



Cabinet

Minute of Decision

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Strengthening Disability Support Services: Policy Decisions to Establish a Legislative Framework

Portfolio Disability Issues

On 7 April 2026, the Cabinet:

- 1 **noted** that in November 2025, Cabinet invited the Minister for Disability Issues to report back to the Cabinet Social Outcomes Committee by mid-2026 with further policy advice for strengthening Ministry of Social Development (MSD) funded disability support services (DSS) [SOU-25-MIN-0154];
- 2 **agreed** to accelerate the strengthening of DSS through a package of policy and operational changes, which will be enhanced by a new Act that establishes a foundational legislative framework and clarifies the policy intent in relation to DSS and carers, and takes a precautionary approach to mitigate potential financial and operational impacts;
- 3 **noted** that the DSS Bill (the Bill) will give effect to the policy decisions below, and is proposed to hold a category 2 priority on the 2026 Legislation Programme (must be passed before the 2026 General Election to meet a specific deadline);

Policy decisions for inclusion in the Bill: foundational elements

- 4 **agreed** that the purpose of the Bill should reflect the intention to provide disability support services which contribute to enabling eligible people to live their everyday life by providing disability support from within the funding available, having regard to their needs and circumstances;
- 5 **agreed** that the Bill should provide a framework to allow for subsequent decisions to be implemented through secondary legislation by establishing:
 - 5.1 the power to make Minister-approved (and Cabinet-approved where appropriate) Ministerial programmes (to be used primarily for funding policy);
 - 5.2 the power to make Ministerial directions (to be used primarily to provide direction, clarification, and oversight of DSS and Ministerial programmes);
- 6 **agreed** that the Bill should clarify that DSS is a funding programme administered by an agency which makes a contribution to the care of disabled people;
- 7 **agreed** that responsibility for care of disabled people rests in the first instance with their family and whānau, or other natural supports;

- 8 **noted** that existing eligibility settings will continue;
- 9 **agreed** that the Bill should establish that MSD can use DSS to invest early in support for eligible disabled people, for example, but not limited to, maintaining or promoting their independence;
- 10 **agreed** that the Bill makes it clear that the responsible Minister, through Ministerial programmes and directions, can target funding and services based on a disabled person's needs and circumstances;
- 11 **agreed** that the Bill include that MSD and its contracted providers can only allocate funding or other support, including to family members, in accordance with what is provided for under the Act, including under any savings provisions (existing policies that are saved);

Policy decisions for inclusion in the Bill: employment-related provisions

- 12 **noted** that in December 2025, the Supreme Court released its judgment *Fleming v Attorney-General* [2025] NZSC 188 (the judgment), which established two paid family carers, Ms Fleming and Mr Humphreys, as employees of the Crown, widened the scope and payment for work to include where the family carers are constrained, and held that they are entitled to claim remedies for unpaid wages and relevant costs;
- 13 s 9(2)(h) 
- 14 **agreed** that the Bill will ensure that care provided by a family carer beyond that funded under a DSS policy or Ministerial programme by the agent that administers DSS (currently MSD) will not constitute 'work' for the purpose of the Minimum Wage Act 1983 for a period of three years;
- 15 **agreed** that the Bill should ensure the agency that administers DSS (currently MSD) and its contracted providers supporting assessment or service coordination are not (and will not be) in relation to a carer:
- 15.1 an employer for the purposes of the Employment Relations Act 2000 unless there is an intentional written employment agreement to that effect;
 - 15.2 a controlling third party under the Employment Relations Act 2000;
 - 15.3 'persons involved in a breach' for liability for penalties and arrears under the Employment Relations Act 2000;
- 16 **agreed** that the Bill should temporarily validate prior/existing employment agreements (excluding any MSD or supporting agency agreements that were never intended to form an employment relationship) and any other arrangements with disabled people funded by DSS who lack decision-making capacity put in place to employ carers, for a period of up to three years to ensure continuity of care while addressing the absence of valid orders under the Protection of Personal and Property Rights Act 1988;

- 17 **agreed** that the Bill include transitional and savings arrangements that will:
- 17.1 ensure existing funding policies are saved and can be amended or revoked;
 - 17.2 confirm that existing allocations and funding decisions are saved;

Policy decisions for inclusion in the Bill: fiscal operational and litigation risk mitigation

- 18 **agreed** that the Bill will have retrospective effect to validate all current paid family care arrangements as if they were authorised by the Bill;
- 19 **agreed** that the Bill will save the court proceedings seeking remedies flowing from the judgment;
- 20 **agreed** that the Bill should extinguish claims against the Crown that have been filed before the date that the Bill is introduced to the House of Representatives but not yet determined or resolved;
- 21 **agreed** that the Bill will include a litigation bar, effective from the date of the Bill's introduction, against claims regarding discrimination or employment claims related to the employment status of paid family carers where those claims relate to decisions or events prior to the Bill's introduction in the House of Representatives;

Progressing the Bill

- 22 **invited** the Minister for Disability Issues to issue drafting instructions to the Parliamentary Counsel Office to enable development of new legislation to give effect to the policy decisions above and in Appendix 2 to the paper under CAB-26-SUB-0115;
- 23 **authorised** the Minister for Disability Issues to act on any matters requiring further policy decisions in relation to policy detail and technical aspects, in line with the decisions above, and to resolve any minor or non-controversial amendments that arise during drafting, without further reference to Cabinet;
- 24 **invited** the Minister for Disability Issues to report back to the Cabinet Social Outcomes Committee by the end of 2026 for policy decisions on a new support model for carers of disabled people and timeframes for design and implementation;
- 25 **authorised** the Minister for Disability Issues to engage, in advance of the Bill's introduction, with a small number of representative organisations of carers and disabled people most affected by the decisions above, and provide them with a confidential briefing on the development of the new support for carers, the proposed Bill, and other operational matters.

Rachel Hayward
Secretary of the Cabinet