

Chair  
Cabinet Legislation Committee

## **ORDERS IN COUNCIL AND AMENDMENT REGULATIONS FOR THE ANNUAL GENERAL ADJUSTMENT OF RATES AND THRESHOLDS**

### **Proposal**

- 1 This paper seeks Cabinet approval to submit to the Executive Council the following Orders and Amendment Regulations, to give effect to the 2019 Annual General Adjustment:
  - Social Security (Rates of Benefits and Allowances) Order 2019
  - Social Security Amendment Regulations 2019
  - Residential Care and Disability Support Services Amendment Regulations 2019
  - Student Allowances Amendment Regulations 2019
  - Health Entitlement Cards Amendment Regulations 2019
  - Oranga Tamariki (Minimum Rates of Payment for Board and Lodgings) Order 2019.
- 2 There are also three remedial matters that will be addressed in this process:
  - Two minor technical amendments following the rewrite of the Social Security Act: revoking the Social Security (Long-term Residential Care) Regulations 2005 and removing a reference in the Health Entitlement Cards Regulations 1993 to the now redundant Social Security Act 1964.
  - Exempting the backpayments made for the Accommodation Supplement (AS) boundaries issue from income and cash assets tests for social assistance.

### **Previous Cabinet decisions**

- 3 In March 2002 Cabinet delegated authority to the Minister of Finance and the Ministers responsible for New Zealand Superannuation, social security benefits and allowances, the Community Services Card, Student Allowances, and War Pensions and Allowances to jointly approve adjustments to rates based on increases in the Consumers Price Index [CAB Min (02) 7/1A refers].
- 4 In late 2005, through a Confidence and Supply Agreement, it was agreed that the net married couple rate of New Zealand Superannuation for the 2006 Annual General Adjustment should be set at a minimum of 66% of the net average wage. The same decision was made for the Annual General Adjustments of 2007 and 2008. In April 2009, Cabinet agreed to set the net married couple rate of New Zealand Superannuation at a minimum of 66% of the net average wage on an on-going basis [CAB Min (09) 13/8 (56) refers].
- 5 There is a statutory requirement to adjust rates of main social security benefits, Student Allowances, Foster Care Allowances and New Zealand Superannuation according to movements in the Consumers Price Index. The All Groups Consumers Price Index, excluding

cigarettes and other tobacco products index (CPI), must be used for adjustments until 2020 [CAB-16-MIN-0189 refers].

### **Annual General Adjustment**

- 6 Since 1992, main benefit rates have been increased each year in line with changes in the cost of living for New Zealand households.
- 7 The Minister of Finance, Minister of Housing and Urban Development, Minister of Education, Minister for Social Development, Minister of Health, Minister for Veterans and Minister for Children have approved the new rates, consistent with their delegated authority.
- 8 The Minister for Veterans has prepared a separate paper for the Cabinet Legislation Committee, seeking approval to submit to the Executive Council the Amendment Regulations required to increase the rate of Veteran's Pension and the rate of the Decorations Allowance under the Veteran's Support Act 2014 from 1 April 2019.
- 9 The Orders and Amendment Regulations take effect on 1 April 2019, and will:
  - increase the rates of main benefits, Student Allowance, Foster Care Allowance and New Zealand Superannuation to comply with the statutory requirement to adjust the rates to reflect the 1.69% increase in the CPI over the previous year
  - increase rates and thresholds of allowances and various forms of supplementary assistance in line with the 1.69% increase in the CPI over the previous year
  - further increase the rates of New Zealand Superannuation in line with the commitment to keep the net married rate at a minimum 66% of the net average wage
  - increase income thresholds for Disability Allowance and superannuitant-specific income thresholds for the Community Services Card by the greater dollar impact from: applying the annual percentage increase in the All Groups CPI excluding cigarettes and other tobacco products; or applying the annual increase amount of New Zealand Superannuation.

### **Technical matters following the rewrite of the Social Security Act**

- 10 As part of the rewrite of the social security legislation, 24 sets of regulations were rewritten and consolidated into two new sets of regulations. The old regulations that became the Social Security Regulations 2018 were explicitly revoked but the regulations that became the Residential Care and Disability Support Services Regulations 2018 were only implicitly revoked. For clarity and to avoid doubt I seek agreement to explicitly revoke the now redundant Social Security (Long-Term Residential Care) Regulations 2005.
- 11 The Health Entitlement Cards Regulations currently have a reference to the now redundant Social Security Act 1964. For clarity, this reference will be removed.
- 12 There is a further technical issue related to the rewrite of the social security legislation that does not require regulatory changes. During the process of amending the AGA instruments, Parliamentary Counsel Office identified a drafting error in section 452(2)(p) of the Social Security Act 2018. This section incorrectly omits Part 3 of Schedule 5, meaning that section 452(2)(p) suggests incorrectly that the legal authority to increase the income limits in Part 3 of Schedule 5 (income limits for Disability Allowance) does not technically exist. Parliamentary Counsel Office will correct this error through an editorial change which I expect can be done by 1 April 2019 or soon after. Parliamentary Counsel Office has the authority to do this under section 25 of the Legislation Act 2012 which relates to editorial changes making clear, but not

changing the legal effect of, legislation. Consequently, there are no implications of this error on the AGA process and Parliamentary Counsel Office has certified the relevant Order.

