In Confidence

Office of the Minister for Disability Issues

Cabinet Social Outcomes Committee

Strengthening Disability Support Services: five-year programme of improvements and extending the legislative framework

Proposal

1 This paper seeks agreement to the scope of work to extend the legislative framework for the Ministry of Social Development's (MSD) Disability Support Services (DSS) funded disability support. The work programme will also promote certainty for the community in changes that are intended to be progressed over the next five years.

Relation to government priorities

2 Relevant priorities are better public services, fiscal responsibility, and ensuring fairer, consistent, transparent, and sustainable support for disabled people and families/whānau with the greatest need based on their needs and circumstances.

Executive Summary

3 There is an opportunity to continue the momentum of improvements to DSS and ensure a full range of appropriate provisions for the safety and dignity of eligible disabled people and their families/whānau. This paper seeks agreement to a second phase of legislative work to build on the foundations established through the recently passed DSS Act 2026 and strengthen the system of DSS-funded disability support into the future. It is also an opportunity to build trust with the community, through increased system transparency in the changes they can expect to happen to funded disability support in the next five years.

4 The objective of having specific DSS legislation is to create a more coherent and durable framework that better protects the rights, wellbeing, dignity, and safety of disabled people, while supporting fair, transparent, and sustainable decision-making. It will clarify system features for the delivery of funded disability support, the responsibilities and powers of the responsible Minister, and the rights of people accessing it.

5 The DSS Act 2026 (first phase) provides a clear legislative foundation for the $2.7 billion of appropriated funding relied upon by thousands of disabled New Zealanders and their families/whānau. It establishes greater certainty, consistency, and transparency in how disability support is funded and administered, recognising DSS as an essential service for people with significant and often lifelong support needs. It reinforces that funded disability support is provided within public funding available.

6 The DSS Act 2026 sets the system foundations, but it does not establish the full range of protections, safeguards, responsibilities, and accountability mechanisms that are commonly found in other publicly funded social support systems. As a result, disabled people, families/whānau, carers, service providers, and government agencies continue

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to operate within a system where some key roles, processes, and protections remain unclear and are complex to navigate. Further authorising provisions will be required to ensure DSS can deliver a comprehensive range of support.

7 The proposed work programme to consider amendments to the DSS Act 2026 has been informed by lessons from recent improvements to DSS, feedback received through consideration by Select Committee of the DSS Bill, findings from community consultation, and relevant government priorities, including implementation of the Crown's response to the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions (RCOI). It also draws on legislative approaches used in comparable social support systems in New Zealand, Australia, and the United Kingdom.

8 Subject to Cabinet agreement, initial policy decisions will be sought from Cabinet in early-2027. This advice will include arrangements for actively consulting with disabled people, their families/whānau, and the wider sector, and a draft discussion document. This discussion document will set out a high-level roadmap for further improvements to DSS expected over the next five years so that the community know what to expect.

Background

9 MSD administers (through its DSS business group) around $2.7 billion in Vote Disability Support Services. DSS provides a range of disability support for eligible disabled people, their families/whānau, and carers, which assists in their everyday lives and with their independence and participation in the community.

10 External reviews[1] in 2023 and 2024 described longstanding issues affecting DSS's efficiency and effectiveness. Historically, DSS has often used operational policies and contracts to make decisions about funding and support. In some cases, these decisions were made through operational practice rather than through Parliamentary or Cabinet approval. This practice has contributed to the inconsistency and incoherence in funded disability support across service lines and in delivery around the country. It has also contributed to a lack of transparency.

11 The lack of consistency and transparency has led to disabled people and their families/whānau not enjoying the benefits, protections, and responsibilities which exist in other social support systems, which can mitigate the risks of litigation (for example, clear complaints processes, or independent review and appeal of decisions). The Supreme Court judgment, *Fleming v Attorney-General [2025] NZSC 188*, is the latest example that has subsequently led to the courts widening policy settings for DSS. The judgment does not reflect the policy intent behind flexible funding, as the Crown was never intended to be an employer of carers of disabled people.

