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Office of the Minister for Social Development and Employment

Chair
Cabinet Social Wellbeing Committee

Social Security (Accommodation Supplement) Amendment Bill: Approval for Introduction

Proposal

- 1 I seek Cabinet approval for the introduction of the *Social Security (Accommodation Supplement) Amendment Bill* (the Bill) and for the Bill to be passed under urgency.
- 2 As was agreed by Cabinet in July 2022 [CAB-22-MIN-0251], the Bill will amend the Social Security Act 2018 and Social Security Regulations 2018¹ to recognise an individual, whose partner is in long-term residential care, as single for the purpose of calculating entitlement for Accommodation Supplement (AS).
- 3 I propose this Bill is added to the 2022 Legislation Programme and passed with a category 2 priority (must be passed in 2022).

Executive summary

- 4 In the administration of the Accommodation Supplement (AS), MSD's longstanding practice has been to calculate the AS benefit levels for individuals, whose partners are in long-term residential care, as though they are single. This approach was based on the policy rationale that the partner-in-care can no longer contribute towards existing accommodation costs. Their partner (or 'community partner'), meanwhile, still has accommodation expenses but has characteristics, such as income, that are more similar to a single person.
- 5 This approach, however, is not consistent with legislation. Previous attempts to align legislation with practice were delayed due to COVID. s 9(2)(f)(iv) [REDACTED]
[REDACTED]
[REDACTED]
- 6 In the preparation of the RSB, unappropriated expenditure under the Public Finance Act 1989 (PFA) was identified because the rate of AS paid fell outside the scope of legislation. Treasury, Audit New Zealand, and the Office of the Auditor-General (the OAG) have been informed of the issue. MSD has taken steps to remedy the situation, including providing the necessary inputs to the Treasury-led process to validate the unappropriated expenditure via an Appropriation Act under section 26C of the PFA.
- 7 Legislation still must be amended urgently to ensure New Zealanders, specifically community partners, lawfully receive an appropriate rate of AS without disruption. The *Social Security (Accommodation Supplement) Amendment Bill* seeks to address this issue with the intent to align legislation with current practice and the original policy intent of the AS.
- 8 This change, however, will produce a cost to the Crown, as community partners' AS benefit rates would increase relative to the level consistent with the current law. Cabinet's approval,

¹ The Bill will also include consequential amendments to the New Zealand Superannuation and Retirement Income Act (NZSRI) 2001 and the Veterans' Support Act 2014

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therefore, is sought for an appropriation change and to charge the expense against the between-Budget contingency.

Policy

- 9 The Accommodation Supplement (AS) is a weekly payment which helps low-income people with their rent, board, or the cost of owning a home. Several criteria are used to assess an individual's eligibility and maximum benefit rates they are entitled to receive. Relationship status is one criterion since couples share the cost of accommodation while a single person is responsible for covering the entire amount.
- 10 In situations where one partner is in long-term residential care (referred to as 'partner-in-care') and the other remains in the community (referred to as 'community partner'), MSD currently treats the latter as though they are single for the purposes of calculating the rate of AS. The policy rationale for this is because the partner-in-care can no longer contribute towards existing accommodation costs. This approach lowers the community partner's entry threshold and, therefore, makes them eligible for an AS rate equal to a 'single person', which is often to their benefit.
 - 10.1 While MSD calculates the rate of entitlement for the AS as though the community partner is single, the Ministry continues to apply the cash asset threshold of a couple. This does not change the rate of payment that is eligible to the community partner, but it recognises the difficulty of distinguishing cash assets between individual partners.
- 11 Approximately 300 New Zealanders are currently receiving AS as a community partner. They are predominately in receipt of either New Zealand Superannuation or a Veterans Pension and, as such, are likely to be on fixed, limited incomes. ^{s 9(2)(a)}
- 12 Advice given for a Review of Decision (ROD) application in 2018/2019 identified that this practice was inconsistent with the Social Security Act 2018. Under current legislation, the community partner and partner-in-care should continue to be treated as a couple and paid the appropriate rate based on their circumstances.²
- 13 Cabinet agreed in July 2022 to address this issue ^{s 9(2)(f)(iv)} whereby the Social Security Act 2018 and Social Security Regulations would be amended³ to reflect MSD's current practice of treating the community partner as single for the purposes of AS ^{s 9(2)(f)(iv)}

Unauthorised expenditure under the Public Finance Act 1989

- 14 Further analysis revealed that the unauthorised AS expenditure is in breach of the Public Finance Act 1989 (PFA). This is because MSD is paying clients a rate of benefit outside of the scope of the authorising legislation and, therefore, the appropriation.
 - 14.1 The total unappropriated expenditure for the past five financial years (1 July 2017 to 30 June 2022) was \$5.907 million.
- 15 For unauthorised expenses incurred during the 2022/23 financial year, validation will be sought under section 26C of the Public Finance Act by Parliament in the Appropriation

² The NZSRIA 2001 and Veterans' Support Act 2014 specifically make provision for the single rate of NZS, Veteran's Pension, and Emergency Benefit for individuals whose partners are in long-term residential care. The NZSRIA is silent on the rate for AS.

