

JOINT BRIEF OF EVIDENCE OF BEN MARTIN O'MEARA, MELISSA SARAH GILL AND SARAH JANE PALMER #N17

Mahony Horner questions in writing

Q1: At [59], you state that “the Minister for Disability Issues directed MSD to support her to take a paper to Cabinet to seek agreement on the government response to the Independent Review”, which became the July CBC paper, BMS-17

(a) Is there a reason why MSD was tasked with drafting the paper to Cabinet regarding the Independent Review instead of Whaikaha?

Sarah Palmer:

1. I am not able to answer this question for the Minister.
2. I can say that at the direction of the Minister, PSC set up the independent review and hosted the secretariat function. MSD was also asked to support (given its earlier involvement in the establishment of Whaikaha and its host agency arrangement). It would not be unusual for a Minister to ask an agency, other than the one being reviewed, to hold the pen on a Cabinet paper on their behalf. For example, in this circumstance that could either have been PSC or MSD.
3. In addition, MSD had been attending the weekly officials meetings with the reviewers and the Minister, had prepared previous advice and the April Cabinet paper, and had capacity to draft the CBC paper on an urgent basis.

(b) Was Whaikaha’s involvement relating to the July CBC paper limited only to providing feedback (as noted in [61])?

Sarah Palmer and Ben O’Meara:

4. Yes

Q2 At [61], you state that “Whaikaha provided feedback on the draft versions of the July CBC paper

(a) Was the feedback from Whaikaha incorporated in the July CBC paper? If so, how? And if not, why not?

Sarah Palmer:

5. Yes, most feedback from Whaikaha was included. This included the insertion of appendix 2. Where feedback from Whaikaha was inconsistent with the Minister’s directions, it was not included.

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6. Cabinet material belongs to the Minister and the Minister along with officials determines the content.

Q3 At [68], you refer to the amended July CBC paper (noting that it became the August 2024 Cabinet Paper, BMS-20) which then included recommendations that made MSD responsible for delivering DSS by October 2024:

(a) What work has been undertaken by the Crown to support the notion that MSD has the capability to deliver DSS?

Melissa Gill:

7. The Public Service Commission advised the Minister on machinery of government matters, see BMS-21.
8. MSD delivers the welfare system and has the capability to deliver DSS.
9. MSD has controls and systems capability already in place to manage the delivery of services. MSD has:
 - 9.1 130 sites
 - 9.2 123 Service Centres (at 28 May 2024)
 - 9.3 9,248 staff (as at 25 March 2024)
 - 9.4 2,000 providers
10. In the 2022/23 year 1.3 million people received income support from MSD.
11. MSD supports a million people at any given time. This includes:
 - 11.1 Income support
 - 11.2 Superannuation
 - 11.3 Help to find a job
 - 11.4 Public housing assistance
 - 11.5 Student loans and allowances
 - 11.6 Emergency support and wage subsidies
 - 11.7 community services and funding
 - 11.8 social policy and advice to Government

- 11.9 monitoring three Crown entities
12. In the 2022/23 year MSD answered 3.9 million calls - [source MSD Annual Report]
13. MSD's purpose is Manaaki tangata, manaaki whaanau
- 13.1 We help people to be safe, strong and independent
14. MSD has well-established procurement and commissioning functions responsible for a range of services to clients across various portfolios from social, employment and housing to community and commercial providers. We are the lead on the cross-agency social sector commissioning work programme.
15. We have established procurement policies and practices across the organisation supported by governance forums for significant procurement decisions. We follow all government procurement guidelines as set out by the NZ Government Procurement Group (MBIE). Given our size and our procurement portfolio we continually look for ways to further mature our procurement processes to ensure they continue to align with Government expectations and provide appropriate outcomes. This includes regular assessments against MBIE's best practice guidelines.
16. The Ministry has invested in further improving its procurement and contract management capability. In 2023 we implemented procurement and contract management technology across our departmental spend, and additional development is underway to use it for non-departmental contracting and procurement by March 2025. The investments in this technology provide MSD with a single source of truth about all our contracted engagements and full financial management and reporting, as well as payments and e-invoicing capability

(b) In the BMS-20 Cabinet Paper at [29], it states that “MSD is under considerable pressure at the moment and is already responsible for delivery of two Government targets.” How will these circumstances be mitigated by the Crown to ensure that MSD is equipped to meet the operational requirements of DSS?