12 Since 2024, Cabinet has agreed actions to stabilise financial controls and ensure sustainability, implement a new pricing model and improvements for residential care, implement a nationally consistent needs assessment (including a new carer assessment), and allow users more choice in the use of their flexible funding. These

[1] Department of Prime Minister and Cabinet stocktake of risks report (2023); Rapid Assurance Review: Commercial Management (2024); and the Independent Review of Disability Support Services (2024).

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actions have laid the groundwork for long-term positive change for disabled people, their family, whānau, and carers.[2]

13 In May 2026, Cabinet agreed to the DSS Bill [CAB-26-MIN-0115 and LEG-26-MIN-0083 refer]. It progressed the first phase (phase 1) of a legislative programme that strengthens DSS-funded disability support. The recently passed DSS Act 2026 establishes a foundational legislative framework underpinning DSS-funded disability support by:

13.1 setting out the purpose for DSS-funded disability support services, which is provided within public funding available

13.2 establishing principles to be taken into account in decisions on allocation of DSS-funded disability support services

13.3 empowering the responsible Minister to determine support programmes (as secondary legislation) to authorise funding of disability support services

13.4 providing transitional and savings arrangements to ensure continuity of existing funding policies, allocations, and funding decisions.

14 Phase 1 has the objective of providing certainty and consistency for disabled people and their families/whānau in the funded disability support that they can expect to access. It promotes fairness and transparency through a clear authorising mechanism for policy and funding of disability support, which is be subject to Parliamentary accountability and made publicly available. Further, it addresses fiscal and litigation risk arising from, or related to, the Supreme Court case, including that the Crown is not the employer of carers who are paid from a DSS funding allocation for a disabled person.

I intend to lay out the key components of a five-year work programme to further strengthen DSS, including legislation, for consultation with the community

15 Community consultation has consistently raised the importance of disabled people and their families/whānau having certainty in what they can access from DSS-funded disability support. There continues to be concerns about what may happen in the future and the fear of unexpected changes adding to their stress and worry.

16 A range of work has been, and continues to be, progressed to strengthen DSS-funded disability support. This includes the development of a long-term funding strategy, a focus on continuous improvement of services like respite and behavioural support services so DSS can better meet the needs of disabled people and their families/whānau, and more effective provision of information and advice.

17 The implementation of nationally consistent assessment underpinned by the Enabling Good Lives approach now supports greater consistency and certainty. Community feedback regarding improvements to services, system systems and process, such as how complaints are made and responded to, will also be a feature of future legislation.

[2] Cabinet decisions: CAB-24-MIN-0301, SOU-24-MIN-0157, SOU-25-MIN-0088, and SOU-25-MIN-0154 refer.

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18 The development of a new carer support package in consultation with community representatives will be progressed over the next few months. A key focus is the work to put in place more appropriate arrangements to support people who lack decision-making capacity in response to the recent Supreme Court judgment. This will include more appropriate arrangements to support people who do not have decision-making capacity.

19 There is a lot of work to do. I intend to come back to Cabinet for approval of a discussion document for consultation with the community that sets out the five-year work programme to strengthen DSS-funded disability support. This will provide clarity and transparency to the community, by providing a timeline and proposed approach to the development of support programmes as secondary legislation. It will also seek input from the community to inform the development of amendments to the DSS Act 2026.

20 Subject to future Cabinet agreement, this approach will promote transparency by setting out areas for improvement to DSS-funded disability support, signal the areas we will focus on and when, and invite community input on the direction of improvements.

Extensions to the legislative framework is central to strengthening DSS

21 I always intended a second phase of legislation to address the areas set out in this paper, so that DSS can operate on a similar basis to other government funders of social support. Phase 2 will build upon the foundational framework that the DSS Act 2026 has established by:

21.1 further clarifying the scope, role, and functions of DSS-funded disability support

21.2 providing safeguarding measures to reduce the risk of harm and ensure an appropriate level of oversight of the system, such as through providing for a review of decision and clear complaints processes, stronger monitoring of service quality and safety, and aligning with the Crown's response to the RCOI

21.3 clarifying system features for the delivery of funded disability support services, the responsibilities and powers of the Minister, and the rights of people accessing it, such as being clear on the functions of DSS and the responsibilities of contracted providers for needs assessment and funding allocation.

