Disability Support Services Bill

Government Bill

Explanatory note

General policy statement

The Disability Support Services Bill (the **Bill**) provides a new foundational legislative framework to strengthen and stabilise the provision of disability support services (**DSS**) by improving the consistency, fairness, transparency, and sustainability of the system. The Bill sets the parameters for how appropriated funding is used, its purpose, and mechanisms for setting funding policy.

This Bill is intended as the first phase of providing a legislative framework for DSS. A further phase is envisioned that will address things such as safeguarding, information gathering, and appeals and complaints processes.

For the purposes of the Bill, disability support services are those funded through Vote Disability Support Services, provided to eligible disabled persons, and administered by the Ministry of Social Development (**MSD**). Those support services are provided to a subset of a wider group of disabled persons.

The Bill also responds to the Supreme Court judgment regarding paid family care in *Fleming v Attorney-General* [2025] NZSC 188, [2025] 1 NZLR 973 (the **Supreme Court case**). It does this by clarifying employment relationships and containing measures to manage Crown fiscal and litigation risks.

Overview of Bill

The objectives of the Bill are to—

- 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, where appropriate:

- 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 temporary representative arrangements for 3 years:
- mitigate the Crown's fiscal and litigation risks arising from, or related to, the Supreme Court case.

Purpose of DSS

The Bill provides a purpose for DSS-funded disability support services, which guides interpretation of the Bill and sets parameters for the support provided under the Bill. Key features include that DSS-funded disability support services—

- operate in a constrained funding environment:
- are a contribution to care:
- are focused on enabling disabled people to live their everyday life, having regard to their needs and circumstances.

Improving consistency and transparency of decision-making

Ministerial programmes

To improve consistency and transparency, the Bill enables the Minister to make ministerial programmes as secondary legislation. Ministerial programmes provide flexibility to tailor support for specific groups, address technical matters, respond quickly to emerging issues, and trial new approaches. Ministerial programmes require a consistency accountability statement under the Regulatory Standards Act 2025. Ministerial programmes must be published and can be reviewed and disallowed by Parliament.

The Bill enables the Minister to make programmes that provide for payments to be made by, or on behalf of, MSD to a person who provides care in the context of a familial or close social relationship. The recipient of such a payment would not be an employee.

Ministerial directions

The Bill provides for ministerial directions, allowing the Minister to give written general or specific directions on how certain powers, functions, and discretions are exercised.

Families are generally expected to contribute care support where they can

Families play an important role in supporting disabled people. The Bill provides that, where appropriate, families and whānau have responsibility in the first instance for the well-being of their members.

As a contribution to care, DSS assessment and allocation processes consider what other support is available to a disabled person. Decisions about the provision of DSS-funded disability support services should take into account, where appropriate, the resources and support available to an eligible person, including support available—

- within their family, whānau, and community; and
- from other publicly funded sources.

Clarifying employment relationships

The Bill clarifies employment relationships by confirming that the Crown (the administering agencies, such as MSD) and its contracted providers involved in assessment or service co-ordination are not employers of DSS carers. The Crown or a contracted provider is only the employer of a DSS carer if there is an intentional written employment agreement. The Bill also clarifies that the Crown or a contracted provider cannot be a controlling third party or a person involved in a breach under the Employment Relations Act 2000.

These changes recognise that it was never the policy intent for the Crown to be the employer of carers and reaffirm that it is the Crown that makes funding decisions.

This provides certainty regarding the relationship between disabled people and paid family carers following the Supreme Court case. If a disabled person uses DSS-funded disability support services to employ another person, the employment relationship is solely between the disabled person and the carer.

The Bill makes clear that the Crown or a contracted provider is not involved in a breach of employment standards relating to carers employed by disabled people, even if it provides services (such as hosting) or guidance to support those employment arrangements.

The Bill validates, for a period of 3 years, existing employment arrangements between disabled persons and their carers despite the disabled person not having capacity. It also retrospectively validates agent arrangements (as temporary representatives who are persons acting on behalf of a disabled person but where there is no order under the Protection of Personal and Property Rights Act 1988). It does this to ensure that there is no disruption to the care arrangements of disabled persons and the use of funding packages that allow choice in what arrangements are put in place.