### **Back-payments for the Accommodation Supplement boundaries issue**

- 13 Accommodation Supplement (AS) area boundaries were required by the Social Security Act 1964 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 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 Stats NZ updates boundaries.
- 14 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.
- 15 The Minister of Housing and Urban Development and the Minister for Social Development have agreed that the Ministry of Social Development should proactively review clients' entitlements and make back-payments where these are owed.
- 16 Unless specifically exempted, a lump sum back-payment of AS may affect current eligibility to income and cash asset tested financial assistance. On 8 October 2018, Cabinet agreed to exempt these back-payments, and any income derived from them, from income and cash asset tests for a period of 12 months after receipt [CAB-18-MIN-0484 refers].
- 17 Cabinet agreed to amend the following regulations under the Social Security Act 1964:
  - Social Security (Income and Cash Assets Exemptions) Regulations 2011
  - Social Security (Temporary Additional Support) Regulations 2005
  - Social Security (Long-term Residential Care) Regulations 2005.
- 18 As noted in paragraph 10, social security legislation has recently been rewritten. Under the new social security legislation, the equivalent regulations to the ones Cabinet agreed to amend are as follows:
  - Social Security Regulations 2018
  - Residential Care and Disability Support Services Regulations 2018.

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

- 19 It is proposed that Cabinet refer the Orders and Amendment Regulations to the Executive Council on 25 February 2019. The Orders and Amendment Regulations will be gazetted on 1 March 2019 and will come into effect on 1 April 2019. This is in line with the 28-day rule.

### **Compliance**

- 20 The Orders and Amendment Regulations comply, where applicable, with the following:
  - the principles of the Treaty of Waitangi;
  - the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
  - the principles and guidelines set out in the Privacy Act 1993;
  - relevant international standards and obligations; and

- *Legislation Advisory Committee Guidelines: Guidelines on Process and Content of Legislation*, published by the Legislation Advisory Committee.

### **Regulations Review Committee**

- 21 There are no grounds for the Regulations Review Committee to draw the Orders or Amendment Regulations to the attention of the House under Standing Order 315.

### **Certification by Parliamentary Counsel**

- 22 Parliamentary Counsel has certified the following Orders and Amendment Regulations:
- Social Security (Rates of Benefits and Allowances) Order 2019
  - Social Security Amendment Regulations 2019
  - Residential Care and Disability Support Services Amendment Regulations 2019
  - Student Allowances Amendment Regulations 2019
  - Health Entitlement Cards Amendment Regulations 2019
  - Oranga Tamariki (Minimum Rates of Payment for Board and Lodgings) Order 2019.

### **Regulatory Impact Analysis**

- 23 The regulatory impact analysis requirement does not apply as these changes have been approved by Joint Ministers in accordance with the policy agreed by Cabinet in March 2002.

### **Publicity**

- 24 The Ministry of Social Development will work with relevant Ministers' Offices to advise the public of the changes to rates and thresholds after they are confirmed by Cabinet on 25 February 2019.

### **Consultation**

- 25 The Treasury, Ministry of Housing and Urban Development, Ministry of Education, Ministry of Health, Inland Revenue, Veterans' Affairs and Oranga Tamariki–Ministry for Children have been consulted and agree with the recommendations in this paper. The Department of the Prime Minister and Cabinet (Policy Advice Group) has been informed of this paper.

### **Proactive Release**

- 26 I intend to proactively release this paper in full (as required by CO (18) 4).

### **Recommendations**

It is recommended that the Committee:

- 1 **note** that, acting with Cabinet's delegated authority [CAB Min (02) 7/1A refers], the Ministers responsible for the Finance, Housing and Urban Development, Education, Social Development, Health, Veterans and Children portfolios have approved new rates of New Zealand Superannuation, benefits, Student Allowance, Foster Care Allowance and new rates and thresholds for allowances and supplementary assistance;
- 2 **note** that the proposed Orders in Council and Amending Regulations will come into effect on 1 April 2019 and will:

- 2.1 increase the rates of main benefits, Student Allowance, Foster Care Allowance and New Zealand Superannuation to comply with the statutory requirement to adjust the rates to reflect the 1.69% increase in the All Groups Consumers Price Index, excluding cigarettes and other tobacco products index over the previous year;
  - 2.2 increase rates and thresholds of allowances and various forms of supplementary assistance in line with the 1.69% increase in the All Groups Consumers Price Index, excluding cigarettes and other tobacco products index over the previous year;
  - 2.3 further increase the rates of New Zealand Superannuation so that the net amount payable to a couple is 66% of the net average wage [CAB Min (09) 13/8 (56) refers];
  - 2.4 increase income thresholds for Disability Allowance and superannuitant-specific income thresholds for the Community Services Card by the greater dollar impact from: applying the annual percentage increase in the All Groups Consumers Price Index excluding cigarettes and other tobacco products; or applying the annual increase amount of New Zealand Superannuation [CAB-15-MIN-0273 refers];
  - 2.5 make two minor technical amendments following the rewrite of the Social Security Act 1964;
  - 2.6 exempt back-payments from the Accommodation Supplement boundaries issue from income and cash asset tests
- 3 **authorise** the submission to the Executive Council of the following Orders and Amending Regulations:
- 3.1 Social Security (Rates of Benefits and Allowances) Order 2019
  - 3.2 Social Security Amendment Regulations 2019
  - 3.3 Residential Care and Disability Support Services Amendment Regulations 2019
  - 3.4 Student Allowances Amendment Regulations 2019
  - 3.5 Health Entitlement Cards Amendment Regulations 2019
  - 3.6 Oranga Tamariki (Minimum Rates of Payment for Board and Lodgings) Order 2019.

Hon Carmel Sepuloni  
Minister for Social Development

Authorised for lodgement