

In Confidence

Office of the Minister for Social Development and Employment

Chair, Cabinet Legislation Committee

Social Security (Cash Assets and Income Exemptions—Lake Alice Compensation or Ex Gratia Payments) and Residential Care and Disability Support Services (Exempt Assets—Lake Alice Compensation or Ex Gratia Payments) Amendment Regulations 2025

Proposal

- 1 This paper seeks Cabinet approval to submit the attached Social Security (Cash Assets and Income Exemptions—Lake Alice Compensation or Ex Gratia Payments) and Residential Care and Disability Support Services (Exempt Assets—Lake Alice Compensation or Ex Gratia Payments) Amendment Regulations 2025 to the Executive Council, which will exclude Lake Alice redress payments from being considered as income or cash assets for assistance administered by the Ministry of Social Development (MSD) permanently.

Policy

- 2 On 16 December 2024, Cabinet agreed:
 - 2.1 that the redress payments recognising torture and any income derived from these payments made to former patients of the Lake Alice Psychiatric Hospital (the Lake Alice Unit) will be made on an ex-gratia basis, and are consequently exempt from being treated as cash assets or income for tax or benefit purposes, and;
 - 2.2 to amend Schedule 8 of the Social Security Regulations 2018 and Schedule 3 of the Residential Care and Disability Support Services Regulations 2018 to extend the permanent exemption on ex-gratia or compensation payments being treated as income and cash assets to former patients of the Lake Alice Unit [CAB-24-MIN-0516 refers].
- 3 There is an existing income and cash asset exemption for ex-gratia or compensation payments to former patients of the Lake Alice Unit, but this is limited to 12 months from after the payment is made.
- 4 This decision to make legislative changes to remove the 12-month time limitation of the Lake Alice exemption will therefore ensure, effective from the date that the Amendment Regulations come into force, that the treatment of the Lake Alice redress payments is consistent with other ex-gratia and compensation payments, which are exempt permanently, when considering entitlement to MSD administered assistance.

Timing and 28-day rule

- 5 If approved, the Amendment Regulations will be submitted to the Executive Council for consideration on 28 July 2025 and published in the New Zealand Gazette by 31 July 2025 at the latest.
- 6 A waiver to the 28-day rule is sought on the grounds that the Amendment Regulations confer only benefits to the public by ensuring that redress payments available to survivors of torture at the Lake Alice Unit are not treated as income or cash assets for benefit purposes, but these benefits will only occur if the Amendment Regulations are in effect before 12 August 2025. Otherwise there may be adverse consequences to survivors who have already received those redress payments.
- 7 Adverse consequences could occur as Cabinet had agreed in August 2024 to specific payments for survivors of the Lake Alice Unit [CAB-24-MIN-0300 refers], and the first of these payments was made in August 2024, so they will be treated as income and cash assets by MSD in August 2025.
- 8 If the 28-day rule is waived, the Amendment Regulations will take effect from 1 August 2025, which is prior to the current 12-month time limitation on Lake Alice ex gratia and compensation payments.

Compliance

- 9 The Amendment Regulations comply 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 or the Human Rights Act 1993;
 - 9.3 the principles and guidelines set out in the Privacy Act 2020;
 - 9.4 relevant international standards and obligations, in particular those under the United Nations Convention Against Torture; and
 - 9.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

- 10 There are no grounds for the Regulations Review Committee to draw the Amendment Regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

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

Impact Analysis

- 12 The Ministry for Regulation has determined that this proposal is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

Publicity

- 13 Once the Amendment Regulations have been approved, MSD will communicate these changes and guidance will be updated to include information about the permanent exemption.

Proactive release

- 14 I intend to proactively release this paper subject to the provisions of the Official Information Act 1982.

Consultation

- 15 The Ministry of Health, Inland Revenue, Crown Response Office and Ministry of Disabled People – Whaikaha have been consulted.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that on 16 December 2024, Cabinet agreed to additional redress payments for survivors who were tortured at the Lake Alice Child and Adolescent Unit (the Lake Alice Unit) and also agreed:
 - 1.1 that the redress payments recognising torture and any income derived from these payments made to former patients of the Lake Alice Unit will be made on an ex-gratia basis, and are consequently exempt from being treated as cash assets or income for tax or benefit purposes, and
 - 1.2 to amend Schedule 8 of the Social Security Regulations 2018 and Schedule 3 of the Residential Care and Disability Support Services Regulations 2018 to extend the permanent exemption on ex-gratia or compensation payments being treated as income and cash assets to former patients of the Lake Alice Unit [CAB-24-MIN-0516 refers]
- 2 **note** Cabinet had earlier agreed to make other payments to survivors of the Lake Alice Unit [CAB-24-MIN-0300 and SOU-24-MIN-0123 refer], and that the first of the payments made under these agreements were made in August 2024
- 3 **note** that the Amendment Regulations will give effect to the decision referred to in paragraph 1.2 above
- 4 **note** that a waiver of the 28-day rule is sought on the grounds that the Amendment Regulations confer only benefits on the public as long as they are in place prior to 12 August 2025

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- 5 **agree** to waive the 28-day rule so that the Amendment Regulations can come into force on 1 August 2025
- 6 **authorise** the submission to the Executive Council of the following:
 - 6.1 Social Security (Cash Assets and Income Exemptions—Lake Alice Compensation or Ex Gratia Payments) Amendment Regulations 2025
 - 6.2 Residential Care and Disability Support Services (Exempt Assets—Lake Alice Compensation or Ex Gratia Payments) Amendment Regulations 2025.

Authorised for lodgement

Hon Louise Upston

Minister for Social Development and Employment