Minimum Wage Act limitation

The Bill clarifies that the Minimum Wage Act 1983 cannot be used by a court to require payment to paid family carers that is not consistent with DSS funding policy (including a ministerial programme, a ministerial direction, or an existing policy). This reinforces that the Government makes the decisions on the use of Crown funding and funding policies. It also recognises the expectation that families contribute to care and the indirect risks to the Crown and system if the courts determine that hours are "work" that go beyond the hours funded under DSS funding policy. This clarification is temporary for 3 years to allow for an alternative payment model for family carers to be developed, tested, and implemented and for family carers to steadily transition out of employment relationships.

Managing Crown fiscal and litigation risks

The Bill addresses risks of further litigation and potential fiscal risks for the Crown arising from the Supreme Court case. Other family carers may seek a declaration that they are Crown employees or pursue remedies (such as additional wages and compensation) outside of existing funding policies. The resulting claims could create unmanageable fiscal costs for the Crown. The Bill manages fiscal and litigation risks by—

- saving the successful claims and any subsequent remedies of Ms Fleming and Mr Humphreys:
- extinguishing claims filed, but not resolved or determined, before the Bill was introduced:
- providing for limited and targeted retrospectivity to bring current employment arrangements within the Bill, which is needed in the interests of providing certainty for disabled people, family carers, and the administration of DSS:
- barring claims (where those claims relate to decisions or events before the Bill's introduction in the House of Representatives) regarding—
    - the employment status of paid family carers, disabled people, and people acting on behalf of disabled people:
    - allegations of discrimination, on relevant grounds, related to paid family carers.

Section 27 of the New Zealand Bill of Rights Act 1990 affirms a person's right to justice. The litigation bar is necessary to restore policy-setting responsibility to the Crown, ensure that decisions about publicly funded care and support by family members are made within the framework set by Parliament, and reduce litigation and financial risk. It is appropriate that funding decisions remain with the Crown, rather than being determined through individual court judgments. The Crown does not have unlimited funding and must make choices.

Existing DSS policies and funding allocations continue

The Bill will continue existing DSS funding policies and individual funding allocations until new arrangements are in place. All existing allocations transfer, so there is no immediate impact on anyone's current funding.

DSS policies will be continued for 3 years. This provides time to move from DSS policies to ministerial programmes. The Minister will have the ability to amend DSS policies if a ministerial programme has not been developed but changes are necessary.

Departmental disclosure statement

The Ministry of Social Development is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2026&no=312

Regulatory impact statement

The Ministry of Social Development produced a regulatory impact statement on 24 March 2026 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/regulatory-impact-statements/establishing-a-legislative-framework-for-funded-dss.pdf
- https://www.regulation.govt.nz/our-work/regulatory-impact-statements/

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. It provides that the Bill comes into force on the day after Royal assent.

Part 1
Preliminary provisions

Clause 3 sets out the purposes of the Bill, which are to—

- provide a legislative framework for DSS-funded disability support services, including by enabling the making of secondary legislation for the purpose of providing disability support services; and
- in response to the decision in the Supreme Court case,—
    - clarify the nature of the relationships between the Crown, contracted providers, and persons who provide DSS-funded disability support services to others; and
    - temporarily provide for persons to act on behalf of disabled persons—
        - who do not have a person acting for them under the Protection of Personal and Property Rights Act 1988; and
        - in relation to the making of decisions about disability support services; and
    - validate employment agreements between paid family carers and their disabled family members for a limited period; and
    - address other employment-related matters connected with the provision of DSS-funded disability support services; and
- mitigate litigation risk, and related fiscal risk, to the Crown.

Clause 4 is an interpretation provision. It defines the terms contracted provider, disability support services, DSS-funded disability support services, DSS funding policy, eligible person, family member, and paid family carer.

Clause 5 provides for the transitional, savings, and related provisions set out in *Schedule 1*.

Clause 6 provides that the Bill (when enacted) binds the Crown.

Part 2
Disability support services system

Clause 7 sets out the purpose of DSS-funded disability support services, which is to contribute towards enabling eligible persons to live their everyday life by providing disability support services from within public funding available, having regard to their needs and circumstances.

