

EXEMPTING BACK PAYMENTS MADE IN RELATION TO THE ACCOMMODATION SUPPLEMENT BOUNDARY ISSUE FROM INCOME AND CASH ASSETS TESTS

Proposal

- 1 This paper seeks approval to exempt lump sum back-payments of Accommodation Supplement to past and present recipients from income and cash assets assistance tests. The back-payments are the result of correcting a historical error with Accommodation Supplement boundaries which meant eligible clients did not receive their full entitlement.

Executive summary

- 2 Accommodation Supplement (AS) area boundaries were required by the Social Security Act 1964 (the Act) to align with the Government Statistician area boundaries. These AS boundaries were not always updated. The Families Package (Income Tax and Benefits) Act 2017 corrected this error by fixing AS area boundaries to Statistics New Zealand boundaries as at 26 June 2017. This means that AS area boundaries are no longer required to be updated when Statistics New Zealand updates boundaries.
- 3 However, there are approximately 1,693 current and past AS recipients affected by the historical error, with approximately 1,064 underpaid between January 2001 and 1 April 2018.
- 4 The Minister of Housing and Urban Development and I have agreed that the Ministry of Social Development (MSD) should proactively review clients' entitlements and make back-payments where these are owed.
- 5 Unless specifically exempted, a lump sum back-payment of AS may affect current eligibility to income and cash asset tested financial assistance.
- 6 I am of the view that this error was outside the clients control and therefore it would be unfair to penalise clients for receiving AS back-payments. Granting of back-payments should not affect the clients' current financial assistance entitlements. Therefore, I propose that regulations are made under the Act to exempt the back-payments, and any income derived from them, from income and cash assets tests for a period of 12 months after receipt.
- 7 If Cabinet approves this proposal, the Parliamentary Council Office (PCO) will draft amendments to regulations under the Act. These will be submitted to the Cabinet Legislation Committee before payments are made to affected clients.
- 8 Once the regulations are in place, MSD will be able to identify former and current clients, proactively review their entitlement, and pay arrears using a similar process as with other comparable issues.

Background

- 9 The Accommodation Supplement (AS) is a non-taxable weekly payment to help subsidise housing costs for low-income beneficiary and non-beneficiary households with limited income

and assets. AS provides an up to 70 per cent subsidy for housing costs that exceed 25 per cent of the recipient's income, up to a set maximum amount.

- 10 AS is provided under sections 61E-61EC of the Social Security Act 1964 (the Act). Schedule 18 of the Act prescribes the mechanism for calculating the rates of AS up to prescribed maximum rates, which vary depending on the AS area in which a person lives and other matters such as income and family circumstances.
- 11 Urban and rural places throughout New Zealand are allocated into four AS areas that reflect local housing costs. Area One includes places with the highest accommodation costs and Area Four includes places with the lowest accommodation costs. In 1996, the Act was amended to specify that the AS area boundaries at that time referred to specified area boundaries as defined by the Government Statistician. This resulted in a requirement that AS area boundaries be updated when the Government Statistician boundaries were altered.

Historical accommodation supplement boundaries were not updated as required

- 12 However, since 1996 updates to AS boundaries were not always made each time the Government Statistician boundaries were updated. This has resulted in the potential for clients to be paid an incorrect rate of AS. The Ministry has identified that AS boundaries had last been updated in 2005 using 2001 Statistics New Zealand (Statistics NZ) boundaries.
- 13 The previous Ministers for Social Development and Social Housing took decisions that MSD should continue to operationally apply the 2001 boundaries. These decisions were made on the basis that a validation provision was included in the Social Security Legislation Rewrite Bill and that the Bill would soon pass to validate past decisions.
- 14 Changes made through the Families Package (Income Tax and Benefits) Act 2017 fixed AS boundaries to Statistics New Zealand boundaries as at 26 June 2017, and allowed for regulations to be made to define AS area boundaries. There is no longer a requirement in the Social Security Act 1964 that AS area boundaries be updated when Government Statistician boundaries are updated. This fixed the issue going forward, however the historical issue was not resolved.
- 15 In February 2018, the Minister for Housing and Urban Development and I agreed to remove the validation provision in the Rewrite Bill that confirmed past AS area boundary decisions. Officials provided us with advice on alternative options for addressing the AS historical misalignment issue.

Legal advice

s 9(2)(h)



Scale and impact for clients who are affected by this issue

- 19 Between January 2001 and 1 April 2018, an estimated 1,693 current and past AS recipients have been affected by this issue¹.
- 20 Approximately 106 were overpaid (at an average of approximately \$1,020 each), around 1,064 were underpaid (at an average of approximately \$1,235 each) and the remaining 523 clients resided in areas affected by the error but their AS payments were unaffected.
- 21 The estimated total cost of under-payments to affected clients is approximately \$1.3m.
- 22 I have instructed MSD not to retrospectively review past likely overpayments made because of the AS area boundaries issue. Since the AS overpayments were the result of MSD errors it would be unfair to expect clients to repay any money which they received in good faith, and which occurred through no fault of their own.