Melissa Gill:

17. MSD officials discussed with the Minister how the transfer of DSS may impact the delivery of the two Government targets MSD is responsible for and its overall work programme.

18. Cabinet agreed to transfer all relevant DSS functions, resources and funding as well as policy, quality assurance and supporting functions to MSD.
19. MSD has appointed on secondment a new DCE, Chris Bunny, to be responsible for the branded business unit in MSD. As explained in BMS [79], Anne Shaw is the Associate Deputy Chief Executive responsible for delivery and Alastair Hill is the Programme Director responsible for the Taskforce.
20. I have discussed with MSD's CE, Debbie Power, the steps that we have put into place to ensure the smooth transition of DSS (and supporting functions) to MSD, the resources required, and how MSD's normal governance practices will apply to DSS. These steps are outlined further in my answer at 5(d).

Q4 At [82]-[83], you say that Whaikaha will be required to work with taangata whaikaha Maaori and express a hope that current partnerships between Whaikaha and the disability community will be maintained. In the BMS-20 Cabinet Paper at [23], it states that “[t]here will be multiple points of engagement with the disability community and DSS stakeholders throughout the programme. As such, opportunities will be created to enable disabled people, their families and whānau, and carers to provide input throughout the programme.”

(a) How will Whaikaha ensure the whaanau hauaa / taangata whaikaha Maaori communities will be directly engaged with regarding the implementation of the DSS review programme?

Melissa Gill and Ben O’Meara:

21. The DSS Taskforce is leading the design of an engagement strategy to ensure disabled people and taangata whaikaha Maaori have a voice in the design and implementation of the independent review recommendations. An engagement lead began work on 11 September 2024 and has begun to prepare an engagement strategy.
22. Whaikaha is assisting the DSS Taskforce by providing information on, and contact details for, groups that Whaikaha currently engages and works with.

(b) Given that work relating to the implementation of the DSS review programme is already underway, what are the consultation and engagement strategy options provided by the officials, including officials from Whaikaha, to the Minister?

Melissa Gill and Ben O'Meara:

23. Significant work went into the communications approach for the announcement of the DSS review programme. This included discussions with the Minister, her office and Whaikaha on steps to make the announcement as accessible as possible in the circumstances. As an example, NZSL interpreters provided interpretation in the Minister's videos to the community and at the press conference.
24. Other activities which supported the announcement included:
 - 24.1 Whaikaha officials emailed NASCs, EGL demonstration sites, flexible funding hosts and EMS providers plus community and partnership groups and called key stakeholders. Paula Tesoriero emailed providers, the Transformation Board, Strategic Advisory Group, DPO Coalition and NEGL group.
 - 24.2 MSD officials emailed its Risk and Audit Committee, Maaori Reference Group, Pacific Reference Group, Pou Tangata, National Beneficiary Advocate Consultative Group and Community Law.
 - 24.3 Paula Tesoriero and Ben O'Meara met with the Transformation Board, Strategic Advisory Group, DPO Coalition and NEGL.
 - 24.4 Paula Tesoriero and Amanda Bleckmann called NZDSN, residential providers and NASCA.
25. Whaikaha and MSD have also supported the Minister to engage with the community after the announcement, including about the impact of the decisions that have taken effect. For example, the Minister provided a video update to the community on 20 August 2024, published on the Whaikaha website, with an NZSL interpreter. The Minister's update is also currently available in audio, Braille and large print. On 23 August 2024, the Minister published an open letter to all New Zealanders.
26. Whaikaha and the Taskforce have worked together on different ways of communicating with the community and providers. This includes publishing

questions and answers and information on the changes alongside the operational policy and guidelines on the Whaikaha website.