Clause 8 sets out 2 principles that the Ministry and contracted providers must take into account when making decisions about the provision of DSS-funded disability support services. The principles are that—

- families, whānau, and other culturally recognised family groups, where appropriate, have responsibility in the first instance for the well-being of their members; and
- before being provided with DSS-funded disability support services, an eligible person should, where appropriate, use their resources and any other support that is available to them, including from—
    - other publicly funded sources; and
    - their family, whānau, or other culturally recognised family group; and
    - their community.

Clause 9 provides that neither the Ministry nor a contracted provider may allocate DSS-funded disability support services other than in accordance with the Bill and DSS funding policy.

Clause 10 empowers the Minister to give the Ministry general or special written directions about the Ministry's performing or exercising any functions, duties, or powers of the Ministry under the Bill. Directions given are secondary legislation and the Ministry is required to comply with them.

Clause 11 empowers the Minister to, by written notice, approve and establish programmes for the purpose of providing disability support services. Approved programmes are secondary legislation and must be administered by the Ministry.

Clause 12 applies to a person who receives payments, under a programme approved and established under *clause 11*, from the Ministry or a contracted provider for providing care to an eligible person who is their family member or with whom they are otherwise in a close social relationship. It provides that the person is not an employee of the eligible person.

Clauses 13 and 14 provide that neither the Crown nor a contracted provider is the employer of a person who provides DSS-funded disability support services to another person unless they are party to a written agreement with the provider of the support that specifies otherwise.

Clause 15 provides that, for the purposes of the Employment Relations Act 2000, neither the Crown nor a contracted provider is a controlling third party in relation to an employee who provides DSS-funded disability support services to their employer.

Clause 16 provides that, for the purposes of the Employment Relations Act 2000, neither the Crown nor a contracted provider is involved in a breach of employment standards if the breach relates to a person who—

- provides care to a disabled person; and
- is paid, in whole or in part, for providing that care with funding allocated to the disabled person in accordance with DSS funding policy.

Hon Louise Upston

Disability Support Services Bill

Government Bill

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Schedule 1 9
Transitional, savings, and related provisions

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Disability Support Services Act **2026**.

2 Commencement

This Act comes into force on the day after Royal assent.

Part 1
Preliminary provisions

3 Purposes of Act

The purposes of this Act are to—

(a) provide a legislative framework for DSS-funded disability support services, including by enabling the making of secondary legislation for the purpose of providing disability support services; and

(b) in response to the decision of the Supreme Court in *Fleming v Attorney-General* [2025] NZSC 188, [2025] 1 NZLR 973,—

(i) clarify the nature of the relationships between the Crown, contracted providers, and persons who provide DSS-funded disability support services to others; and

(ii) temporarily provide for persons to act on behalf of disabled persons—

(A) who do not have a person acting for them under the Protection of Personal and Property Rights Act 1988; and

(B) in relation to the making of decisions about disability support services; and

(iii) validate employment agreements between paid family carers and their disabled family members for a limited period; and

(iv) address other employment-related matters connected with the provision of DSS-funded disability support services; and

(c) mitigate litigation risk, and related fiscal risk, to the Crown.

4 Interpretation

In this Act, unless the context otherwise requires,—

contracted provider means a person engaged by the Ministry, under a contract for services, to perform, on behalf of the Crown, a function relating to the administration of the provision of DSS-funded disability support services

disability support services includes goods, services, facilities, and financial assistance—

(a) provided to disabled persons for their care or support or to contribute towards enabling them to live their everyday life; or

(b) provided for purposes related or incidental to the care or support of people with disabilities or to contribute towards enabling them to live their everyday life

DSS-funded disability support services—

(a) means any disability support services funded (whether wholly or partly and whether directly or indirectly) by money appropriated by Parliament under—

(i) the appropriation known, on the commencement of this Act, as the Disability Support Services multi-category appropriation (M23) (A25); or

(ii) any predecessor, successor, or replacement appropriation with the same, or substantially the same, purpose; but

(b) does not include any disability support services provided under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003

DSS funding policy means any of the following to the extent that it relates to the allocation and use of DSS-funded disability support services:

(a) a direction given under **section 10**:

(b) a programme approved and established under **section 11**:

(c) any policy or programme established by the Crown before the commencement of this Act, as amended from time to time by the Minister under **clause 8 of Schedule 1**

eligible person means a person who—

(a) has been assessed by the Ministry or a contracted provider under DSS funding policy as requiring disability support services; and