³ ^{s 9(2)(f)(iv)}

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(2022/23 Confirmation and Validation) Bill. MSD will provide the necessary inputs into the Treasury-led process to remedy the situation.

15.1 The Minister of Housing, as the relevant appropriation Minister, also will need to certify the explanation and value of any unappropriated expenditure in the 2022/23 financial year. MSD will submit this information to Treasury for inclusion in their report on unappropriated expenses and capital expenditure for tabling in Parliament alongside the Appropriation (2022/23 Confirmation and Validation) Bill.

16 s 9(2)(g)(i), s 9(2)(f)(iv)

I propose that this issue is addressed through a separate Bill and passed under urgency

17 s 9(2)(f)(iv)

18 To remedy the situation, I seek Cabinet's approval to address this issue in a separate Bill by including the *Social Security (Accommodation Supplement) Amendment Bill* on the 2022 Legislation Programme with a category 2 priority (must be passed in 2022) and to pass this through a truncated legislative process with all stages under urgency. This will mean MSD's current practice of treating community partners as single for the purposes of calculating their entitlement to AS will be lawful going forward and, thus, ensure clients in this situation do not experience any disruption to their AS entitlements.

19 Under this scenario, the majority of existing clients will neither experience a reduction nor an increase to their benefits. It will instead provide predictable and stable financial support to the approximately 300 community partners. Furthermore, this legislative solution will ensure that AS accurately accounts for people's living arrangements, recognising that couples' situations may change due to age, health, disability, or other circumstances.

20 I propose that the Bill come into force the day after the date on which it is granted Royal assent and no later than 1 December 2022.

20.1 The Bill will authorise AS payments as described in paragraphs 9, 10, and 10.1. This practice will not, however, be retrospectively validated.

21 s 9(2)(f)(iv)

Alternative option is to pursue a manual approach in the interim, but it poses risk

22 Should legislation not be pursued under urgency, an interim solution would be for MSD to revise its practice and align it with legislation until amendments could come into force.

23 This activity would involve a manual review of clients' circumstances to determine the amount of AS they are eligible to receive. The review, however, is likely to result in a lower amount of AS paid to most clients.

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- 24 For those that will experience a change in their benefit level, MSD would directly contact clients before implementing any changes and discuss with them options to offset any potential reduction in AS. In addition, MSD would assess what other assistance clients may be eligible to receive, such as Temporary Additional Support (TAS), which is a non-taxable extra benefit paid for a maximum of 13 weeks.
- 25 Under this scenario, MSD estimates that 256 of the 301 individuals would be affected, and they would experience a reduction in AS of up to \$62 per week. Over the course of a year, this amounts to \$3,224 per individual.
- 26 s 9(2)(h) [REDACTED] The Ministry is working through the most appropriate options. s 9(2)(h) [REDACTED]
- 27 Although this interim measure would ensure MSD's practice is consistent with legislation, it would come at a cost borne largely by older New Zealanders on limited incomes and with a partner in long-term residential care. In addition, this approach would have significant resource implications for MSD, whose officials would manually assess and peer review each situation, change benefit rates, and later reset the rates once the legislation has been amended. As such, I do not believe this temporary approach represents the best option.

Compliance

- 28 The Bill complies with each of the following:
- 28.1 The principles of the Treaty of Waitangi.
- 28.2 The rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.
- 28.3 The disclosure statement requirements (a disclosure statement has been prepared and is attached to the paper).
- 28.4 The principles and guidelines set out in the Privacy Act 1993.
- 28.5 Relevant international standards and obligations.
- 28.6 The Legislation Guidelines (2018) published by the Legislation Design and Advisory Committee.

Consultation

- 29 Treasury, Manatū Haurora / The Ministry of Health, and Te Tūāpapa Kura Kāinga / The Ministry of Housing and Urban Development were consulted on this paper and the Bill. The Department of the Prime Minister and Cabinet (Policy Advisory Group) was informed.
- 30 As a consequential amendment to the NZSRIA 2001 is included in this Bill, section 73 of this Act provides that the Minister must bring to the attention of the House the consultation process that was followed, including whether consultation has taken place with the parties that are in agreement with the Part proposed to be amended. I have consulted with these parties, specifically the National Party and the Green Party, as well as engaged Te Pati Māori and ACT. None have expressed any concerns with the proposed amendment.

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Binding on the Crown

- 31 The Social Security Act 2018, NZSRIA 2001, and Veterans' Support Act 2014 are binding on the Crown, and, as such, the amendments in the Bill will also be binding.

Creating new agencies or amending law relating to existing agencies

- 32 Not applicable.

Allocation of decision-making powers

- 33 The Bill does not allocate decision-making powers between the executive, the courts, or tribunals.

Associated regulations

- 34 The Bill includes revisions to the Social Security Regulations 2018 in order to bring into effect the proposed amendments to how AS is calculated.

