

Chair
Cabinet Social Wellbeing Committee

Changes to Income and Cash Assets Tests – Methamphetamine Contamination Recovery

Proposal

- 1 I seek Cabinet's approval to make changes to income and cash assets tests under the social security legislative framework in relation to debt incurred due to former zero-tolerance methamphetamine contamination policies. I propose that refund payments related to this debt be exempted from income and cash asset tests for social assistance.
- 2 To achieve this, I seek authorisation for submission of the attached Amendment Regulations to the Executive Council:
 - 2.1 Social Security (Cash Assets and Income Exemptions – Refunds of Specified Debt Repayments) Amendment Regulations 2019
 - 2.2 Residential Care and Disability Support Services (Exempt Assets – Refunds of Specified Debt Repayments) Amendment Regulations 2019.

Housing New Zealand has been providing assistance to people affected by zero-tolerance methamphetamine contamination policies

- 3 In June 2018, Housing New Zealand (HNZ) reviewed their zero-tolerance methamphetamine contamination policies. HNZ's review concluded that their zero-tolerance approach, which resulted in tenancies being terminated between 1 July 2013 and 1 June 2018 because of low levels of methamphetamine contamination was unnecessary.
- 4 Subsequently, HNZ committed to an assistance programme to support signatories and potentially other household members to ease hardship caused to them through the application of these policies [SWC-18-MIN-0125 refers]. This assistance is in the form of a discretionary grant.
- 5 With Cabinet agreement, these discretionary grants were exempted from income and cash assets tests for financial assistance for a period of 12 months to ensure that they did not affect entitlements to assistance, and specifically assistance that included an asset test such as Special Needs Grants, Accommodation Supplement or Temporary Additional Support [CAB-18-MIN-0584 refers].

People also incurred debt with the Ministry of Social Development as a result of zero-tolerance methamphetamine policies

- 6 As a result of their tenancies being terminated, signatories and household members also incurred debt with the Ministry of Social Development (MSD). MSD in consultation with HNZ undertook an analysis of the types of debt held by affected people.

- 7 In total, it was found that there were approximately 8,500 recoverable grants to main tenants (228), additional signatories (22), and other occupants (652). Approximately \$3,237,000¹ was granted. MSD found that the debt comprised:
- **Recoverable Emergency Housing Special Needs Grants (EH-SNG)²** - as at 18 February 2019 there have been 289 grants to main tenants with a total amount granted of approximately \$332,000, eight grants to other signatories totalling approximately \$7,500 and 23 grants to other occupants with an amount granted of approximately \$23,000. In total there have been 320 grants with a total amount granted of approximately \$363,000.
 - **Recoverable assistance** – this includes advance payments of benefits, SNG, and recoverable assistance payments and can cover a variety of needs such as bedding, board and furniture. A total of approximately \$2,875,000 was granted.

We have written off debt for all recoverable assistance related to the zero-tolerance methamphetamine policy using powers contained in the Social Security Act 2018

- 8 I considered that it was important that main tenants, additional signatories and other occupants (people residing in the house as a home) were not adversely affected by MSD debt accrued as a direct result of seeking financial assistance following tenancy terminations in relation to HNZ's zero-tolerance policy. Therefore, the Minister of Finance and I have, using powers contained in the Social Security Act 2018 (the SSA) and associated regulations, agreed to write off debt for all recoverable assistance related to the zero-tolerance methamphetamine policy.
- 9 MSD is currently implementing an operational process for the debt write-off to occur. In some situations, clients have already made repayments on the debt from their income. MSD will be investigating clients' individual circumstances and providing refunds where appropriate.

Similar to Housing New Zealand's discretionary grants, any refund payments made by the Ministry of Social Development could affect people's access to government assistance

- 10 Under the SSA and the Residential Care and Disability Support Services Act 2018, MSD must consider a client's income and cash assets when determining what support a person may be eligible for. A lump sum payment can affect people's entitlement to assistance.
- 11 Exemptions for certain types of income and cash assets are specified in the Social Security Regulations 2018 and the Residential Care and Disability Support Services Regulations 2018. The refund payments made by MSD related to methamphetamine recovery are not currently exempt under these regulations.
- 12 If a single lump sum refund payment is made by MSD it will generally not affect entitlement to main benefits. However, any income derived from this payment would likely be included in calculations and could impact on means tested entitlements. The payment would also still be treated as a cash asset and would affect assistance that includes an asset test, for example Special Needs Grants, Accommodation Supplement, Temporary Additional Support or people in need of Public Housing. This means the refund payment could still affect MSD clients' entitlements to financial assistance.

¹ The dollar amounts quoted in this paragraph have been rounded.

² This is a SNG for emergency housing that is last resort assistance and can be used when a client cannot access other adequate accommodation.

- 13 The Amendment Regulations will also enable refund payments made to affected people in need of Public Housing to be made exempt from the cash assets test, as the SSA definition for cash assets (and subsequent exemptions) is also used to assess Public Housing eligibility. Existing operational discretion enables MSD to override the income and asset test for Public Housing and exclude income from donations being included in the income related rent calculation for the 12-month period. Likewise, MSD can use this discretion to exempt other government financial assistance paid to affected individuals in, or in need of, Public Housing for the 12-month period to avoid any unintended reduction in housing entitlement.