22 Phase 2 will include considering technical provisions that were identified in development of the phase 1 legislation, but which I chose not to progress at the time, for example information-sharing provisions. This delay will allow for meaningful consultation with disabled people and their families/whānau, and the wider community.

23 The objectives of the phase 2 legislative programme are to:

23.1 promote the dignity and safety of system users, including identifying benefits, protections, and responsibilities (for example, complaints processes, or establishing and/or clarifying duty of care (for example, in safeguarding and oversight processes))

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23.2 reinforce the gains made in organisation and system capability improvements, which underpin the strategic direction for DSS and its funded disability support (for example, in commissioning and procurement)

23.3 provide powers or other measures for DSS to carry out its mandated functions (for example, where DSS relies on operational policy and/or contracts and which leaves DSS open to challenge) or to clarify roles and responsibilities (for example, employment-related matters).

24 In considering the benefit and impact of any potential legislation, officials will consider my priorities for ensuring consistency, fairness, transparency, and sustainability of the DSS system. In addition, where reasonably practicable, officials will use a common approach to promote coherency across the phase 2 work programme and provide guidance for developing and assessment of legislative amendments. This includes:

24.1 simplifying the experience of disabled people and their families/whānau and reduce transactions needed in accessing funded disability support

24.2 promoting a relationship-based approach between disabled people and their families/whānau and the disability support system, particularly where they have long-term or lifelong support needs

24.3 increasing efficiency in the use of public funds, including that the administration of DSS-funded disability support is proportional to the appropriated funding

24.4 measuring effectiveness in the difference that is made in the lives of disabled people, and their families/whānau and carers.

25 It will be important in this work to balance clarity and certainty of legislation with operational flexibility, particularly given the dynamic and diverse needs and circumstances of disabled people and families/whānau. It will also be important that measures do not increase complexity in the DSS system or which cannot be enforced.

Phase 2 will be informed by existing domestic and international legislation for similar publicly funded social support systems

26 Cabinet agreement is sought to the scope of the phase 2 legislative work programme that is set out in **Appendix 1**. It has been informed by officials' review of legislation enabling domestic social support systems (that is in relation to injury compensation, welfare, protection of children and young people) and internationally (in Australia and the UK) as relevant to strengthening DSS-funded disability support.[3] **Table 1** below summarises areas to be explored.

[3] 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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27 There is no single model setting out requirements for legislation underpinning social support systems. Except for general guidance provided in the Cabinet Manual and from the Legislation Design and Advisory Committee, legislation underpinning social support systems reflect the nature and scope of funding, administrative arrangements, and approach to legislative design. A key requirement is that legislation provides clear authorisation for how appropriated funding is used.

28 The design approach for phase 1 legislation reflected the need to accelerate the establishment of a foundational legislative framework to provide certainty and consistency for disabled people and their families/whānau. It took a precautionary approach to reduce disruption from potential significant fiscal costs following from the Supreme Court case. It also limited the level of operational detail in primary legislation where it is appropriate to be delegated to secondary legislation.

In scope areas for phase 2

29 Phase 2 will build on the foundational framework of the DSS Act 2026 by further clarifying or establishing the authorising environment for DSS-funded disability support, on a similar basis to other social support systems. It will identify the benefits to its efficient and effective administration, respond to government priorities, and ensuring the wellbeing and safety of disabled people and their families/whānau and carers.

30 Phase 2 will also explore issues raised in submissions from the Select Committee consideration of the DSS Bill, which did not fit within its scope. There was general support for DSS having a legislative framework, however, many submissions said that the DSS Bill did not go far enough or matched their expectations. Greater clarity on the role and scope of DSS in funding disability support was sought. Submitters also sought clarity on the rights and responsibilities of disabled people and their families/whānau accessing funded disability support and providing measures to ensure their safety and wellbeing. Most submitters called for consultation with the affected community in the development of DSS legislation.