27. The normal channels of communication have also been used by the community and providers to ask questions about the DSS review programme. The Minister, Whaikaha, MSD and the Taskforce have responded to correspondence and media requests.
28. As to engagement strategy options in the future, we refer to our answer at Q4(a).

(c) Has a consultation and engagement strategy been implemented, and when can whaanau hauaa / taangata whaikaha Maaori communities be expected to be engaged with regard to the DSS review programme, given that the implementation has already begun with no engagement having taken place?

Melissa Gill:

29. I refer to my previous answer at 4(b).
30. I anticipate an engagement strategy will include that content when it is developed. I also anticipate that details will be made public as soon as they are agreed by the Minister.

Q5 At [87], you refer to Whaikaha becoming a “new standalone public service department” before 2025, “responsible for advocating for disabled New Zealanders”.

(a) In what ways will the work of this new standalone public service department be different from the work undertaken by the Office for Disability Issues (ODI) (prior to its integration into Whaikaha)?

Ben O’Meara:

31. The functions of the new standalone public service department are outlined in CAB-24-MIN-0301 (BMS-23). The functions that are different, or additional, to the work undertaken by the former ODI include:
- 31.1 providing strategic policy advice on matters affecting disabled people and taangata whaikaha Maaori such as education, health, employment, transport and housing;
- 31.2 strengthened system level monitoring of progress and outcomes for disabled people and taangata whaikaha Maaori against key government goals; and

31.3 providing an integrated source of government information for disabled people and taangata whaikaha Maaori, including the coordination of alternate formats.

32. More detailed decisions on the scale and scope of the new standalone public service department are expected by the end of 2024.

(b) Given the numerous problems identified with the operation of ODI, what steps are being taken to ensure they will not be replicated once more in the setting up of this new standalone public service department?

Ben O'Meara:

33. The intention for the former ODI to provide advice on cross-sectoral disability policy issues was never fully realised so, as outlined above, the new standalone public service department will be set up with a dedicated focus to provide strategic policy advice on matters affecting disabled people and taangata whaikaha Maaori.

(c) Including September, there are roughly three and a half months left prior to the beginning of 2025. One of the issues regarding Whaikaha is how quickly it was established, which led to the risks and problems identified for service delivery. Will there be any work undertaken alongside the DSS review programme to ensure that Whaikaha can continue to fulfil its representative/advocacy role for disabled New Zealanders, including whaanau hauaa / taangata whaikaha Maaori?

Ben O'Meara:

34. The work Whaikaha undertakes to fulfil its representative/advocacy role for disabled people and taangata whaikaha Maaori is not impacted by the DSS review programme and continues as usual.

35. One of the core functions of Whaikaha, and the new standalone public service department, relates to system leadership and societal change.

36. Whaikaha, and the new standalone public service department, will provide coherent system-level leadership and stewardship that aligns priorities and focus across government. This includes accessibility, the New Zealand Sign Language Board; the New Zealand Disability Strategy; and compliance with the UN Convention on the Rights of Persons with Disabilities.

(d) What preparation or improvements are being made to ensure that this rapidity does not merely repeat itself yet again in the transferral of DSS to MSD?