MSD will take a proactive approach to correct entitlements for current and former AS clients

- 23 The Minister for Housing and Urban Development and I have decided to proactively review client entitlement and make back-payments to correct past underpayments where possible. This approach helps retain public trust and confidence in the social welfare system in that issues are fixed when they are found.
- 24 On this basis, I seek Cabinet's agreement to exempt these lump sum AS back-payments, and income derived from these payments, from all forms of asset and income testing under the Act and related regulations for 12 months. Not exempting the back-payments would be inequitable as they correct an error outside of the client's control.
- 25 This would require amendments to the:
 - *Social Security (Income and Cash Assets Exemptions) Regulations 2011*²
 - *Social Security (Temporary Additional Support) Regulations 2005*
 - *Social Security (Long-term Residential Care) Regulations 2005*.
- 26 These changes will also require amendment to the Ministerial Direction in relation to Special Benefit to similarly exempt lump-sum back payments from the definitions of income and cash assets in the Ministerial Direction. I intend to make changes to the Ministerial Direction at the same time as the changes to regulations.
- 27 Once these amendments are in place, MSD will be able to identify former and current clients, proactively review their entitlement, and pay arrears using a similar process as with other alignment issues. It is anticipated that MSD will have these necessary processes in place to identify and pay clients by June 2019.

Consultation

- 28 This paper has been prepared by MSD. The Department of Prime Minister and Cabinet has been consulted.

¹ Actual AS system changes were made on 1 April 2018. This means that a number of people were still not receiving their correct AS payments between 26 June 2017 and 1 April 2018

² Amendments will flow through to the cash assets tests for social housing. The exemptions would also cover Special Needs Grants, advance payments of benefits and Recoverable Assistance payments

Financial implications

- 29 There are no financial implications resulting from the recommendations in this paper.
- 30 The estimated cost of back-payments to affected clients is approximately \$1.3m and will be absorbed from within existing Accommodation Assistance appropriation funding.

Human rights implications

- 31 This paper has no human rights implications.

Legislative implications

- 32 This paper proposes amendments to the Social Security (Income and Cash Assets Exemptions) Regulations 2011, the Social Security (Temporary Additional Support) Regulations 2005 and the Social Security (Long-term Residential Care) Regulations 2005 to exempt AS back-payments, and any income derived from them, from the cash asset and income tests for assistance under the Social Security Act 1964.
- 33 The proposed amendments to these regulations will ensure that affected clients do not have their financial entitlements affected by back-payments made to correct this error.
- 34 In order to make the regulatory amendments set out in paragraph 32 above, I request that Cabinet invite me to instruct the PCO to draft the required regulations.

Regulatory impact and compliance cost statement

- 35 The Regulatory Quality Team at the Treasury has determined that the regulatory decisions sought in this paper are exempt from the requirement to provide an Impact Assessment as the relevant issues have been addressed by an existing Impact Analysis³.

Gender implications

- 36 This paper has no gender implications.

Disability perspective

- 37 This paper has no disability implications.

Publicity

- 38 Affected clients who are currently receiving financial assistance will be contacted and advised about the error and when they will receive their back payments. Once amendments to regulations have been made, we will attempt to contact affected clients who are no longer receiving financial assistance through processes that will be in place before June 2019.
- 39 I intend to proactively release this Cabinet paper on the MSD website.

³ Regulatory Impact Statement: Exempting back-payments, associated with correcting entitlements to the Accommodation Supplement, from income and cash asset tests under the Social Security Act 1964 refers: <https://treasury.govt.nz/sites/default/files/2017-01/ris-msd-ebp-nov16.pdf>.”

Recommendations

40 It is recommended that the Committee:

- 1 **note** the Accommodation Supplement (AS) area boundaries were not always updated in accordance with changes to area boundaries made by the Government Statistician as was required by the Social Security Act 1964;
- 2 **note** that the issue has been resolved going forward, through changes to the Social Security Act 1964 as part of the Families Package (Income Tax and Benefits) Act 2017;
- 3 **note** that this means that AS area boundaries are no longer required to be updated when Statistics New Zealand update their boundaries;
- 4 **note** that clients who lived in the relevant AS areas between 1996 and 1 April 2018 are affected by failures to adjust AS area boundaries in accordance with those set by the Government Statistician;
- 5 **note** that there are approximately 1,693 current and former clients who receive or have received AS who are affected by this issue with approximately 1,064 underpaid;
- 6 **note** that MSD will proactively review client records and make back-payments to those underpaid because of the area boundaries issue;
- 7 **note** unless specifically exempted a back-payment of AS back-payments to affected clients will affect income- and cash asset-tested assistance ;
- 8 **agree** to amend the Social Security (Income and Cash Asset Exemptions) Regulations 2011, the Social Security (Temporary Additional Support) Regulations 2005, and the Social Security (Long-term Residential Care) Regulations 2005 to exempt AS back-payments made to correct clients' entitlements to the AS and any income derived from them in the 12-month period of receipt from cash asset and income tests for assistance under the Social Security Act 1964;
- 9 **note** the Minister for Social Development intends to amend the Ministerial Direction on Special Benefit to exempt back-payments for correcting clients' AS payments and any income derived from them in the 12-month period from cash asset and income tests for assistance under the Social Security Act 1964;
- 10 **invite** the Minister for Social Development to instruct the Parliamentary Counsel Office to draft regulations to give effect to decisions in recommendation 8.

Hon Carmel Sepuloni
Minister for Social Development

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