

Chair
Cabinet Social Wellbeing Committee

CHANGES TO INCOME AND CASH ASSETS REGULATIONS – EXEMPTING LUMP-SUM PAYMENTS MADE BY THE MINISTRY OF SOCIAL DEVELOPMENT

Proposal

- 1 I am seeking Cabinet's approval to amend the regulations so that payments made by the Ministry of Social Development (MSD) are exempt from income and cash assets tests for eligibility to access specified forms of government financial assistance.
- 2 To achieve this, I seek authorisation for submission to the Executive Council of:
 - 2.1 the Social Security (Income and Cash Assets Exemptions – MSD Lump-sum Payments) Amendment Regulations 2019
 - 2.2 the Residential Care and Disability Support Services (MSD Lump-sum Payments) Amendment Regulations 2019.

Executive summary

- 3 Under the Social Security Act 2018 (the SSA) and the Residential Care and Disability Support Services Act 2018 (the RCDSSA), MSD must consider a client's income and cash assets when determining eligibility for government financial assistance. This includes lump-sum payments made to a client by MSD or other agencies or entities¹.
- 4 MSD makes lump-sum payments to its clients for different reasons [refer to Appendix One] other than scheduled or emergency financial assistance payments. Every MSD lump-sum payment represents a client's lawful entitlement whether, for example, the payment is for an historic benefit underpayment or because of the way the benefit system is structured, such as the payment of benefits in arrears.
- 5 Exemptions from the income and cash assets tests are currently available for payments specified in the Social Security Regulations 2018 and the Residential Care and Disability Support Services Regulations 2018 (the regulations). Exemptions are generally sought when it would be unfair, unreasonable, or inequitable if a payment adversely affected a person's financial assistance.
- 6 I have had a strong focus on ensuring clients receive their full and correct financial entitlements. Where this requires a lump-sum or one-off payment, it is reasonable that the client is not disadvantaged from receiving payments they are lawfully entitled to.
- 7 Apart from everyday client interactions and business administration transactions that result in lump-sum payments, **s 9(2)(f)(iv)**

¹ The definition of income does not include any benefit, grant, allowance, or concession received under the Social Security Act 2018, Part 6 of the Veterans' Support Act 2014 or Part 1 of the New Zealand Superannuation and Retirement Income Act 2001, so benefit arrears are not considered income. These payments however, are chargeable income for Temporary Additional Support.

Exempting all MSD lump-sum payments will avoid delaying payments to clients or disrupting or preventing access to financial assistance.

- 8 I propose introducing the MSD lump-sum payments exemption to exempt lump-sum payments made by MSD, and any income derived from those payments, from the income and cash assets test for 12-months after the payment is made. The proposed exemption would apply to all MSD lump-sum payments made on or after 20 September 2019.
- 9 While the exemption will apply to all MSD lump-sum payments, in practice it will only affect a small number of lump-sum payments that are over the cash asset thresholds. It will future-proof MSD's work, improve client service and enable consistent and timely administration.
- 10 Given the MSD lump-sum payments exemption intends to cover more than one payment type to enable responsiveness to the unique circumstances of MSD clients, I propose that as part of Ministerial oversight, MSD reports quarterly to the Minister for Social Development on the use and application of the exemption.

Background

Income and cash assets tests are a fundamental part of a needs-based system

- 11 The welfare system is founded on a needs-based approach. Income and cash assets tests help MSD determine if a person is using the resources available to them before applying for government assistance.
- 12 Main benefits are income tested so when a person receives income from sources such as wages, investments or interest payments their benefit rate may be reduced. Additional financial support such as Accommodation Supplement and Temporary Additional Support is also cash asset tested. If a person's cash assets are over specified thresholds, they may not qualify for any additional support payments.
- 13 Where a person does need financial assistance, it is important they access their full and correct entitlement.

Exemptions make sure that the income and cash assets tests do not create unfairness

- 14 Income and cash assets exemptions are an important part of the welfare system. They enable us to be responsive in different situations where it would be unfair if lump-sum payments owed to a client prevented them from accessing government financial support. When an exemption is in place, people can continue to receive their existing financial support and may also be granted additional assistance during the period specified for the exemption, when a lump-sum payment pushes them above the asset or income threshold². Exemptions generally last 12 months.
- 15 The rules that govern exemptions differ so that each exemption is fit for purpose and appropriate to specific situations or events. Existing exemptions can be grouped into three broad types:

² Cash asset thresholds for Accommodation Supplement are \$8,100 for a single person and \$16,200 for a couple and sole parent. For Special Needs Grants, Advance Payment of Benefits and Temporary Additional Support the threshold is \$1095.26 (the lowest threshold) for a single person and \$1,824.83 for a couple and sole parent.