Ben O'Meara and Melissa Gill:

37. To ensure the success of the new DSS branded business unit within MSD and the new standalone public service department, a Transition Governance Group made up of Whaikaha and MSD senior leaders has been established to support DSS and MSD. The Transition Governance Group will oversee the design of both the new DSS branded business unit and the new standalone public service department (with the support of Treasury and PSC) before advice is provided by the respective CEs to the Minister.
38. Whaikaha and the Ministry of Social Development are committed to continuity of DSS. As outlined in the Memorandum of Understanding between Whaikaha and the Ministry of Social Development (BMS-25), to ensure the successful operation and delivery of DSS, Whaikaha will provide ongoing support for DSS until final transfers of agreed DSS support functions, resources, and staff are completed. This includes:
 - 38.1 DSS policy and operational policy support;
 - 38.2 Advice on operational matters, including exceptions and exemptions;
 - 38.3 Management of DSS safeguarding procedures and complaints processes;
 - 38.4 Support functions (not already included in the MSD Shared Services agreement) including finance, human resources and employment relations, organisational development support, property, legal services, risk, health safety and security and ministerial and executive services;
 - 38.5 Any other supporting services including ensuring continuity of service through the current shared services between Whaikaha and Health New Zealand and Ministry of Health.
 - 38.6 The Whaikaha Ministerial and Executive Services (MaES) team will continue to support Official Information Act responses consistent with existing delegations.

Q6 At [88], you state that “the Government has decided that it is better suited to a well-established and larger government department with capabilities to oversee contracts with service providers, manage large budgets and monitor outcomes”.

(a) Similar to question 3.a., what work has been undertaken to support the notion that a larger government department like MSD will be in a better position to do the work described above?

Melissa Gill:

39. I refer to my previous answer at 3(a).

(b) What is a “branded business unit” and how will one of those provide better DSS outcomes?

Melissa Gill:

40. A branded business unit means that while DSS will be an operational part of MSD, DSS will have a separate “identity” from MSD with its own branding. I refer to paragraph 90 of our Brief of Evidence for further information about what this will look like for members of the disabled community continuing to access DSS.

41. As to the question of how it will provide better DSS outcomes, I refer to my answer at 3(a).

Q7 At [88]-[94], you describe that work relating to the future delivery of DSS.

(a) At what point were whaanau hauaa / taangata whaikaha Maaori engaged with in respect of the operational changes described in these paragraphs?

Melissa Gill:

42. There was no engagement with disabled people or taangata whaikaha Maaori specifically on the operational changes described in these paragraphs. These changes flow directly from the decision made by the Government as a result of the independent review.

(b) Was there any discussion with whaanau hauaa / taangata whaikaha Maaori groups as to how these operational changes will impact their interactions with DSS?

Ben O’Meara:

43. Whaikaha has held numerous online meetings with NASCs, EGL sites, and providers (including kaupapa Maaori providers). NASCs, EGL sites, and providers continue to be the key point of interaction for disabled people and taangata whaikaha Maaori.

44. There were no discussions with disabled people or taangata whaikaha Maaori specifically on how these operational changes will impact their interactions with DSS because there is unlikely to be immediate changes to the support they receive.

(c) How then can any firm and positive expectation be made as to the ability of the new branded business unit to deliver the outcomes needed by whaanau hauaa / taangata whaikaha Maaori?

Melissa Gill:

45. MSD has many existing relationships with disabled people and taangata whaikaha Maaori. Those relationships, and MSD's commitment to te Tiriti o Waitangi, will shape its delivery of DSS.
46. MSD is committed to working with whaanau hauaa and taangata whaikaha with a focus on delivering outcomes. Through our upcoming engagement we welcome the opportunity to identify and explore ways to improve how MSD can support the aspirations of taangata whaikaha Maaori.

Q8 At [98], you state that the Government is committed to the EGL vision and principles.

(a) How does this commitment reconcile with the fact that work on the national rollout of EGL is paused until work on the three stages of the DSS review programme has been completed (see [42] of BMS-20)?

Melissa Gill:

47. The EGL vision and principles are for all government agencies to aspire to. The EGL vision and principles are not limited to DSS or system transformation.
48. The Independent Review made it clear that urgent work was required to stabilise DSS to ensure that the appropriation would not be breached and that services will be delivered consistently for disabled people. The Minister has repeatedly told me that her priorities are for DSS to be fair, consistent and transparent.