(b) is eligible under DSS funding policy to be considered for DSS-funded disability support services

family member, in relation to a person (**A**), means another person who—

(a) is any of the following:

(i) A's spouse, civil union partner, or de facto partner:

(ii) A's child, tamaiti whāngai, stepchild, or grandchild:

(iii) A's sibling, half-sibling, or step-sibling:

(iv) a parent or step-parent of A:

(v) a person who acts as a parent of A:

(vi) a grandparent of A:

(vii) an uncle or aunt of A:

(viii) a nephew or niece of A:

(ix) a first cousin of A; or

(b) is—

(i) a member of A's family, whānau, or other culturally recognised family group; and

(ii) not mentioned in **paragraph (a)(i) to (ix)**; and

(iii) in a close relationship with A

paid family carer means a person (**C**) who—

(a) provides care to a person (**D**) who is—

(i) a disabled person; and

(ii) C's family member; and

(b) is paid, in whole or in part, for providing that care with funding allocated to D in accordance with DSS funding policy.

5 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.

6 Act binds the Crown

This Act binds the Crown.

Part 2
Disability support services system

7 Purpose of DSS-funded disability support services

The purpose of DSS-funded disability support services is to contribute towards enabling eligible persons to live their everyday life by providing disability support services from within public funding available, having regard to their needs and circumstances.

8 Principles that Ministry and contracted providers must take into account when making decisions about provision of DSS-funded disability support services

(1) This section applies when the Ministry or a contracted provider is making decisions about the provision of DSS-funded disability support services.

(2) The Ministry or contracted provider must take into account the following principles:

(a) families, whānau, and other culturally recognised family groups, where appropriate, have responsibility in the first instance for the well-being of their members:

(b) before being provided with DSS-funded disability support services, an eligible person should, where appropriate, use their resources and any other support that is available to them, including from—

(i) other publicly funded sources; and

(ii) their family, whānau, or other culturally recognised family group; and

(iii) their community.

9 Neither Ministry nor contracted provider may allocate DSS-funded disability support services other than in accordance with this Act and DSS funding policy

Neither the Ministry nor a contracted provider may allocate DSS-funded disability support services other than in accordance with this Act and DSS funding policy.

10 Minister may give Ministry binding directions

(1) The Minister may give the Ministry general or special written directions about the Ministry's performance or exercise of any functions, duties, or powers of the Ministry under this Act.

(2) The Ministry must, in performing or exercising a function, duty, or power, comply with all relevant current directions given under this section.

(3) A direction given under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

11 Approved disability support services programmes

(1) The Minister may, by written notice, approve and establish programmes for the purpose of providing disability support services.

(2) A programme approved and established by the Minister under **subsection (1)**—

(a) must be administered by the Ministry; and

(b) may do all or any of the following:

(i) specify criteria for determining who is eligible to receive disability support services under the programme:

(ii) specify criteria to be taken into account by the Ministry in allocating funding under the programme:

(iii) provide for the making of payments to persons who provide care to an eligible person who is their family member or who is otherwise in a close social relationship with them:

(iv) provide funding for residential care for disabled persons:

(v) impose conditions on the use of funding provided under the programme:

(vi) set out processes for dealing with exceptional circumstances:

(vii) set out other rules for the administration of the programme.

(3) The criteria that may be specified under **subsection (2)(b)(i) or (ii)** include (but are not limited to)—

(a) the nature of a person's disability:

(b) the cause of a person's disability:

(c) the age of a person:

(d) the nature of a person's living arrangements:

(e) the nature of the care or support that a person needs:

(f) income-based criteria:

(g) asset-based criteria:

(h) the likelihood that providing disability support services to a person in the short term will reduce their need for disability support services over the long term.

(4) Before approving and establishing a programme under **subsection (1)**, the Minister must take into account—

(a) the purpose of DSS-funded disability support services as set out in **section 7**; and

(b) the principles set out in **section 8(2)**; and

(c) any other matters that the Minister considers relevant.

(5) A programme approved and established under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

12 Recipient of payments under approved disability support services programme not employee of eligible person

(1) This section applies to a person (**A**) who receives payments—

(a) under a programme approved and established under **section 11**; and

(b) for providing care to an eligible person who is—

(i) A's family member; or

(ii) otherwise in a close social relationship with A; and

(c) made by the Ministry or a contracted provider; and

(d) that are not made on behalf of the eligible person.

