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**MINISTRY OF SOCIAL
DEVELOPMENT**
TE MANATŪ WHAKAHIATO ORA

Cabinet paper

Date: 8 August 2017 **Security Level:** Cabinet Sensitive

For: Hon Anne Tolley, Minister for Social Development

File Reference: REP/17/8/890

Amendment Regulations to exempt lump-sum payments to correct clients' entitlements to Temporary Additional Support from income and cash asset tests and other technical issues

Cabinet Committee Cabinet Legislation

Date of meeting 9 August 2017

Minister Hon Anne Tolley, Minister for Social Development

The proposal The Cabinet Legislation Committee is asked to authorise the submission of the following regulations to the Executive Council:

- Social Security (Income and Cash Assets Exemptions) Amendment Regulations (No. 2) 2017 (Income and Cash Asset Regulations);
- Social Security (Temporary Additional Support) Amendment Regulations (No. 2) 2017 (TAS Regulations);
- Social Security (Long-term Residential Care) Amendment Regulations (No. 3) 2017 (Long-term Residential Care Regulations); and
- Social Security (Overseas Pension Deduction) Amendment Regulations 2017 (Overseas Pension Deduction Regulations).

Agreement is sought to wave the 28-day rule for the regulations, except for the Overseas Pension Regulations.

Agreement is sought to recommend to Cabinet that the Overseas Pension Deduction Regulations refer to instalments of the New Zealand benefit(s), reflecting the original intent of the SOC paper.

Key points In December 2015, you asked MSD to undertake a stock-take of issues where there was potential misalignment between legislation, policy and operational practice. This stock-take identified seven

issues that required legislative change.

On 21 June 2017, Cabinet agreed to the legislative changes required for those seven issues, of which four require amending regulations [SOC-17-MIN-0075].

You are seeking authorisation to submit Amendment Regulations relating to the following issues:

- exempting lump-sum payments of arrears to correct former and current clients' entitlement to Temporary Additional Support from income and cash asset tests under the Social Security Act 1964, and
- improving legislative clarity and to give effect to the recognised policy intent and longstanding administrative practice.

Waiver of the 28-day rule

A waiver to the 28-day rule is sought for three of the four regulations so they can come into force on 18 August 2017 (i.e. the earliest opportunity):

- Income and Cash Assets Regulations;
- TAS Regulations; and
- Long-term Residential Care Regulations.

A waiver is sought on the grounds that the regulations confer only benefits on the public and are needed to validate irregularities.

The Overseas Pension Deduction Regulations do not require a waiver as it will commence on 16 September 2017. This aligns with the start of a new calculation period for exchange rates used to convert overseas currency to New Zealand currency.

Background

This paper covers four of the seven alignment issues which SOC agreed to progress. The other three issues are being progressed through the Social Security (Electronic, Remedial and Other Matters) Amendment Bill. MSD expects the Bill to pass in 2018, depending on other Government priorities.

Exempt back-payments correcting clients entitlements to Temporary Additional Support from income and cash asset tests

When Temporary Additional Support was introduced in April 2006, to replace Special Benefit, the Government agreed to grand-parent all existing Special Benefit clients to preserve their current entitlements which were thought to be more generous than Temporary Additional Support. MSD now understands that some clients would have been better off on Temporary Additional Support. MSD understood Special Benefit clients were prohibited from cancelling their Special Benefit and moving to Temporary Additional Support. This understanding has been found to be incorrect.

MSD will take appropriate steps to correct entitlements for former and current clients who would have received a higher level of financial support on Temporary Additional Support, to retain trust and confidence in the social welfare system.

Cabinet has agreed to exempt the lump-sum payment of arrears from income and cash asset tests. The following amendments give effect to this decision: Income and Cash Assets Regulations; TAS Regulations; and Long-term Residential Care Regulations.

Current regulations state that Temporary Additional Support cannot be made as a lump-sum payment. The TAS Regulations provide an exemption to this so a lump-sum payment can be made in relation to this issue.

Calculation of currency exchange rates for deduction of overseas pensions

Section 70 of the Social Security Act 1964 provides that government-administered overseas pensions (including benefits, pensions, allowances etc.) must be deducted from any New Zealand benefit or pension.

The Overseas Pension Deduction Regulations clarifies how the Ministry applies overseas currency exchange rates in order to deduct overseas pensions from any New Zealand benefit or pension. The amendment confirms current practice.

The paper includes recommendations to Cabinet to ensure that Overseas Pension Deduction Regulations refer to instalments of the New Zealand benefit(s). The paper that was considered at SOC incorrectly referred to instalments of the overseas pension [SOC-17-MIN-0075]. The text in the body of the SOC paper accurately reflected the intent. The Amendment Regulations have been drafted to refer to New Zealand benefit(s).

This is consistent with the intent to clarify the policy, in line with current practice.

Exempting energy trust dividends from income tests

In 2000, after the 1990s electricity industry reforms, several energy trusts were established and started paying their customers dividends.

MSD's current practice is to exempt energy trust dividends as income. The Income and Cash Assets Regulations confirms this practice.

Exempting some Crown health and disability funding from income and cash asset tests

There are several Crown payments paid directly to injured or disabled people to purchase health and disability support services that require, or can require, a person to enter an employment relationship e.g. Funded Family Care.

Current practice is to exempt these funds from income tests. This aligns with the original policy intent. The amendment to the income and cash asset exemptions regulations confirms this practice. The amendment also exempts these funds from cash asset tests.