Other instruments

- 35 The Bill does not include any provision empowering the making of other instruments that are deemed to be legislative instruments or disallowable instruments (or both).

Definition of Minister/department

- 36 The Bill does not contain a definition of Minister, department (or equivalent government agency), or chief executive of a department (or equivalent position).

Financial implications

- 37 s 9(2)(f)(iv) [REDACTED] officials advised that the changes would have "no or minimal" fiscal implications. Options for managing the "minimal" fiscal implications were not discussed.
- 38 In light of the finding that MSD's current practice is inconsistent with the current law and, thus, gives rise to unappropriated expenditure, the Treasury advises that the change to AS does produce a cost to the Crown, and this cost should be managed against allowances. In line with the Treasury's guidance on this matter, MSD estimates the cost to be \$0.196 million for the remainder of the 2022-23 financial year and over \$0.300 million per annum thereafter.
- 39 The cost arises because, if the policy change had not been agreed to, MSD would be required to apply the current law. This would result in less AS being paid out than at present.
- 40 Against this baseline, the policy change would increase the AS cost. Similarly, because Ministers have a discretion as to whether to proceed with the change or not, the cost should be managed against allowances – in this case, again on Treasury advice, I propose to charge the cost against the Between-Budget Contingency.

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Impact Analysis

- 41 The Treasury Regulatory Quality Team has determined that the decisions sought in this paper are exempt from the Regulatory Impact Analysis requirements on the basis that they will have no or only minor impacts on businesses, individuals, and not-for-profit entities.

Climate Implications of Policy Assessment

- 42 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

- 43 This issue largely, but not entirely, affects older people. Currently, approximately 300 New Zealanders are receiving AS as a community partner, predominantly in receipt of either New Zealand Superannuation or a Veterans' Pension. A significant proportion live in Central Auckland and are in private, rental accommodation. The impact of the proposed amendment to this cohort will be neutral, ensuring they continue to receive the same benefit rates. Alternative options have been explored, which would in the majority of cases result in a reduction in AS that community partners would receive.

Certification by Parliamentary Counsel

- 44 The Bill has been drafted and certified by the Parliamentary Counsel Office in anticipation of Cabinet's approval.

Commencement of legislation

- 45 The Bill will come into force the day after the date on which it is granted Royal assent and no later than 1 December 2022.

Parliamentary stages

- 46 The Bill should be introduced by 17 November 2022 and enacted no later than 25 November 2022. I propose that no Select Committee process be undertaken since the Bill proposes minor amendments and will not have an adverse effect on current clients.

Proactive release

- 47 I propose to partially release this paper as per Cabinet Office circular CO(18) 4: Proactive Release of Cabinet Material s 9(2)(f)(iv)

Gender and disability implications

- 48 The proposed amendments are policy neutral and do not have any gender or disability implications.

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Recommendations

49 It is recommended that Cabinet:

49.1 **agree** to add the *Social Security (Accommodation Supplement) Amendment Bill* to the 2022 Legislation Programme with a category 2 priority (must be passed in 2022);

49.2 s 9(2)(f)(iv)

49.3 **agree** that the purpose of the *Social Security (Accommodation Supplement) Amendment Bill* is to amend the Social Security Act 2018 and Social Security Regulations 2018 – with consequential amendments to the New Zealand Superannuation and Retirement Income Act 2001 and the Veterans’ Support Act 2014 – and recognise an individual, whose partner is in long-term residential care, as single for the purpose of calculating entitlement for Accommodation Supplement;

49.4 **note** the following forecast changes to the cost of Accommodation Supplement with a corresponding impact on the operating balance and net debt, arising from the finding that MSD’s operational practice in respect of individuals whose partner is in long-term residential care does not align with legislative requirements:

	\$m – increase / (decrease)				
Vote Social Development Minister of Housing	2022/23	2023/24	2024/25	2025/26	2026/27 & Outyears
Benefits or Related Expenses: <i>Accommodation Assistance</i>	(0.196)	(0.330)	(0.321)	(0.312)	(0.304)

49.5 **approve** the following changes to appropriations to provide for the decision in recommendation 49.3 above with a corresponding impact on the operating balance and net debt:

	\$m – increase / (decrease)				
Vote Social Development Minister of Housing	2022/23	2023/24	2024/25	2025/26	2026/27 & Outyears
Benefits or Related Expenses: <i>Accommodation Assistance</i>	0.196	0.330	0.321	0.312	0.304

49.6 **agree** that the proposed change to appropriation for 2022/23 above be included in the 2022/23 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply;

49.7 **agree** that the expenses incurrent under recommendation 49.5 above be charged against the between-Budget contingency established as part of Budget 2022;

50 **approve** the introduction of the *Social Security (Accommodation Supplement) Amendment Bill*, subject to the final approval of the Government caucus; and

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51 **agree** that the *Social Security (Accommodation Supplement) Amendment Bill* be introduced by 17 November 2022 and passed through all stages under urgency.

Hon Carmel Sepuloni
Minister for Social Development and Employment

Approved for lodging