



# Report

**Date:** 5 March 2021

**Security Level:** BUDGET SENSITIVE

**To:** Hon Carmel Sepuloni, Minister for Social Development

## Funding to implement a Court of Appeal decision on the Means Assessment for Long-term Aged Residential Care initiative

### Purpose of the report

- 1 This report informs you of a late Budget 2021 initiative we wish to submit to implement a Court of Appeal decision on the means assessment for long-term aged residential care.

### Recommended actions

It is recommended that you:

- 1 **discuss** the contents of this report at the next officials' meeting on 8 March 2021.

  
\_\_\_\_\_  
Julia Bergman  
General Manager  
Disability, Seniors and International Policy

5/3/21  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Hon Carmel Sepuloni  
Minister for Social Development

6/3/21  
\_\_\_\_\_  
Date

**Following a Court of Appeal decision, you agreed to a new approach to financial means assessments for the Residential Care Subsidy**

- 2 In May 2019, the Court of Appeal found that some aspects of the Ministry of Social Development's (MSD) approach to carrying out financial means assessments (FMA) for Residential Care Subsidy (RCS) were inconsistent with legislation.
- 3 Since December 2019, in response to this decision, MSD has implemented a revised approach to FMA for new and current clients. This approach aligns with the Court decision. We must still refund some clients' RCS payments based upon the decision. Until this is done MSD, the Ministry of Health, and District Health Boards (DHBs) are open to legal and reputational risks.
- 4 Key advice and decisions have been:
  - that approximately 2,100 clients and deceased clients' estates would be contacted and that retrospective RCS payments could be up to \$20 million [REP/19/8/734 refers]
  - you and the then Minister of Health agreed that MSD should undertake retrospective reviews for clients who had past FMAs that may have been affected by the decision, with refunds to be paid to them (or their estates) where appropriate [REP/20/2/076 refers]
  - that new funding of up to \$20 million should be sought to meet the costs of retrospective RCS payments through the Between-Budget-Contingency (BBC) [REP 20/11/1129 refers]. This funding approach was consulted on with the Treasury
  - that retrospective RCS payments be exempted from means testing for RCS and various other forms of social security assistance for a 12-month period [REP 20/11/1129 refers].
- 5 We previously provided you a draft Cabinet paper setting out the approach outlined above [REP 21/02/056 refers].

**Following further advice, we are now seeking funding through a Budget 2021 initiative**

- 6 Officials have recently received advice from the Minister of Finance's Office that their preferred approach is for a Budget 2021 initiative to be submitted seeking this funding instead of applying for BBC funding.
- 7 We are now preparing an initiative to submit for Budget 2021 based on this advice and the parameters that you and the Minister of Health have previously agreed. Broadly, this initiative will seek \$5 million in this financial year (2020/21) and \$15 million in 2021/22.
- 8 The Minister of Finance's permission is required for the initiative to proceed. Therefore, we have separately provided your office with a draft email for you to send to the Minister of Finance seeking permission to submit this Budget initiative.

**A separate Cabinet paper seeking policy decisions will still be required**

- 9 Although funding is being sought through the Budget 2021 process, other decisions will still be necessary so implementation can begin as soon as possible afterwards. These decisions include Cabinet approval for:
  - MSD implementing the Court of Appeal decision retrospectively and processing refunds to clients/estates directly, rather than through DHBs and rest home owners; and
  - exemptions from means-testing for RCS and social security assistance for a 12-month time-period.

BUDGET SENSITIVE

- 10 We are drafting an updated Cabinet paper with these decisions for your approval. We have consulted with your Office and aim to provide you an updated draft Cabinet paper by 11 March 2021.
- 11 Dependent on your agreement and Ministerial consultation, a final copy of the Cabinet paper will be submitted via CABNET on 18 March 2021 to be considered at the Cabinet Social Wellbeing Committee meeting on 24 March 2021.

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