Refund payments are proposed to be exempted from income and cash assets tests

- 14 I propose that refund payments should be exempted from income and cash assets tests. I consider that refund payments should be treated similarly to HNZ discretionary grants and be exempt from income and cash asset tests. It would be unfair to penalise people who were affected by the zero-tolerance approach to methamphetamine contamination by reducing their financial assistance entitlements because of income and cash asset tests.
- 15 This exemption was not able to be progressed last year as officials were still working through issues relating to writing-off MSD debt for signatories and other household members. At that stage MSD and HNZ had not completed their analysis to consider the implications of this debt for affected signatories and other household members.
- 16 I therefore seek Cabinet's approval to submit the attached Amendment Regulations to the Executive Council on 15 April 2019. These Regulations will ensure that affected people who receive repayment refunds from MSD will not be adversely affected in terms of their eligibility for other government assistance as a result of receiving the payments.
- 17 Recipients may take time to decide how they use their refund payment. However, there is also a need, consistent with the purpose of the SSA, to ensure that people do not receive social assistance indefinitely despite having a payment they could potentially use to support themselves. I consider that it is appropriate, given these factors, that the exemption period applies for 12 months. A 12-month exemption is consistent with other exemption periods in the welfare system. This 12-month exemption period should also apply to any income derived from the payment.

Consultation

- 18 The Ministry of Health, Ministry of Housing and Urban Development, Housing New Zealand, and the Treasury have been consulted. The Department of the Prime Minister and Cabinet has been informed.

Financial implications

- 19 There are no financial implications for appropriations as a result of exempting refund payments from income or cash asset tests as this change will act to maintain the status quo for existing clients.

Human rights implications

- 20 This paper has no human rights implications.

Legislative implications

- 21 Exempting refund payments from income and cash assets tests will, subject to Cabinet agreement, require changes to Regulations. These changes will be through:
- 21.1 Social Security (Cash Assets and Income Exemptions — Refunds of Specified Debt Repayments) Amendment Regulations 2019
 - 21.2 Residential Care and Disability Support Services (Exempt Assets—Refunds of Specified Debt Repayments) Amendment Regulations 2019.
- 22 I also intend to amend the Ministerial Direction in relation to Special Benefit to exempt refund payments, and any income derived from them from cash assets and income 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

- 23 The Amendment Regulations, if approved, will be submitted to the Executive Council for consideration on 15 April 2019, come into force on 16 April 2019, and will be published in the New Zealand Gazette on 16 April 2019.
- 24 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

- 25 The Amendment Regulations comply, where applicable, with the following:
- 25.1 the principles of the Treaty of Waitangi
 - 25.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
 - 25.3 the principles and guidelines set out in the Privacy Act 1993
 - 25.4 relevant international standards and obligations
 - 25.5 Legislation Guidelines 2018 edition published by the Legislation Design and Advisory Committee.

Regulation Review Committee

- 26 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

- 27 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

- 28 The Treasury Regulatory Quality Team has determined that the decisions sought in this Cabinet paper are not subject to the Regulatory Impact Analysis requirements on the basis that they will have no, or minor, impacts on businesses, individuals or not-for-profits.

Gender implications

- 29 This paper has no gender implications.

Disability perspective

- 30 This paper has no disability implications.

Publicity

- 31 As part of the legislative requirements, the Amendment Regulations will be notified in the New Zealand Gazette on 16 April 2019.

Proactive Release

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

Recommendations

- 33 It is recommended that the Committee:

- 1 **note** that Cabinet previously agreed to amend regulations to exempt Housing New Zealand discretionary grants (to address financial hardship caused from tenancies ending as a result of Housing New Zealand's zero-tolerance methamphetamine contamination policies), and any income derived from them, from cash assets and income tests for financial assistance for a period of 12 months;
- 2 **note** that as a result of previous zero-tolerance methamphetamine policies signatories and household members also incurred debt with the Ministry of Social Development from recoverable assistance;
- 3 **note** the Minister of Finance and the Minister for Social Development used powers contained under the Social Security Act 2018 to write-off debt for all recoverable assistance to ensure that affected people were not adversely affected by debt accrued as a direct result of seeking financial assistance following tenancy terminations in relation to Housing New Zealand's former zero-tolerance policy;
- 4 **note** that the Ministry of Social Development is implementing an operational process for the debt write-off to occur and that some clients will receive refunds as they have paid off some of the debt incurred due to their use of recoverable assistance;
- 5 **note** that the refund payments would currently be treated as cash assets or income when determining eligibility for other government assistance and may impact:
 - 5.1 entitlement to financial assistance from the Ministry of Social Development;
 - 5.2 access to long-term residential care;

5.3 eligibility to Public Housing and Income Related Rent;

- 6 **agree** to amend the Social Security Regulations 2018 and the Residential Care and Disability Support Services Regulations 2018 to exempt refund payments by the Ministry of Social Development, and any income derived from them, from income and cash assets tests for financial assistance for a period of 12 months;
- 7 **note** that the Minister for Social Development intends to amend the Ministerial Direction in relation to Special Benefit to exempt refund payments, and any income derived from them from cash assets and income 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;
- 8 **authorise** the submission of the following Amendment Regulations to the Executive Council to give effect to the decision referred to in recommendation six above:
 - 8.1 Social Security (Cash Assets and Income Exemptions – Refunds of Specified Debt Repayments) Amendment Regulations 2019; and
 - 8.2 Residential Care and Disability Support Services (Exempt Assets – Refunds of Specified Debt Repayments) Amendment Regulations 2019;
- 9 **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;
- 10 **agree** to waive the 28-day rule so that the Amendment Regulations can come into force on 16 April 2019.

Authorised for lodgement

Hon Carmel Sepuloni
Minister for Social Development