



**MINISTRY OF SOCIAL
DEVELOPMENT**

TE MANATŪ WHAKAHIATO ORA

09 FEB 2021

On 30 November 2020, you emailed the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982 (the Act), the following information:

- *Could I please make a request for all briefings/reports/advice and correspondence provided to the Minister/Government around temporary financial support.*
- *Further, could I please request the forecast costings of the scheme, a breakdown of those costings, predicted number of recipients including the areas they are in, age and gender.*

On 9 December 2020, you clarified your request to the following:

- *All briefings/reports/advice and correspondence provided to the Minister around 'allowing temporary visa holders access to the Emergency Benefit', which was announced 20 November 2020.*
- *The forecast costings of the scheme, a breakdown of those costings, predicted number of recipients including the areas they are in, age and gender.*

For the sake of clarity, your questions are addressed in turn:

- *All briefings/reports/advice and correspondence provided to the Minister around 'allowing temporary visa holders access to the Emergency Benefit', which was announced 20 November 2020.*

The following four documents were identified to be within the scope of your request:

- Cabinet paper – *Support for foreign nationals from 1 December 2020*, dated 6 November 2020
- Aide-memoire – *Support for foreign nationals from 1 December 2020*, dated 13 November 2020
- Report – *Approval for foreign nationals to access Emergency Benefit and operational settings*, dated 24 November 2020
- Report – *Additional funding required to pay Working for Families tax credits to foreign nationals receiving Emergency Benefits*, dated 25 November 2020

The Cabinet paper – *Support for foreign nationals from 1 December 2020*, dated 6 November 2020, is refused under section 18(d) of the Act on the basis that the information requested will soon be publicly available. This information will be published as soon as possible, early this year.

The following three documents are attached to this response:

- Aide-memoire – *Support for foreign nationals from 1 December 2020*, dated 13 November 2020
- Report – *Approval for foreign nationals to access Emergency Benefit and operational settings*, dated 24 November 2020
- Report – *Additional funding required to pay Working for Families tax credits to foreign nationals receiving Emergency Benefits*, dated 25 November 2020

Some information is withheld under section 9(2)(ba)(i) of the Act as it is subject to an obligation of confidence, and if released, could prejudice the supply of similar information in the future. The greater public interest is in ensuring that such information can continue to be supplied.

Some information is withheld under section 6(c) of the Act, as if the information is made available, it would likely prejudice the security or defence of New Zealand, or the international relations of the Government of New Zealand.

Some information is withheld under section 9(2)(f)(iv) of the Act as it is under active consideration. The release of this information is likely to prejudice the ability of government to consider advice and the wider public interest of effective government would not be served.

Some information is withheld under section 9(2)(g)(i) of the Act to protect the effective conduct of public affairs through the free and frank expression of opinions. I believe the greater public interest is in the ability of individuals to express opinions in the course of their duty.

You will note that the names of some individuals are withheld under section 9(2)(a) of the Act in order to protect the privacy of natural persons. The need to protect the privacy of these individuals outweighs any public interest in this information.

In order to provide copies of correspondence relating to '*allowing temporary visa holders access to the Emergency Benefit*', Ministry staff would have to look through thousands of emails to find correspondence in scope. This would require the Ministry to divert personnel from their core duties and allocate extra time to complete this task. The diversion of these resources would impair the Ministry's ability to continue standard operations and would be an inefficient use of the Ministry's resources. As such, your request is refused under section 18(f) of the Act, as it requires substantial collation. The greater public interest is in the effective and efficient administration of the public service.

I have considered whether the Ministry would be able to respond to your request given extra time, or the ability to charge for the information requested. I have concluded that, in either case, the Ministry's ability to undertake its work would still be prejudiced.

- *The forecast costings of the scheme, a breakdown of those costings, predicted number of recipients including the areas they are in, age and gender.*

The Ministry interpreted this part of your request to be for the information used to estimate the costings.

The primary purpose of costing is to estimate the magnitude of cost for decision and appropriation purposes. The estimate provided is a mid-point figure, but at the same time, must cover actual expenditure that may be incurred. The costing was made at a high level, based on information available at the time.