- a. **ex gratia, compensation and settlement payments** in recognition of harm or in respect of a claim of harm such as historic abuse settlements made to people to recognise harm
 - b. **specific lump-sum arrears payments that correct MSD errors in financial assistance payments** such as the Accommodation Supplement alignment payments
 - c. **other payments for a specific purpose that is not an ‘income-related purpose’** such as Housing New Zealand Corporations’ payments for alleged methamphetamine contamination.
- 16 I propose a general MSD lump-sum payments exemption is established for lump-sum payments made by MSD. This would create an exemption applicable to the different lump-sum payments arising from MSD’s work programme and everyday client interactions, future-proofing entitlements by enabling MSD to be responsive to the unique needs of its clients.
- 17 The MSD lump-sum payments exemption will also limit the need for amendments to the regulations when a review or assessment of full and correct entitlement results in an MSD lump-sum payment being made.
- 18 The exemption would not cover payments made by other agencies or entities because different criteria must be applied.
- 19 Further work is needed around income and cash assets exemptions and whether they are fair and fit for purpose. I have previously commissioned a full review of these exemptions and I will report back to Cabinet once I have received further advice.

MSD lump-sum payments ensure clients receive their lawful entitlements

- 20 MSD makes lump-sum payments to its clients to meet its obligations of ensuring every client receives their full and correct financial entitlements. Lump-sum payments are made for different reasons including payments made:
- to correct an MSD system error
 - because MSD did not have all the information to make the correct assessment of a client’s entitlements (sometimes this is because a client has suffered trauma and as a result they chose not to share sensitive information at the time of their benefit application, despite this meaning they would receive less financial support)
 - because of how the benefit system is administered (for example benefit payments are paid in arrears and following the grant of a benefit a client will receive an initial lump-sum payment).
- 21 All lump-sum payments, irrespective of the reason for the payment, ensure a client’s full and correct entitlement, and represent weekly financial entitlement for a specific period of eligibility. It is unfair to disadvantage any client for receiving money owed to them from MSD. These are often payments that would not have affected their entitlement if it had been paid at the time the client was entitled to receive them. Applying the exemption to MSD lump-sum payments will ensure we treat clients equitably.

Having an exemption that is applicable to all MSD lump-sum payments will enable a responsive and consistent application of policy

- 22 Certain income and cash assets exemptions only apply to specific payments such as the payments made to Viet Nam Veterans or Canterbury Earthquake payments. The proposed MSD lump-sum payments exemption, like the ex gratia and compensation payments exemption, intends to cover more than one payment type. This will enable MSD to be responsive to the different circumstances and needs of MSD's clients where full and correct entitlements are achieved through MSD lump-sum payments.
- 23 In practice, the exemption will only be activated for the smaller number of lump-sum payments that are over the cash asset threshold. Most payments made by MSD are for less than the lowest cash asset limit of \$1095.16, and therefore do not affect financial entitlements.
- 24 In the 12 months ending February 2019, MSD made 405,430 lump-sum payments to 149,631 clients, of whom 81,623 received two or more payments. Of those 405,430 payments, 90 percent were under \$1000³. Of that 90 percent, half were for less than \$100.
- 25 The exemption will apply to all payments made by MSD on or after 20 September 2019. This is because there are several lump-sum payment types that could apply to different clients which means it is not practicable or simple to differentiate between payments and to exempt only a portion of them. Applying the exemption to all payments will enable consistent application and administration. It is an equitable approach that will ensure no client is disadvantaged, and in particular that MSD is not making full and correct entitlement payments and then removing or preventing other financial assistance.

Reviews of full and correct entitlement will continue to be part of the welfare system

- 26 § 9(2)(f)(iv) [REDACTED]
- 27 Generally, MSD amends the regulations for each new lump-sum payment, which is resource and time intensive. Having the proposed exemption in place will diminish the risk of clients having their lump-sum payments delayed or their financial assistance stopped or reduced while an exemption is sought.
- 28 Given the MSD lump-sum payments exemption intends to cover more than one payment type to enable responsiveness to the needs of MSD clients, I also propose that MSD reports quarterly to the Minister for Social Development on the use and application of the exemption.

Exempting payments for 12 months is fair and in-line with most other exemptions

- 29 Like most other exemptions, the proposed exemption covers the lump-sum payment and any income derived from that payment, for 12-months from the date the payment (effective from

³ MSD counted multiple payments to a client made on the same day as one payment to establish whether a client receiving more than one payment remained under the cash asset threshold.

⁴ § 9(2)(f)(iv) [REDACTED]

20 September 2019). This means a person can continue to receive the same level of assistance they were receiving on the date the lump-sum payment is made, and they may apply for and be granted additional financial assistance within the 12-month period⁵.

- 30 This is to strike a balance between allowing people enough time to decide the best way to use their payments and the principle that people should use resources available to them before calling on the government for assistance. I am advised that clients typically spend their money within a short time. It would be unreasonable to assume that every lump-sum payment is a cash asset immediately after it is made.

Consultation

- 31 The Ministry of Health, Treasury and Ministry of Education have been consulted. Inland Revenue has been informed.

Financial implications

- 32 The financial impact of the exemption will be minimal and will be absorbed within the existing demand driven forecasts. Any financial implications of payments will be worked through as part of the policy process.

Human rights implications

- 33 The proposals in this paper have been considered and there are no human rights implications.

