Explanation
Foundational elements		
1	Clarification that the Minister can, when required, make amendments to DSS policies that have been saved under the Bill until these are transferred into ministerial programmes.	- Aligns with the decision-making framework in the Bill. - In accordance with usual practice, significant policy issues, contentious issues and changes that touch on funding settings will be agreed by Cabinet.
2	Limit the savings of DSS policies to three years from commencement of the Bill.	- Aligns with the general transition period under the Bill. - Provides Parliament with certainty on the transition from existing policies to ministerial programmes.
3	Clarification that ministerial programmes can be used for issues relating to residential care.	Provides avoidance of doubt given the presence of primary legislation relating to residential care in other settings.
4	Clarification that services provided under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 ¹ are excluded from the definition of DSS-funded disability support.	- While those services are funded under the same Vote, I want to avoid any confusion regarding the applicable purpose and principles for compulsory care and rehabilitation options of people with intellectual disabilities who are charged with, or convicted of, an offence. - For example, the Bill provides that DSS-funded disability support is contributory – that does not match the nature of Court-ordered compulsory detainment.
Addressing fiscal and litigation risk		
5	Clarification that pending claims against the Crown and/or contracted providers are extinguished in their entirety.	Aligns with Cabinet's decisions regarding measures to address litigation risk.
6	Including spouses in the saving provision regarding the Supreme Court decision.	s 9(2)(a) [REDACTED] [REDACTED] s 9(2)(h) [REDACTED] [REDACTED] [REDACTED]

¹ For completeness, the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 authorises the Minister of Health to use certain powers and is administered by the Ministry of Health.