(2) A is not an employee of the eligible person.

(3) This section applies despite anything to the contrary in the Employment Relations Act 2000 or any other legislation or rule of law.

13 The Crown not employer of provider of DSS-funded disability support services without written agreement

(1) This section applies to a person (**A**) who provides DSS-funded disability support services to another person.

(2) The Crown is not the employer of A unless the Crown and A are parties to a written agreement that specifies that A is an employee of the Crown.

(3) This section—

(a) is subject to **clause 16 of Schedule 1**; but

(b) otherwise applies despite anything to the contrary in the Employment Relations Act 2000 or any other legislation or rule of law.

14 Contracted provider not employer of provider of DSS-funded disability support services without written agreement

(1) This section applies to a person (**A**) who provides DSS-funded disability support services to another person.

(2) A contracted provider is not the employer of A unless the contracted provider and A are parties to a written agreement that specifies that A is an employee of the contracted provider.

(3) This section—

(a) is subject to **clause 16 of Schedule 1**; but

(b) otherwise applies despite anything to the contrary in the Employment Relations Act 2000 or any other legislation or rule of law.

15 Neither the Crown nor contracted provider is controlling third party in relation to employee who provides DSS-funded disability support services to their employer

(1) This section applies to an employee who provides DSS-funded disability support services to their employer.

(2) For the purposes of the Employment Relations Act 2000, neither the Crown nor a contracted provider is a controlling third party in relation to the employee.

16 Neither the Crown nor contracted provider is involved in breach of employment standards relating to certain carers

(1) This section applies to a breach of employment standards if the breach relates to a person who—

(a) provides care to a disabled person; and

(b) is paid, in whole or in part, for providing that care with funding allocated to the disabled person in accordance with DSS funding policy.

(2) For the purposes of the Employment Relations Act 2000, neither the Crown nor a contracted provider is involved in the breach.

(3) In this section, **employment standards** has the meaning given in section 5 of the Employment Relations Act 2000.

Schedule 1
Transitional, savings, and related provisions

s 5

Part 1
Provisions relating to this Act as enacted

1 Interpretation

In this Part, unless the context otherwise requires,—

3-year transition period means the period that—

(a) starts on the commencement date; and

(b) ends immediately before the date that is the third anniversary of the commencement date

Authority means the Employment Relations Authority established by section 156 of the Employment Relations Act 2000

commencement date means the date on which this Part comes into force

employee has the meaning given in section 6 of the Employment Relations Act 2000

employment agreement has the meaning given in section 5 of the Employment Relations Act 2000

Employment Court means the Employment Court constituted under the Employment Relations Act 2000

Health and Disability Commissioner means the Health and Disability Commissioner appointed in accordance with section 8 of the Health and Disability Commissioner Act 1994 and section 28(1)(b) of the Crown Entities Act 2004

Human Rights Commission means the Human Rights Commission continued by section 4 of the Human Rights Act 1993

introduction date means the date on which the Disability Support Services Bill was introduced into the House of Representatives

specified allegation means any assertion to the effect that a person's right to freedom from discrimination on 1 or more of the grounds stated in section 21(1)(b), (h), (i), and (l) of the Human Rights Act 1993, being the right affirmed by section 19 of the New Zealand Bill of Rights Act 1990, has been breached before the introduction date by—

(a) any policy or programme established by the Crown that relates to—

(i) the allocation and use of DSS-funded disability support services; and

(ii) paid family carers; or

(b) anything done or omitted to be done in compliance, or intended compliance, with any policy or programme described in **paragraph (a)**

welfare guardian has the meaning given in section 2 of the Protection of Personal and Property Rights Act 1988.

2 Validity of certain employment agreements entered into before commencement date

(1) This clause applies to an employment agreement entered into before the commencement date between a paid family carer and a disabled person who is their family member.

(2) The employment agreement is not invalid merely because the disabled person did not have the capacity to enter into the agreement.

3 Bargaining for validated employment agreements not unfair

(1) This clause applies to an employment agreement that would, but for **clause 2**, be invalid.

(2) For the purposes of the Employment Relations Act 2000, bargaining for the employment agreement is not unfair.

