

Aide-mémoire



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

Cabinet paper

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For: Hon Anne Tolley, Minister for Social Development

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Correcting entitlements to the Accommodation Supplement

Cabinet Committee Social Policy

Date of meeting 7 September 2016

Minister Hon Anne Tolley, Minister for Social Development

Proposal In 2014, the Ministry of Social Development (MSD) identified a significant error in its assessment and payment system which affected the calculation of client entitlements for the Accommodation Supplement (AS). The AS error has been in effect since 1993 and has resulted in some clients being over or underpaid their AS entitlements. When the issue was identified MSD took immediate action to fix the error in the payment so that new clients would receive their correct entitlements.

The system fix, implemented in December 2014, prevented the error from being perpetuated for new clients. It did not, however, correct entitlements for those clients already impacted by the error.

This Cabinet paper proposes a phased approach to correct entitlements to AS for current and former clients.

The financial impact of the recommended approach to correct AS entitlements will be on the 2015/16 financial year.

Therefore, it is critical the Cabinet paper is considered at the Cabinet Social Policy Committee on 7 September in order to have decisions in time to meet deadlines associated with the Public Finance Act 1989.

Key issues Key issues likely to be raised for discussion include:

- why MSD should correct AS entitlements;

- the scale of the issue;
- the net approach;
- interaction with other benefits;
- phase one: correcting entitlements for current clients who continue to be overpaid (278 clients);
- phase two: correcting entitlements for current clients who were historically underpaid (~22,000 current clients);
- phase three: correcting entitlements for former clients who were historically underpaid their AS entitlements (~27,000 former clients);
- phase four: debt write-off for historical overpayment of AS entitlements (~29,000 current clients and ~36,000 former clients); and
- exemption of lump sum back-payment of AS from income and cash asset testing.

Why MSD should correct AS entitlements

In order to maintain the public’s trust and confidence in the social welfare system, the government must hold itself to the same standard as it holds its clients to. For example, if clients are overpaid financial assistance entitlements due to a fault of their own, we expect them to repay it.

MSD underpaid clients due to an MSD system fault. s 9(2)(h)
 Section 9(2)(h) Legal professional privilege

s 9(2)(h) My view is that the Government has two options, either:

- proactively correct entitlements to AS through a considered and administratively efficient method; or
- wait until MSD is required to undertake reviews of AS entitlements on an individual basis (as seen with the commencement date issue).

My recommendation, as set out in this paper, is that we proactively correct entitlements because it will provide significant administrative efficiencies and is likely to limit reputational damage associated with the AS error. s 9(2)(h)

Section 9(2)(h) Legal professional privilege

MSD has worked closely with beneficiary advocates throughout the development of the proposed approach and they are supportive of the phased approach set out in this paper.

Scale of the issue

MSD advised me that, as at 1 August, there are approximately 127,000 clients who receive or have received AS between 1993 and December 2014 and are affected by the error (including 278 current clients who are currently being overpaid).

The records MSD have relied upon in undertaking this work are official records and there are no better sources of information available.

The total value of underpayments to all affected clients is up to \$29 million (affecting ~22,000 current clients and ~29,000 former clients).

The total cost of overpayments, since 1993, is around \$53 million (~29,000 current clients and ~36,000 former clients).

The net approach

MSD has applied a net approach to calculate the fiscal impacts of the AS issue. This means that in instances where a client has been subject to both overpayment and underpayment of their AS entitlements these have been offset against each other.

The net impact has been calculated on this basis because:

- this is MSD's standard practice when calculating arrears payments; and
 - it is consistent with the CE's responsibilities for stewardship of public resources under the Public Finance and State Sector Acts.
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Interaction with other benefits

In calculating the net impact, only AS entitlements were included (i.e. MSD has not taken into account AS interaction with other financial assistance).

This is because:

- the number of policy changes to the benefit system over the 23 year period would make it extremely complicated to calculate with confidence; and
- in the vast majority of cases, the outcome would result in an overpayment having been made to the client, not an underpayment.

MSD consider it important to take a consistent approach and solely taking into AS entitlements provides consistency, clarity and transparency in relation to decision making. Beneficiary advocates are supportive of this approach.

The most significant of the other benefits affected is Temporary Additional Support (TAS). MSD recently completed an assessment of those clients affected by the AS error who also received TAS on the basis that TAS is now frequently used to assist with accommodation costs:

- ~22,000 clients were impacted by the AS error and also received TAS (TAS and AS clients).
 - Of the ~22,000 TAS and AS clients, only ~1,200 of them appear to be negatively impacted by not taking TAS into account when correcting the error. However, we have not considered what impact an increase in TAS and AS
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would have on other financial assistance entitlements.