Ben O'Meara:

49. The new standalone public service department will continue to promote the EGL vision and principles through its function to facilitate societal change and provide system leadership.

(b) Relatedly, what is a realistic timeframe for the completion of the three stages of the DSS review programme?

Melissa Gill:

50. Cabinet has directed the timeframes for the DSS Taskforce. Stage one will be actioned by 30 September 2024, and stages two and three will be progressed with decisions expected to be taken by the end of 2024.
51. I am unable to provide further information regarding what will happen in 2025. Timeframes will be agreed by Cabinet as the work progresses.

Q9 Relating to BMS-14: the Independent Review. One of the concerns relating to Whaikaha in the Independent Review (BMS-14) is that the establishment of Whaikaha was rushed, meaning it inherited system risks that were not able to be addressed adequately by the ministers and officials creating Whaikaha.

(a) How will these inherited system risks, which are likely to be transferred to MSD given the “lift and drop” approach taken to the DSS review programme, be identified and addressed by MSD to ensure it can meet the operational requirements of delivering DSS?

Melissa Gill:

52. MSD has a well-established risk culture and is committed to managing risk in a structured and practical way. Our Chief Executive is responsible for governance and oversight of risk management within the Ministry. The CE is accountable for ensuring that the Ministry has a consistent, effective, and robust risk management framework, oversight, and culture in place to effectively manage and mitigate Ministry risks.
53. The Risk and Audit Committee (who provide independent advice to the Chief Executive) has been updated on the DSS transfer.
54. MSD will continue to work with the Whaikaha executive leadership team to gain a full picture of the system and operating risks associated with DSS (other than that already identified by the Review). MSD will use this risk information and conduct its own assessment and that will inform its DSS capability uplift work programme over the coming months and year. Q10 Questions relating to BMS-20: August 2024 Cabinet Paper.

In the BMS-20 Cabinet paper at [29], the Minister for Disability Issues refers to MSD as “on balance, [...] the best option”.

(a) What options is the Minister referring in this Cabinet Paper?

Melissa Gill:

55. The Public Service Commission provided advice to the Minister regarding machinery of government issues. I refer to paragraph 70 of our joint brief of evidence.

(b) Has there been any work undertaken by the Crown in respect of those options referred to in question 4(a) which provide empirical evidence that support the Minister’s opinion regarding the transfer of DSS to MSD as “the best option”?

Melissa Gill:

56. I refer to my previous response to question 4(a).

(c) Given the legacy issues inherited by Whaikaha from the previous Ministry of Health (as noted in the Independent Review, BMS-14), has the Crown undertaken any risk impact assessment or similar assessment in respect of MSD’s capability to deliver DSS to ensure that those legacy issues are addressed?

Melissa Gill:

57. I refer to my previous response to 9(a) regarding risks.

58. For completeness, I note that the Ministry of Regulation determined that the DSS transfer was exempt from the requirement to provide a regulatory impact statement. That exemption was on the grounds that the proposal had no or only minor impact on business, individuals and not-for-profit entities.

Q11 The Wai 2619 named claimant, Dr Huhana Hickey, has made comments in the media in response to the transfer of funding delivery functions to MSD, where she describes MSD as “one of the cruellest ministries in this country”.¹ Is Whaikaha and the Minister for Disability Issues aware of these comments and the bases for them?

(a) Are Whaikaha and the Minister for Disability Issues aware of the WEAG Report *Whakamana Taangata: Restoring Dignity to Social Security in New Zealand* and its recommendations? If so, has this report been considered in the design and development of the proposed DSS branded business unit?

Melissa Gill and Ben O’Meara:

59. MSD and Whaikaha are aware of the WEAG report. We have not discussed the WEAG Report with the Minister in the context of the DSS transfer.

