Appendix 1: Proposed phase 2 legislative work programme

The scope of the proposed phase 2 legislative work programme with areas and parameters that will be explored is set out in **Table 3** below. It will form the initial basis of work. Table 3 is not in any priority order. The identified areas were informed by a review of selected legislation for social support systems domestically and internationally to identify provisions that may be relevant to DSS.[1] The work programme may need to phase advice on areas.

Table 1: Scope of phase 2 legislative work programme

Area	*Parameters*	*Justification for inclusion*
Principles	Describes specific things that should be taken into account in decision making where further guidance is required, either generally or in relation to specific actions, which builds on the principles included in the DSS Act 2026	Additional principles that guide decision-making under the DSS Act 2026 may be needed depending on the range of extended legislation proposed. These could consider whether there is benefit in having further protections for disabled people and further guidance on giving effect to the purpose, where there are benefits not already covered by the principles in the DSS Act 2026.
Access to funded disability support	Describes the process that a person follows in seeking DSS-funded disability support	To strengthen the consistency and transparency of how DSS-funded disability support operates by setting out the process or pathway a person has to apply to access DSS-funded disability support. This could serve to set expectations for disabled people and their families/whānau and ensure fair experiences around the country and through the devolved system. It could also provide the basis for the acceptance or refusal of access. To be clear on how the process should accommodate the range of abilities of disabled people and their families/whānau in engaging with the process, including where people may have limited or lack decision-making capacity and where support should be provided to enable expression of their will and preference. Legislation could step out the process with any accompanying benefits, protections, and responsibilities or expectations. It may also be useful to consider how the process accommodates the support needs of a disabled person and the related but separate support needs of families/whānau as natural supports by being clear on what should be expected to be made available.

[1] The following domestic legislation was reviewed: Accident Compensation Act 2001; Pae Ora (Healthy Futures) Act 2022; Health Act 1956; Social Security Act 2018; Health and Disability Services (Safety) Act 2001; Residential Care and Disability Support Services Act 2018; Disabled Persons Community Welfare Act 1975; Oranga Tamariki Act 1989.
The following international legislation was reviewed: Australia: National Disability Insurance Scheme Act 2013; Australia: Disability Services and Inclusion Act 2023; UK: Care Act 2014 (England); UK: Social Care (Self-directed Support) (Scotland) Act 2013.

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Area	*Parameters*	*Justification for inclusion*
		This area could also serve as an accountability measure for DSS and/or contracted providers.
Eligibility	Describes the criteria that a person must meet to access funded disability support	There is no overall consistent statement of eligibility for DSS-funded disability support. Instead, eligibility to access funded disability support is distributed through service lines and specific types of support. The basis for eligibility is also inconsistent and arises from various Cabinet minutes, ministerial decisions, operational policy, or contracting arrangements. There is an opportunity to clarify the scope of who is an eligible person to access DSS-funded disability support, but which does not limit the flexibility of the range of funded disability support. Nor should it limit the opportunity to invest in prevention or early intervention where the intention is to prevent, reduce, or delay the increase in a person's support needs over time, and which promotes or maintains their independence. Eligibility was always intended to be addressed through a second phase of legislation. Current eligibility settings in DSS are fragmented, complex and in parts incoherent as described above, and additional time was required to get this right in primary legislation. In the interim, the development of support programmes enabled by the DSS Act 2026 will improve the transparency of eligibility for specific funded disability support by being publicly available.
Review of decision and complaints and appeal	Describes the process for a person to seek a review of a decision in relation to an assessment or funding allocation, and the process for making a complaint and appealing pathways	It is not clear on the rights of disabled people and their families/whānau who may disagree with the result of a needs assessment or funding allocation, and to what degree it can be contested. This is a common feature of other social support systems where it is prescribed in legislation, including review and appeal pathways and independent determinations. Any measures should promote resolution at the earliest and lowest levels. The focus is on ensuring fair and consistent decision-making. There may need to be consideration of who is able to seek a review, and support for disabled people and their families/whānau in the process (including independent of the decision-making agency). It can include consideration of the role and responsibilities of actors under the devolved system of DSS-funded disability support. This area includes having an explicit process for making complaints about the quality of funded disability support accessed by disabled people and their families/whānau, so there is transparency and accountability for what they can expect or be entitled to exercise.