4 Validated employment agreements expire at end of 3-year transition period

(1) This clause applies to an employment agreement that—

(a) would, but for **clause 2**, be invalid; and

(b) has not expired or been terminated by the end of the 3-year transition period.

(2) The employment agreement expires at the end of the 3-year transition period.

5 Transitional provision relating to paid family carers employed by disabled family member

(1) This clause applies if, during the 3-year transition period, a paid family carer who is an employee provides, or is available to provide, any hours of care to their employer in excess of the number of hours of care for which funding is provided to that employer under DSS funding policy.

(2) For the purposes of the Minimum Wage Act 1983, the paid family carer is treated as not performing work during the excess hours.

(3) In this clause,—

employer has the meaning given in section 5 of the Employment Relations Act 2000

hours includes part-hours.

6 Transitional provision relating to persons regarded by Ministry or contracted provider as acting on behalf of disabled person lacking capacity to make own decisions about disability support services

(1) This clause applies if,—

(a) before the commencement date, the Ministry or a contracted provider regarded a person (**A**) as acting on behalf of a disabled person (**B**) in relation to the making of decisions about disability support services for B; and

(b) at the time that the Ministry or the contracted provider first regarded A as acting on behalf of B in relation to the making of decisions about disability support services for B, B did not have the capacity to make decisions about disability support services for B; and

(c) immediately before the commencement date, B did not have any of the following persons acting for them:

(i) an attorney:

(ii) a welfare guardian:

(iii) a manager.

(2) During the 3-year transition period, A may act on behalf of B in relation to the making of decisions about disability support services for B as if—

(a) A is acting in the best interests of B; and

(b) A has sought B's views on the decisions to be made; and

(c) B has the capacity to—

(i) make decisions about disability support services for B; and

(ii) appoint a person to act on their behalf; and

(iii) provide instructions to a person that B has appointed to act on their behalf.

(3) However, A ceases to be able to act on behalf of B in relation to the making of decisions about disability support services for B if, during the 3-year transition period, B begins to have a person listed in **subclause (1)(c)** acting for them.

(4) Nothing in this clause limits or affects—

(a) the Protection of Personal and Property Rights Act 1988; or

(b) the law of agency.

(5) In this clause, **attorney** and **manager** have the meanings given in section 2 of the Protection of Personal and Property Rights Act 1988.

7 Pre-commencement acts and decisions not invalidated

Nothing in this Act invalidates any act done, or any decision made, by the Ministry or a contracted provider before the commencement date.

8 Minister may amend or revoke certain pre-commencement policies and programmes during 3-year transition period

During the 3-year transition period, the Minister may amend or revoke any policy or programme—

(a) established by the Crown before the commencement of this Act; and

(b) relating to the provision of DSS-funded disability support services.

9 Certain pre-commencement policies and programmes cease to have effect from end of 3-year transition period

(1) This clause applies to a policy or programme described in **clause 8** that has not been revoked under that clause by the end of the 3-year transition period.

(2) The policy or programme ceases to have effect from the end of the 3-year transition period.

10 Certain proceedings in Authority or Employment Court extinguished

(1) This clause applies to the following proceedings lodged or filed with the Authority or the Employment Court, but not determined or resolved, before the commencement date:

(a) proceedings seeking 1 or more of the following:

(i) a declaration or determination that a specified person is or was an employee of the Crown or a contracted provider while they are or were providing or receiving DSS-funded disability support services:

(ii) any remedies that would or may be available to a specified person as a consequence of a declaration or determination referred to in **subparagraph (i)**:

(iii) a declaration of breach under section 142B of the Employment Relations Act 2000 against the Crown or a contracted provider that relates to a specified person and the provision or receipt of DSS-funded disability support services:

(iv) a compensation order under section 142J of the Employment Relations Act 2000 against the Crown or a contracted provider that relates to a specified person and the provision or receipt of DSS-funded disability support services:

(v) the recovery, under section 142Y of the Employment Relations Act 2000, from the Crown or a contracted provider, of wages or other money payable to a specified person in connection with the provision or receipt of DSS-funded disability support services:

(b) proceedings—

(i) to resolve a personal grievance raised by a specified person that relates to the provision or receipt of DSS-funded disability support services; and

(ii) to which the Crown or a contracted provider has, under section 103B of the Employment Relations Act 2000, been joined as a controlling third party:

(c) an application, under section 103B of the Employment Relations Act 2000, to join the Crown or a contracted provider as a controlling third party to proceedings to resolve a personal grievance—

(i) raised by a specified person; and

(ii) that relates to the provision or receipt of DSS-funded disability support services.

