

Chair  
Cabinet Legislation Committee

## **INCOME AND CASH ASSET TEST EXEMPTION REGULATIONS (REQUIRED FOR THE CORRECTION OF ACCOMMODATION SUPPLEMENT ENTITLEMENTS)**

### **Proposal**

- 1 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 2016;
  - Social Security (Temporary Additional Support) Amendment Regulations 2016; and
  - Social Security (Long-term Residential Care) Amendment Regulations (No 2) 2016.

### **Policy**

- 2 The Accommodation Supplement (AS) is a weekly payment to help subsidise housing costs for low-income beneficiary and non-beneficiary households with limited income and cash assets. 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 AS. The error was in effect since 1993.
- 3 As at 1 August 2016, there were approximately 127,000 clients who received AS since 1993 that were affected by the error. The potential cost of underpayments to all affected clients is up to \$29 million, while the potential cost of overpayments is approximately \$53 million.
- 4 MSD intends to correct entitlements to AS through a lump sum back-payment on the basis that MSD must correct these AS entitlements in order to retain trust and confidence in the social welfare system [CAB-16-MIN-0460.1 refers].
- 5 As the lump sum back-payments are being paid as a result of an MSD error, it would be unfair to penalise clients for receiving their lump sum back-payment of AS by then reducing financial assistance entitlements due to income or cash asset tests. On 12 September 2016 Cabinet agreed to amend 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 lump sum back-payments to correct clients' entitlements to the Accommodation Supplement and any income derived from them for the 12 month period following payment, from income and cash asset tests for assistance under the Social Security Act 1964 [CAB-16-MIN-0460.1 refers].
- 6 The Amendment Regulations exempt the lump sum back-payments of AS, and any income derived from them, from income and cash asset tests for the 12 month period following payment.

## **Timing and the 28-day rule**

- 7 The Amendment Regulations, if approved, will be submitted to the Executive Council for consideration on 17 October 2016, come into force on 31 October 2016, and are scheduled to be published in the New Zealand Gazette on 20 October 2016.
- 8 A waiver to the 28-day rule is sought on the grounds that:
  - 8.1 the Amendment Regulations confer only benefits for those affected by them; and
  - 8.2 the 31 October 2016 commencement date will ensure the income and cash asset tests exemptions will be in place in time for the first lump-sum back-payment of AS entitlements, which are expected from November 2016.

## **Compliance**

- 9 The Amendment Regulations comply, where applicable, with the following:
  - 9.1 the principles of the Treaty of Waitangi;
  - 9.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
  - 9.3 the principles and guidelines set out in the Privacy Act 1993;
  - 9.4 relevant international standards and obligations; and
  - 9.5 *Legislation Advisory Committee Guidelines; Guidelines on Process and Content of Legislation*, published by the Legislation Advisory Committee.

## **Regulation Review Committee**

- 10 There are no grounds for the Regulations Review Committee to draw the Amendment Regulations to the attention of the House under Standing Order 319.

## **Certification by Parliamentary Counsel**

- 11 The Amendment Regulations have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

## **Regulatory impact analysis**

- 12 A Regulatory Impact Statement was prepared by the Ministry of Social Development alongside the Cabinet paper *Correcting entitlements to the Accommodation Supplement* [CAB-16-MIN-0460.01 refers].

## **Publicity**

- 13 As part of the legislative requirements, the Amendment Regulations will be notified in the *New Zealand Gazette* on 20 October 2016.
- 14 MSD has developed a communications strategy to outline how potentially affected current and former clients will be able to check whether their historic AS entitlements were impacted

by the error. The focus will be to ensure that potentially affected clients have the right advice to make it as easy as possible to come forward and check their entitlements.

- 15 As part of the communications strategy, MSD will encourage clients to use their lump sum back-payments to repay any MSD debt and provide clients with detailed information about how to do this.

## Consultation

- 16 MSD has consulted with the Treasury, the Ministry of Health and the Crown Law Office during the policy process. The Department of Prime Minister and Cabinet was informed.

## Recommendations

It is recommended that the Committee:

- 1 **note** that on 12 September 2016 Cabinet agreed to amend regulations to exempt lump sum back-payments for correcting clients' entitlements to the Accommodation Supplement and any income derived from them for the 12 month period following payment from income and cash asset tests for assistance under the Social Security Act 1964 [CAB-16-MIN-0406.01 refers];
- 2 **authorise** the submission of the following regulations to the Executive Council to give effect to the decision referred to in paragraph 1 above:
  - 2.1 Social Security (Income and Cash Assets Exemptions) Amendment Regulations 2016;
  - 2.2 Social Security (Temporary Additional Support) Amendment Regulations 2016; and
  - 2.3 Social Security (Long-term Residential Care) Amendment Regulations (No 2) 2016;
- 3 **note** that the regulations will come into effect on 31 October 2016;
- 4 **note** that a waiver of the 28-day rule is sought:
  - 4.1 so that the regulations can come into force before the first lump sum back-payment of Accommodation Supplement is made (in order to correct clients' entitlements to the Accommodation Supplement);
  - 4.2 on the grounds that Amendment Regulations confer only benefits for those affected by them; and
- 5 **agree** to waive the 28-day rule so that the regulations can come into force on 31 October 2016.

Authorised for lodgement

Hon Anne Tolley  
Minister for Social Development