31 There are also employment-related provisions that phase 2 will consider that were identified in response to the Supreme Court judgment but not prioritised for phase 1. This will complement the development of the carer support package that intends to provide an alternative mechanism to fund carers of disabled people, rather than relying on employment to pay carers. This package will be in place before the end of the transition period provisioned for in the Act.

32 Feedback from DSS community consultation focusing on operational improvements run in June-July 2026 will also inform the phase 2 legislative work programme. There was a common theme of the need for improvements in the transparency of access to DSS-funded disability support services, for example clarity in how disabled people and families/whānau can exercise their rights to make a complaint. Disabled people and families/whānau also want clarity on being involved in decision-making impacting them.

33 DSS will continue to work collaboratively with other government agencies in relation to interfaces between the different systems of funded support. This includes working closely with the Crown Response Office to align areas of overlap across the Crown's response to the RCOI, including safeguarding, complaints systems, information

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sharing, exploring a duty of care and the response's wider care safety system framework.

Table 1: Outline of the proposed phase 2 legislative work programme

Area	*Parameters*
Principles	Further 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 build on the principles included in the DSS Act 2026
Access to funded disability support	Describes the process that a person follows in seeking DSS-funded disability support
Eligibility	Describes the criteria that a person must meet to access funded disability support
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 decisions
Funding model	Describes how funding for disability support is determined, distributed, allocated, and used
Functions	Describes the type of activities undertaken in the administration of funded disability support
Scope	Describes the range of funded disability support that is administered by DSS
Commissioning	Describes the function, role, and powers of DSS in relation to contracting out services
Safeguards	Describes measures that seek to protect people accessing funded disability support from abuse and neglect
Quality and safety	Describes measures that allow for communications, monitoring, reporting, and investigating the experience of people accessing funded disability support
Information	Describes measures in relation to the provision of, collection, storage, access to, use, sharing and publication of personal information
Integrity and accountability	Describes measures that preserve trust and confidence in the use of public funding for funded disability support services
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 (including any further clarification of employment-related matters)
Administrative	Describes any administrative processes that benefit from being prescribed.

Out of scope areas for phase 2

34 The areas that are out of scope for consideration in phase 2 include:

34.1 where it is more appropriately dealt with under general legislation (for example, the Public Finance Act 1989)

34.2 where it is more appropriately within the scope of other legislation

34.3 the level of funding for DSS-funded disability support

34.4 the content of support programmes developed as secondary legislation under the DSS Act 2026

34.5 technical details or matters more appropriate for secondary legislation as empowered under the DSS Act 2026.

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I intend to report back in early 2027 on proposed community consultation

35 I propose to report back to Cabinet in early 2027 with initial policy decisions on potential amendments to the DSS Act 2026 and a draft discussion document to inform community consultation. An indicative timeframe is in **Table 2**.

36 The discussion document will include options for the phase 2 legislative work programme. It will also include a high-level roadmap of work to further improve the DSS system, which will set out expectations of planned changes over the next five years and anticipated opportunities for community consultation (including priorities for, and development of, support programmes).

37 If Cabinet agrees with this approach, I will direct officials to discuss with representative organisations of disabled people how to ensure such consultation can include the diverse perspective of people accessing funded disability support.

Table 2: Indicative timeframe for the phase 2 legislative programme

Date	*Activity*
October 2026 to February 2027	Work programme underway
February 2027	Cabinet paper (SOU): initial policy decisions and discussion document
	Legislative programme 2027 submission
By mid-2027	Community consultation (through a discussion document)
Mid-2027	Cabinet paper (SOU): agree to policy decisions
Late 2027	Drafting of Bill by PCO
Early/mid 2028	Cabinet paper (LEG): agree to introduce DSS Bill (phase 2)
At least six months	Parliament consideration of DSS Bill (phase 2)
Early 2029	Royal assent
2029	Operational implementation

Cost-of-living Implications

38 There are no cost-of-living implications arising from recommendations in this paper.

Financial Implications

39 There are no financial implications arising from recommendations in this paper. The development of policy advice on possible amendments to the DSS Act 2026 will consider the potential for any consequential fiscal costs.