- The average additional entitlement to TAS for those 1,200 clients who appear to be negatively impacted by adopting this approach is ~\$200 total for the entire period of the client receiving TAS and AS.
- Our preliminary analysis shows that less than 1% (~1,200) of the total population affected by the AS error (~127,000) would possibly benefit from taking into account TAS.
- Use of TAS for accommodation purposes has increased over recent years, but TAS has historically been used for various other purposes. Therefore, including TAS in the assessment of entitlements may then lead to questions about the interaction with other financial assistance.
- The more variables MSD takes into account when calculating entitlements, in order to correct entitlements to AS, the greater the risk of error.

**Phase one:
correcting
entitlements for
current clients
who are being
overpaid**

MSD are making contact with individual clients prior to confirming the level of overpayment of the Accommodation Supplement (AS) and the duration of their transition period.

This will enable MSD to consider whether to extend the transition period beyond 12 weeks for those clients who do not think they will be able to adequately adjust their circumstances within 12 weeks. It will also provide an opportunity for MSD to undertake a comprehensive assessment of entitlements for those clients who are particularly adversely affected by the correction of their entitlements to AS.

There is no legal basis to continue these AS payments permanently. I could consider a new form of permanent assistance to cover this but I do not consider it appropriate to make payments which are not supported by the policy framework behind AS.

I also note there are more than 1,700 other clients who were affected by the AS error and have had their AS entitlements corrected over the past two years through standard operating procedures.

**Phase two:
correcting
entitlements for
current clients
who were
historically
underpaid**

As MSD has current contact and bank account details for these clients, MSD consider it will be relatively straightforward to correct their historic entitlements to AS.

It will cost \$14 million to correct entitlements for the ~22,000 current clients who have received an historic underpayment of their AS entitlements.

Payments will commence in November 2016 and will be concluded before the end of the year.

**Phase three:
Correcting
entitlements for
former clients
who were
historically
underpaid**

The total cost of correcting underpayments for the ~27,000 former clients who have received an historic underpayment of their AS entitlement is approximately \$15 million.

Addressing the AS error for former clients is more complex as MSD do not have current contact details for clients who are no longer in receipt of a benefit and there are privacy risks associated with sending personal information to a last known address.

In order to facilitate greater uptake by former clients who may be entitled to a lump sum back-payment of AS, MSD has developed a comprehensive communications strategy to inform these people. Under the communications strategy, MSD will use its existing channels of engagement with stakeholders (e.g. beneficiary advocates, Citizens' Advice Bureaux, social services agencies, disabled people's organisations and Age Concern).

An online portal will be established that will allow potentially affected former clients to identify whether their past entitlements are affected by the error. The portal will require the client to provide current details like a postal address and bank account number. If the former client is impacted, MSD will then be able to pay them their lump sum back-payment of AS entitlement.

It is intended that the online portal will be functional from late 2016. Use of the portal will be reviewed after six months from when it is implemented to assess whether there continues to be a need for the online portal.

**Phase four: Debt
write-off**

I have publicly stated that MSD will not recover any overpayments of AS which have resulted from the error. I am of the view that no current or former client should have a debt as a result of an administrative error that was outside of their control. However, under section 85 of the Social Security Act 1964 MSD is required to recover debts unless an exception is met.

Therefore, I propose to utilise section 86(1A)(d) of the Social Security Act 1964 to jointly, with the Minister of Finance, give a written authorisation to establish a class of debt that is to be written off for public finance purposes.

Alternatively, MSD could make an individual assessment of each clients debt and decide to write the debt off on an individual basis (under section 86(9A) of the Social Security Act 1964), however this approach would be burdensome administratively and would reduce certainty for affected clients.

As MSD will not recover any overpayments resulting from the error, under generally accepted accounting practices, this will result in the fair value of the subsequent debt having a nil value

in the Crown accounts. Therefore there will be no appropriation impact from writing off the debt.

Exemption of lump sum payments from income and cash asset tests

Granting lump sum back-payments to correct the AS entitlement error may affect eligibility or entitlement to some forms of financial assistance which are cash asset and/or income tested. I am of the view that the granting of back-payments to correct this error should not impact on the financial circumstances of affected clients given that the issue was caused by an administrative error that was entirely outside of their control.

On this basis, I seek Cabinet's agreement to exempt back-payments in order to correct the error when assessing clients' eligibility to financial assistance. This exemption, specifically targeted to those affected by the AS error, will last for a time period of 12 months following the provision of any lump sum back-payment entitlements to affected clients.

I intend to submit a paper to the Cabinet Legislation Committee by early October seeking approval for the recommended regulations.

Section 9(2)(a) Privacy of natural persons
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