Legislative implications

- 34 Exempting MSD lump-sum payments from income and cash assets tests will, subject to Cabinet agreement, require changes to Regulations. These changes will be through:

- 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

- 35 I also intend to amend the Ministerial Direction in relation to Special Benefit to exempt MSD lump-sum payments, and any income derived from them, from income and cash assets tests for assistance under the Social Security Act 2018 and the Residential Care and Disability Support Services Act 2018 for a period of 12 months.

Timing and the 28-day rule

- 36 The Amendment Regulations, if approved, will be submitted to the Executive Council for consideration on 16 September 2019, they will be published in the New Zealand Gazette on 19 September 2019 and will come into force on 20 September 2019.

⁵ Certain income and cash asset exemptions do not have a time limit such as the Viet Nam Veterans' ex gratia payments and the ex gratia and compensation payments from historic abuse settlements. In both cases the payments recognise ongoing harm.

37 A waiver to the 28-day rule is sought on the grounds that the Amendment Regulations confer only benefits for those affected by them.

Compliance

38 The 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
- Legislation Guidelines 2018 edition published by the Legislation Design and Advisory Committee.

Regulation Review Committee

39 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

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

Regulatory impact and compliance cost statement

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 have no or only minor impacts on businesses, individuals or not-for-profit entities.

Gender implications

42 The proposal will ensure that the entitlements of all MSD clients are preserved. Women are likely to be the main group to benefit from the proposal because they make up 57 percent of all main benefit recipients and 54 percent of New Zealand superannuation recipients, and in particular, women comprise 91 percent of Sole Parent Support recipients.

Disability perspective

43 People receiving a main benefit because of the impact of a disability or health condition, or because they care for a person with a disability or health condition, make up over half of all working-age benefit recipients. The proposal ensures that all MSD clients access their full and correct entitlements including this cohort.

Publicity

- 44 As part of the legislative requirements, the Amendment Regulations will be notified in the New Zealand Gazette on 19 September 2019.

Proactive Release

- 45 I intend to proactively release this Cabinet paper within standard timeframes.

Recommendations

- 46 It is recommended that the Committee:

- 1 **note** that every lump-sum payment made by the Ministry of Social Development ensures a client's full and correct entitlement irrespective of the reason for the payment
- 2 **note** that the purpose of income and cash assets exemptions is to allow people to continue to receive government financial assistance at their existing rate or future assistance in the period specified for the exemption, without an MSD lump-sum payment for underpayments identified through eligibility reviews and transactions relating to the administration of the benefit system, affecting that assistance
- 3 **note** that while currently most Ministry of Social Development lump-sum payments are below the lowest income and cash assets threshold, enabling the exemption for all payments will treat clients equitably and future-proof the regulatory process and the Ministry of Social Development's work programme
- 4 **agree** to amend the Social Security Regulations 2018 and the Residential Care and Disability Support Services Regulations 2018 to exempt Ministry of Social Development lump-sum payments from income and cash assets tests for assistance under the Social Security Act 2018 and the Residential Care and Disability Support Services Act 2018 for a period of 12 months
- 5 **note** that the Minister for Social Development intends to amend the Ministerial Direction in relation to Special Benefit to exempt MSD lump-sum payments, and any income derived from them in the 12-months after the payment is made, from income and cash assets tests for assistance under the Social Security Act 2018 and the Residential Care and Disability Support Services Act 2018
- 6 **direct** the Ministry of Social Development to report quarterly to the Minister for Social Development on the use and application of the MSD lump-sum payments exemption
- 7 **authorise** the submission of the following Amendment Regulations to the Executive Council to give effect to the decision referred to in recommendation four above:
 - 7.1 the Social Security (Income and Cash Assets Exemptions – MSD Lump-sum Payments) Amendment Regulations 2019; and
 - 7.2 the Residential Care and Disability Support Services (MSD Lump-sum Payments) Amendment Regulations 2019.
- 8 **note** that a waiver of the 28-day rule is sought on the grounds that the Amendment Regulations confer only benefits for those affected by them

- 9 **agree** to waive the 28-day rule so that the Amendment Regulations can come into force on 20 September 2019.

Authorised for lodgement

Hon Carmel Sepuloni
Minister for Social Development

Appendix one

MSD makes lump-sum payments for different reasons which include:

- reviews done through targeted programmes of work, where MSD is making retrospective decisions on client entitlements in a systemic way
- payments to individuals whose entitlement has been reviewed and MSD determines that they have been underpaid, for example a review done following a client querying the level of assistance they are receiving
- payments made to back-date a benefit under s 317 of the SSA⁶
- payments that are the result of benefit reviews, appeals to the Social Security Appeal Authority or courts and judicial reviews
- payments made because of clients' changes in circumstances such as income changes or changes of address that result in an increase to the Accommodation Supplement
- the grant of a benefit or supplementary assistance. Benefits are often granted from a prior date and paid in arrears following MSD's assessment and processing of the client's application

⁶ S 317 provides that the Minister for Social Development may consent to backdate a benefit to before a person applied for that benefit, in certain circumstances. I have delegated this power to the Chief Executive of MSD.