

## Daisy Lutyens [TSY]

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**From:** Callum Finn Reason [TSY]  
**Sent:** Thursday, 4 June 2026 5:00 pm  
**To:** Daisy Lutyens [TSY]  
**Subject:** FW: Paid family carers issue [legally sensitive]  
**Attachments:** Ministerial Consultation: Strengthening Disability Support Services: Policy decisions to establish a legislative framework; Min consult briefing - DSS legislation.docx

**Callum Finn Reason** (he/him) | Analyst, **Social Sector, Communities and Learning Team** | Te Tai Ōhanga **The Treasury**

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**From:** Callum Finn Reason [TSY]  
**Sent:** Monday, 23 March 2026 4:28 pm  
**To:** Stacey Wymer [TSY] <[Stacey.Wymer@treasury.govt.nz](mailto:Stacey.Wymer@treasury.govt.nz)>; Claire Howard [TSY] <[Claire.Howard@treasury.govt.nz](mailto:Claire.Howard@treasury.govt.nz)>; Marion Hagyard [TSY] <[Marion.Hagyard@treasury.govt.nz](mailto:Marion.Hagyard@treasury.govt.nz)>  
**Cc:** Mohan Singh [TSY] <[Mohan.Singh@treasury.govt.nz](mailto:Mohan.Singh@treasury.govt.nz)>  
**Subject:** RE: Paid family carers issue [legally sensitive]

Kia ora Stacey, Claire, Marion

Please see our draft briefing to MOF recommending feedback to the Minister for Disability Issues (Hon Upston) about her upcoming paper, "Strengthening Disability Support Services: Policy decisions to establish a legislative framework." (The paper can be found in the attached chain.) This is due to the office COP tomorrow.

We'll have a further opportunity to brief ahead of Cabinet – Hon Upston is aiming for SOU on 1 April.

Happy to discuss.

Thanks  
Callum

**Callum Finn Reason** (he/him) | Analyst, **Social Sector, Communities and Learning Team** | Te Tai Ōhanga **The Treasury**

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**From:** Callum Finn Reason [TSY]  
**Sent:** Friday, 20 March 2026 3:14 pm  
**To:** Stacey Wymer [TSY] <[Stacey.Wymer@treasury.govt.nz](mailto:Stacey.Wymer@treasury.govt.nz)>  
**Cc:** Claire Howard [TSY] <[Claire.Howard@treasury.govt.nz](mailto:Claire.Howard@treasury.govt.nz)>; Mohan Singh [TSY] <[Mohan.Singh@treasury.govt.nz](mailto:Mohan.Singh@treasury.govt.nz)>  
**Subject:** Paid family carers issue [legally sensitive]

[SEEMAIL][SENSITIVE]

[legally sensitive]

Kia ora Stacey,

We appreciate you'll be very busy; we're drafting this quick email to get you, and potentially Mark Sowden, across a Disability Support Services (DSS) issue, given its sensitivity, potential fiscal risk s 9(2)(j) and likelihood of media and public interest. The issue relates to the Government's response to the December Supreme Court judgement that held that two paid family carers of disabled relatives are employees of MSD. We've included a summary of the issue and proposed Government response at the end of this email.

We are emailing you now as we have received the draft Cabinet paper on the Government's response for our review (going to SOU 1 April). A quick chat next week may be helpful. The immediate actions we have are to:

- a) provide agency consultation feedback on the paper to DSS on Monday
- b) provide Ministerial consultation advice to MoF by Wednesday

Given the nature of the proposed Government response, s 9(2)(f)(iv) we want to ensure senior leaders are aware and have an opportunity to engage with our advice before we finalise it. We plan to keep our agency consultation response focused on ensuring the paper is technically accurate, and we will be pulling together our Ministerial advice early next week and can test with you. We do not currently plan to explicitly recommend supporting/not supporting retrospective legislation, but we also have a quick chat with the legal team on Monday that may inform our approach.

**Note** - Given the sensitivity of the paper, DSS shared the paper to Tier 2 leaders of the relevant leaders only. Unfortunately, DSS sent this to Jo Hughes rather than Mark, so there is likely a need for us to get this across Mark's radar too.

Actions:

- Please let us know if you would like to meet to discuss our advice early next week.
- Please let us know how you would prefer we engage Mark on this issue.

Cheers,  
Callum

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#### Issue

- In December 2025, the Supreme Court released its judgment *Fleming v Attorney-General*. In effect, the judgment made two family members, who care for their respective disabled relatives, employees of MSD.
- The judgment referred any assessment of damages and any other compensation to the Employment Court. In particular, MSD is likely to have to reimburse the employees for unpaid wages. s 9(2)(j)
- Beyond the two Supreme Court appellants, there are s 9(2)(h) more family carers with existing claims with the Employment Relations Authority (ERA). s 9(2)(j)
- s 9(2)(f)(iv)

#### Government response

- In response to the judgment, Hon Upston is taking a Cabinet paper to SOU on 1 April proposing a new DSS Bill to be passed before the General Election, that would achieve two objectives:
  - Sets up foundational legislation for Disability Support Services, which currently lacks any dedicated legislative framework; and

- s (9)(2)(g)(i) [REDACTED]
- Hon Upston has also asked Cabinet to decide whether to make the Bill retrospective – i.e. whether to make it extinguish the s 9(2)(h) claims already with the ERA, as well as prospective claims. s 9(2)(j) [REDACTED]

**Callum Finn Reason | Te Tai Ōhanga The Treasury**

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