(2) The proceedings—

(a) cannot be pursued; and

(b) must be treated as if they had been withdrawn or discontinued.

(3) In this clause, **specified person** means a person who is or was 1 or more of the following:

(a) a paid family carer:

(b) a disabled person:

(c) a person appointed under section 31 of the Protection of Personal and Property Rights Act 1988 as manager of any property of a disabled person:

(d) a welfare guardian for a disabled person:

(e) the holder of a power of attorney granted by a disabled person (whether or not the grantor was disabled when the power was granted):

(f) a person supporting the decision-making of a disabled person:

(g) a parent or guardian of a disabled person aged under 18 years:

(h) an agent of a person described in **paragraphs (a) to (g)**.

11 Certain potential proceedings in Authority or Employment Court barred

(1) This clause applies to any potential proceedings described in **clause 10(1)(a) or (c)**—

(a) in the Authority or the Employment Court; and

(b) relating to circumstances, events, or decisions that occurred before the introduction date.

(2) The potential proceedings—

(a) cannot be pursued; and

(b) must be treated as if they are incapable of being lodged or filed.

12 Certain unlawful discrimination complaints barred

On and after the commencement date, no person may make a complaint—

(a) to the Human Rights Commission or the Health and Disability Commissioner; and

(b) that is, in whole or in part, based on a specified allegation.

13 Neither Human Rights Commission nor Health and Disability Commissioner may take action or further action in relation to certain unlawful discrimination complaints

On and after the commencement date, neither the Human Rights Commission nor the Health and Disability Commissioner may take any action, or any further action, in relation to a complaint that—

(a) was made before the commencement date; and

(b) is, in whole or in part, based on a specified allegation.

14 Certain unlawful discrimination proceedings against Crown or contracted provider extinguished

(1) This clause applies to any proceedings—

(a) against the Crown or a contracted provider; and

(b) based, in whole or in part, on a specified allegation; and

(c) lodged or filed with any court or tribunal, but not determined or resolved, before the commencement date.

(2) The proceedings—

(a) cannot be pursued; and

(b) must be treated as if they had been withdrawn or discontinued.

15 Certain potential unlawful discrimination proceedings against Crown or contracted provider barred

(1) This clause applies to any potential proceedings—

(a) in any court or tribunal; and

(b) against the Crown or a contracted provider; and

(c) based, in whole or in part, on a specified allegation.

(2) The potential proceedings—

(a) cannot be pursued; and

(b) must be treated as if they are incapable of being lodged or filed.

16 Specific proceedings unaffected

(1) Nothing in this Act affects—

(a) the Supreme Court decision as it relates to an appellant; or

(b) the position of any particular party under—

(i) any final and binding settlement agreed to before the commencement date; or

(ii) any decision in proceedings that have been determined before the commencement date.

(2) Nothing in this Act prevents the lodging or filing of specified proceedings with the Authority or the Employment Court on or after the commencement date.

(3) Specified proceedings that were lodged or filed with the Authority or the Employment Court before the commencement date, but that have not been determined, resolved, withdrawn, or discontinued, continue as if the provisions of this Act (other than this clause) had not been enacted.

(4) In this clause,—

appellant means an appellant in *Fleming v Attorney-General* (SC 42/2024) or *Humphreys v Attorney-General* (SC 44/2024), being the proceedings to which the Supreme Court decision relates

specified person means an appellant or their spouse, civil union partner, or de facto partner

specified proceedings means proceedings seeking—

(a) remedies for a specified person that are or may be available to the specified person as a consequence of the Supreme Court decision; or

(b) remedies for any other person that are or may be available to that person as a consequence of—

(i) an order made under section 6(5) of the Employment Relations Act 2000 in relation to that person before the commencement date; or

(ii) any other determination made by the Authority or the Employment Court before the commencement date about whether that person is an employee

Supreme Court decision means the decision of the Supreme Court in *Fleming v Attorney-General* [2025] NZSC 188, [2025] 1 NZLR 973.

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