Legislative Implications

40 This paper proposes possible legislative amendments that build on the DSS Act 2026. If approved, a bid will be submitted for consideration in the 2027 legislation programme.

Impact Analysis

Climate Implications of Policy Assessment

41 There are no climate implications arising from recommendations in this paper.

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Population Implications

42 The proposed legislative work programme will benefit disabled people and their families/whānau through promoting and protecting their rights by building on the foundational legislative framework in the DSS Act 2026, particularly through the emphasis on safeguarding measures. It will also increase clarity and consistency on how administration of DSS-funded disability support operates.

43 There will also be consideration of equity impacts in access to DSS-funded disability support. Caring remains highly gendered in New Zealand. Changes to disability support services, particularly those that affect expectations of family-based care and natural supports, are likely to have a disproportionate impact on women. Lack of trust and awareness of the disability system and cultural differences (such as in relation to disability or the role of family) can affect access by disabled Māori, Pacific peoples, and other ethnic populations and their families.

Human Rights

44 This paper's recommendations are not inconsistent with the New Zealand Bill of Rights Act 1990. The proposed legislative work programme will promote and protect the rights of disabled people and their families/whānau, particularly those measures relating to safeguarding and increased transparency in DSS system decision making. It is an opportunity to support progressively realise disabled people's rights set out in the Convention on the Rights of Persons with Disabilities and the Code of Health and Disability Consumer Rights

Use of external Resources

45 No external resources were used in preparing the advice in this paper.

Consultation

46 The following agencies were consulted on this paper: the Ministries of Health, Business, Innovation and Employment, Justice, Regulation, Education, Women, Pacific Peoples, Ethnic Communities; and the Treasury, Oranga Tamariki, Whaikaha – Minister of Disabled People, ACC, Health NZ Crown Response Office, and Te Puni Kōkiri. DPMC was informed.

Communications

47 I intend to communicate with the community and interested stakeholders on Cabinet decisions on this paper, including the intended timeline for consultation.

Proactive Release

48 I intend to proactively release this paper within 30 working days, with appropriate redactions.

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Recommendations

The Minister for Disability Issues recommends that the Committee:

1 **note** that establishing a legislative framework for the Ministry of Social Development's Disability Support Services (DSS) is being progressed in two phases

2 **note** that Cabinet agreed to the DSS Bill as phase 1 [CAB-26-MIN-0115 and LEG-26-MIN-0083 refer], which through the recently passed DSS Act 2026 sets a foundational legislative framework for DSS-funded disability support services

3 **note** that work on the phase 2 legislative programme to develop amendments to the DSS Act 2026 will have the objectives of:

- 3.1 promoting the dignity and safety of system users, including identifying benefits, protections, and responsibilities (for example, complaints processes, and or establishing and/or clarifying duty of care (for example, in safeguarding and oversight processes))
- 3.2 reinforcing the gains made in organisation and system capability improvements, which underpin the strategic direction for DSS and its funded disability support (for example, in commissioning and procurement)
- 3.3 providing powers or other measures for DSS to carry out its mandated functions (for example, where DSS relies on operational policy and/or contracts and which leaves DSS open to challenge) or to clarify roles and responsibilities (for example, employment-related matters)

4 **agree** to the scope of the phase 2 legislative work programme that will be explored by officials as set out in Appendix 1 to this paper

5 **invite** the Minister for Disability Issues to report back to the Cabinet Social Outcomes Committee in early 2027 with advice on:

- 5.1 initial policy decisions on potential amendments to the DSS Act 2026, including opportunities for consultation with disabled people and their families/whānau and carers; and
- 5.2 a discussion document to support community consultation in 2027 to inform potential legislative amendments; and
- 5.3 a high-level roadmap for the improvement of DSS-funded disability support services over the following five years.

Authorised for lodgement

Hon Louise Upston
Minister for Disability Issues

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