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Area	*Parameters*	*Justification for inclusion*
		It is common in legislation for other social support systems to set out the responsibilities, functions, and powers for monitoring, reporting, investigating, sanctions, prosecuting, and offences in relation to quality and safety. These things can be considered for DSS, including identifying accountabilities and actors. It should also consider the rights of those subject to any such measures. There could be consideration of the application to funded disability support which is contracted by DSS and that which is directly purchased by disabled people and their families/whānau.
Funding model	Describes how funding for disability support is determined, distributed, allocated, and used	There is a long history of weak financial management of appropriated funding for DSS, which has contributed to funded disability support not being delivered consistently over time. This created uncertainty for disabled people and their families about decisions and the reliability of support. This work will consider setting out how funding for DSS works at a system level, including how funding is allocated considering the needs of the eligible population, service demand, service capacity and underlying policy outcomes.
Functions	Describes the type of activities undertaken in the administration of funded disability support	To be clear on the type of activities that should be carried out through the administration of funded disability support. This may include clarity for the purpose of any associated powers. Without limiting the opportunity for change and innovation, being clear on functions will reinforce authorising for how appropriated funding should be used. It can serve as the basis for accountability to the responsible Minister and Parliament for arrangements in how appropriated funding is delivered. It will be clear on the type of activities that are not undertaken. It could also be useful in understanding the relationship with other public funders of support.
Scope	Describes the range of funded disability support that is administered by DSS	There has been a longstanding lack of clarity on the range of things that DSS-funded disability support should cover or respond to. This has contributed to the inconsistency and lack of coherency across the devolved system and DSS itself. There has also been challenges with understanding the relationship between DSS-funded disability support and other public funders of support.

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Area	*Parameters*	*Justification for inclusion*
		This work will make clear what DSS must do and what it might contribute to. It could be useful in clarifying the boundaries with other public funders of support, where there are overlaps or gaps.
Commissioning	Describes the function, role, and powers of DSS in relation to contracting out services	Most of DSS-funded disability support is delivered through contracts with other organisations. There is limited direct delivery by DSS with disabled people and their families/whānau in the devolved system. This means that commissioning (which includes such things as planning, procurement, contracting, relationship management with providers, monitoring and accountability, and market stewardship) is a critical aspect of how DSS administers funded disability support. This work will consider whether legislation can strengthen the basis of the commissioning function, including in relation to responsibilities of contracted providers and powers for DSS to take action, such as where providers have not delivered as required. There is also an opportunity to consider the role and responsibilities of DSS in relation to the diversity, number, and coverage of providers. This may also include in relation to the workforce of people employed in providing personal care and other support to disabled people and funded by DSS-funded disability support.
Safeguards	Describes measures that seek to protect people accessing funded disability support from the risk of harm	DSS lacks visibility of the full spectrum of abuse and neglect that may occur in funded services. It does not have powers to act where harm is or may be occurring, nor the ability to remove people from harm and on what basis this can be done. There is also no requirement to report concerns of safety or harm. These provisions are also required to give effect to the Crown's response to the RCOI.
Quality and safety	Describes measures that allow for communications, monitoring, reporting, and investigating the experience of people accessing funded disability support	High-quality and safe disability support services deliver person-centred support that improve outcomes and quality of life, while balancing safeguarding, dignity of risk, and continuously improving through participant feedback, evidence, and learning. DSS continues to rely on measures and standards for service delivery associated with the health sector for use in relation to DSS-funded disability support. There is an opportunity to consider whether this arrangement is efficient and effective, or whether alternatives should be developed that are specific to the scope of DSS-funded disability support. This can also consider independent monitoring.
Information	Describes measures in relation to the provision of, collection, storage, access to,	DSS requires a clearer authorising framework over management of personal information, following government changes including the shift of DSS to MSD. These provisions will

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Area	*Parameters*	*Justification for inclusion*
	use, and publication of personal information	strengthen alignment with public service standards, clarify requirements, and ensure appropriate privacy protections, public transparency and safeguarding responsibilities. There will be clarity on powers for DSS to require information to be provided.
Integrity and accountability	Describes measures that preserve trust and confidence in the use of public funding for funded disability support services	Current practice for flexible funding to individuals carries with it a degree of trust that funding will be used for the purpose that it was allocated in support for disabled people and families/whānau. DSS has limited authority to monitor and take action on misuse of funds or fraudulent activity for providers. Disabled people accessing flexible funding can also be victims of fraud. There needs to be balance between flexibility and self-determination for disabled people with appropriate stewardship of public funds and the long-term sustainability of funded disability support. It may be useful to consider measures in relation to prevention, detection, investigation and response to fraud, abuse, misuse, inappropriate claiming, overpayments, provider accountability, sanctions, recovery, verification of expenditure, and information sharing for integrity purposes.
Institutional arrangements	Describes provisions that relate to system design for the efficient and effective operation of actions and the role and functions of actors under DSS legislation	DSS delivers funding for disability support through a large and widespread range of contracted providers. This includes devolved authority for assessing eligibility for and assessment of disability support needs, determining funding allocations, identifying relevant supports, and ensuring responsiveness to changes in needs such as through regular reviews. It may be useful to consider how legislation can ensure clarity in the role, functions, and responsibilities of actors under DSS legislation that extends further than that progressed by the DSS Act 2026 (that is in relation to employment of carers). It may also be useful for consideration of whether there are sufficient measures in relation managing the Crown (through DSS) being the employer of paid family carers following the Supreme Court judgment.
Administrative	Describes any administrative processes that benefit from being prescribed in DSS legislation	There may be other things that do not fit into the above areas there could be prescribed in legislation. It may also be an opportunity to consider generally or specifically the extent to which DSS should consult with disabled people and their families/whānau.

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