¹ [Watch: Disabled community ‘heartbroken’, slamming disability services restructure | Stuff](https://www.stuff.co.nz/news/344244442/watch-disabled-community-heartbroken-slamming-disability-services-restructure). See also the Welfare Expert Advisory Group *Whakamana Taangata: Restoring Dignity to Social Security in New Zealand* (2019) accessed at <<https://www.weag.govt.nz/assets/documents/WEAG-report/aed960c3ce/WEAG-Report.pdf>>.

(b) Is Whaikaha aware of whether the Minister for Disability Issues plans to address the issues that whaanau hauaa / taangata whaikaha Maaori already have with MSD to ensure that the proposed DSS unit in MSD will not have the same issues?

Melissa Gill:

60. MSD is a party to this inquiry and has considered the claimant evidence carefully. As noted, MSD is committed to working alongside whaanau hauaa and taangata whaikaha, as the disability system continues to evolve.

(c) If so, what work has been undertaken so far to ensure that the proposed DSS unit in MSD will avoid or mitigate those issues?

Melissa Gill:

61. No work has been undertaken at this point in time. The work to date has focussed on preparations for the transition, the establishment of the Taskforce, and implementation of recommendations 1, 2 and 3.

Tukau Law questions in writing

Q1 In reference to paragraphs [22.1-22.3], what will the Crown do to mitigate the same “lift and drop” issues from repeating?

Melissa Gill and Ben O’Meara:

62. To ensure the success of the new branded business unit for DSS within MSD and the new standalone public service department, a Transition Governance Group made up of Whaikaha and MSD senior leaders has been established to support DSS and MSD. The Transition Governance Group will oversee the design of both the new branded business unit for DSS and the new standalone public service department (with the support of Treasury and PSC) before advice is provided by the respective CEs to the Minister.

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63.1 DSS policy and operational policy support;

63.2 Advice on operational matters, including exceptions and exemptions;

- 63.3 Management of DSS safeguarding procedures and complaints processes;
- 63.4 Support functions (not already included in the MSD Shared Services agreement) including finance, human resources and employment relations, organisational development support, property, legal services, risk, health safety and security and ministerial and executive services;
- 63.5 Any other supporting services including ensuring continuity of service through the current shared services between Whaikaha and Health New Zealand and Ministry of Health.

64. The Whaikaha Ministerial and Executive Services (MaES) team will continue to manage Official Information Act responses consistent with the existing delegations.

Q2 Paragraph [36] discusses a briefing that has “a view to ensuring the financial sustainability of the system while maximising choice and control for disabled people and taangata whaikaha Maaori”. However, the briefing does not mention Maaori or taangata whaikaha Maaori at all. What measures are in place to ensure that taangata whaikaha Maaori have maximised choice and control?

Ben O’Meara:

65. This briefing sought agreement for Whaikaha to draft a Cabinet paper. The Cabinet paper would have included a set of measures, but the Cabinet paper was paused.

Melissa Gill:

66. Choice and control is an important aspect of EGL.

67. Engagement is planned to happen, and that will include taangata whaikaha Maaori.

Q3 Why was work on the proposed Cabinet paper seeking a review of DSS moved from Whaikaha to MSD?

Melissa Gill:

68. I refer to the response to 1(a) above.

Q4 What engagement has the Crown conducted with Maaori regarding its actions following the announcement, mentioned at paragraphs [76-81]?

Melissa Gill:

69. I refer to my responses to 4(a) - (c) above.

Q5 Why is DSS being moved to MSD instead of being returned to the Ministry of Health?

Melissa Gill and Ben O'Meara:

70. The New Zealand Disability Strategy and the Convention on the Rights of Persons with Disabilities are underpinned by the social model of disability. Returning DSS to the Ministry of Health would go against the intent of separating the health and disability systems and moving from a medical model of disability to the social model of disability which supports self-determination and focusses on reducing environmental and social barriers.

Q6 What measures are in place to ensure that taangata whaikaha Maaori and kaupapa Maaori providers are engaged with and listened to by the Taskforce mentioned at paragraph [95]?

Melissa Gill:

71. I refer to my responses to 4(a) - (c) above.