

Aide-mémoire



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

Executive Council

Date: 12 September 2019 **Security Level:** Cabinet Sensitive

For: Hon Andrew Little, on behalf of the Minister for Social Development

File Reference: REP/19/9/897

MSD lump-sum payments exemption (for Cabinet)

Date of meeting	16 September 2019, 4pm EW Level 10
Minister	Hon Andrew Little, on behalf of the Minister for Social Development
Proposal	<p>On 11 September 2019 the Cabinet Social Wellbeing Committee (SWC) agreed to Amending Regulations for the exemption of Ministry of Social Development (MSD) lump-sum payments from income and cash assets tests for social assistance. SWC authorised the submission of the regulations to the Executive Council on 16 September 2019. SWC did not agree to MSD's request to waive the 28-day rule¹.</p> <p>You are presenting the regulations to the Executive Council to give effect to SWC's decision which will ensure all MSD clients receive their full and correct entitlements.</p>
Talking points	<ul style="list-style-type: none">• The Minister for Social Development has a strong focus on ensuring MSD clients receive their full and correct entitlements.• Every lump-sum payment made to a client represents the client's full and correct entitlement and these payments are made for many different reasons including payments that address changes in rate of entitlement, where MSD has made an error², or because benefits are paid in arrears.

¹ Regulations cannot come into force until at least 28 days after they have been notified in the New Zealand Gazette unless Cabinet agrees to a waiver.

² An example of an error is where some MSD clients' Accommodation Supplement was being paid incorrectly for the area they were living in. There is an income and cash assets exemption for payments that corrected this error.

- Lump-sum payments can impact people’s access to other financial assistance because of income and cash assets testing that helps target social assistance.
- It would be unfair if a client was disadvantaged as a result of receiving an MSD lump-sum payment they are lawfully entitled to.
- Amending the regulations to exempt MSD lump-sum payments from income and cash assets tests will future-proof lawful access to social assistance.
- Currently, most MSD lump-sum payments are below the lowest income and cash assets threshold (\$1,095) so while the exemption would be applicable to all MSD lump-sum payments, in practice it is only likely to be applied to the small number of payments over the threshold.
- Applying the exemption to all MSD lump-sum payments will treat all clients equitably and enable consistent administration. Cabinet won’t then have to consider a new regulation each time a different MSD lump-sum payment occurs.
- The exemption will apply to payments for a 12-month period, which is consistent with similar exemptions in the welfare system.

Our advice

MSD makes lump-sum payments to clients for many different reasons

MSD makes lump-sum payments to its clients for different reasons apart from scheduled or emergency financial assistance payments. The reasons include payments to correct MSD system errors, because a client may not have provided all the right information at the time their benefit was assessed or because of the way the benefit system is administered, for example benefit payments are made in arrears.

Income and cash assets tests help target financial assistance while all MSD lump-sum payments ensure full and correct entitlements

MSD must consider a client’s income and cash assets when determining eligibility for financial assistance, to make sure clients use their own resources first. MSD lump-sum payments made to clients can impact their access to financial assistance such as Accommodation Supplement³ and Temporary Additional

³ Accommodation Supplement is a benefit that helps a person with their accommodation costs.

Support⁴, if a lump-sum payment is over the income and cash assets thresholds.

However, given MSD lump-sum payments ensure every client's full and correct entitlement, it would be unreasonable for MSD to provide the payment and then immediately prevent or stop access to additional financial assistance the client would otherwise be eligible for.

A range of income and cash assets exemptions for specific payments have already been established to preserve social assistance

There are a range of income and cash assets regulations already in place that exempt specific payments to enable people to continue to receive their financial assistance from MSD uninterrupted. Broadly, the exemptions relate to ex gratia, compensation and settlement payments, specific MSD lump-sum payments and for other payments such as the Housing New Zealand Corporation's payments for alleged methamphetamine contamination.

Amending the income and cash assets regulations will ensure no MSD client is disadvantaged from receiving MSD lump-sum payments they are lawfully entitled to

We propose it is fair and reasonable to preserve client financial assistance entitlements by exempting the MSD lump-sum payments they receive, from the income and cash assets tests.

The exemptions are made through Amendment Regulations⁵

The Amendment Regulations that will ensure people do not have their financial assistance negatively impacted are:

- the Social Security (Income and Cash Assets Exemptions – MSD Lump-sum payments) Amendment Regulations 2019
- the Residential Care and Disability Support Services (MSD Lump-sum Payments) Amendment Regulations 2019

If agreed by Cabinet, the regulations will come into force on 17 October 2019 following the required 28-day notification on the New Zealand Gazette.

The Minister for Social Development also intends to amend the Ministerial Direction on Special Benefit to ensure that MSD lump-

⁴ Temporary Additional Support is supplementary assistance paid as a last resort to help clients with their regular essential living costs that cannot be met from their chargeable income or other resources.

⁵ Enabled by sections 422(1), 423(1)(b) and 428(1) and (2)(d) and (f) of the social Security Act 2018.

sum payments are not considered chargeable income for Special Benefit⁶ purposes. While income and cash assets exemptions apply to means-tested assistance such as Temporary Additional Support, they do not apply to Special Benefit. This is because the Special Benefit provisions have been repealed and replaced by the Temporary Additional Support provisions with Special Benefit only paid under grand-parenting provisions.

Retaining the 12-month time limit on the exemption is fair and is consistent with most other exemptions

It is fair and reasonable to allow clients time (12-months) to decide how they use their payments although we note that generally clients spend their money immediately.

Retaining a 12-month time limit on the exemption so that payments are exempt for 12-months from the income and cash assets tests, is consistent with most other exemptions for payments of these levels. It balances allowing people time to decide on the best way to spend their payments with the legislative requirement that people use the resources available to them before seeking financial assistance.

Implementation

Each day a report will be automatically generated from MSD system data showing lump-sum payments made by MSD. Client records will be updated to record that the value of the lump-sum is excluded from any cash assets declared by the client. Initially, MSD will manually update a client's record until an automated solution is implemented. Any required funding to implement this system will come from existing baselines.

If a client applies for a means-tested benefit in the 12 months since the lump-sum payment is made, a case manager will have that information on the client's file to make sure the client's full and correct entitlements are preserved.

Fiscal implications

The financial impact of the exemption will be minimal and absorbed within the existing demand driven forecasts. Most lump-sum payments (90 percent) that MSD makes are below the income and cash assets and thresholds and so the exemption will not be actively applicable. All payments to clients represent a client's full and correct entitlement, forecasted as part of MSD's delivery of the welfare system. Having the exemption in place will ensure consistency in the application and

⁶ Special Benefit is a discretionary benefit that assists people whose circumstances are causing them hardship. It has been replaced by Temporary Additional Support with Special Benefit payments made under grand-parenting provisions.

administration of the exemption and access to full and correct entitlement.

Reporting

MSD is currently working through the reporting capability process to report quarterly on the use of the proposed MSD lump-sum payments exemption. We intend the reporting to include the number of lump-sum payments made and the number of times the exemption is actively applied. The data collected will assist in determining any changes in the existing estimates of clients receiving lump-sum payments over MSD income and cash assets thresholds, that need the exemption actively applied.

The technical review of exemptions is considering whether we can streamline the exemptions process

As agreed, we are undertaking a technical review of the exemptions process in the context of the welfare overhaul. s

[REDACTED] 9(2)
[REDACTED] (i)
[REDACTED] (iv)

We are considering other options for streamlining the exemptions process. We will report back to the Minister for Social Development by 30 September 2019.

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