To create an estimation of Emergency Benefit for temporary visa holders applications the Ministry could receive from foreign nationals, for the month of December 2020, the Ministry used the Department of Internal Affairs (DIA)'s data regarding applications for their 'Assistance for Foreign Nationals Support Programme' (up to end of September 2020).

For the payment of Emergency Benefit for temporary visa holders, the following two groups were assumed to receive the Jobseeker Support payment rates:

- Single people, aged over 25 years old (\$250.74 per week from 1 April 2020)
- Married people (with children) (\$428.06 per week) respectively.

A third group, 'Recognised Seasonal Employer' (RSE) visa holders, was also identified. This group is also assumed to receive the single person's payment rate under the Emergency Benefit.

Please see the table below which shows the estimated number of foreign nationals expected to apply for Emergency Benefit for temporary visa holders, the estimated average weekly payment rate, and estimated net expenditure for the period 1 December 2020 to 28 February 2021.

Estimated Number of Recipients			
	Single	Families	Seasonal Workers
Dec-20	1,830	310	980
Jan-21	2840	480	980
Feb-21	3,430	580	980

Average Weekly Payment Rate			
	\$250.74	\$428.06	\$250.74

Estimated Net Expenditure			
	\$8,600,000	\$2,500,000	\$3,200,000

The grand total is estimated to be \$14.3 million, before tax, to give an appropriated amount of just over \$16 million.

As mentioned previously, the December 2020 estimation is based on DIA's information up to the end of September 2020.

The Ministry estimated that for 'single' and 'families' groups, January and February would experience a rapid reduction in new grants from December levels, but would retain a high proportion of people continuing to receive the Emergency Benefit for temporary visa holders, for the previous month.

A constant but low proportion of RSE visa holders was estimated to require an Emergency Benefit for summer months.

The Ministry holds no information about age or gender of possible recipients, or about where they are located. By the nature of the various visa restrictions, none of these people will have been logged on the Ministry's system. Therefore, I am refusing your request for this information under section 18(g)(i) of the Act as the information you have requested is not held by the Ministry and I have no grounds to believe that the information is held by another department or Minister of the Crown or organisation.

However, you may find it helpful to know that the Appendix to the Cabinet paper – *Support for foreign nationals from 1 December 2020*, dated 6 November 2020, shows data regarding applicants for DIA's scheme, broken down by region.

The principles and purposes of the Official Information Act 1982 under which you made your request are:

- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

This Ministry fully supports those principles and purposes. The Ministry therefore intends to make the information contained in this letter and any attached documents available to the wider public. The Ministry will do this by publishing this letter and attachments on the Ministry of Social Development's website. Your personal details will be deleted, and the Ministry will not publish any information that would identify you as the person who requested the information.

If you wish to discuss this response with us, please feel free to contact OIA_Requests@msd.govt.nz.

If you are not satisfied with this response regarding temporary visa holders access to the Emergency Benefits, which was announced 20 November 2020, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Ngā mihi nui



Bede Hogan
Manager
Welfare System and Income Support Policy

Aide-mémoire



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

Cabinet paper

Date: 13 November 2020

Security Level: Cabinet Sensitive

For: Hon Carmel Sepuloni, Minister for Social Development and
Employment

File Reference: REP/20/11/1085

Support for foreign nationals from 1 December 2020

**Cabinet
Committee** Cabinet

Date of meeting 16 November 2020

Minister Hon Carmel Sepuloni, Minister for Social Development and
Employment

Proposal You are seeking Cabinet agreement to the proposals, including
funding, to provide the Emergency Benefit to foreign nationals
in hardship from 1 December 2020 to 28 February 2021.

Talking points

- The *Assistance for Foreign Nationals Impacted by COVID-19 Programme* has supported foreign nationals in hardship with in-kind assistance from 1 July 2020 and will end 30 November 2020.
- Some foreign nationals are likely to still be in hardship and unable to return to their home nations following the end of this Programme on 30 November 2020.
- Foreign nationals are generally not eligible for welfare assistance from MSD due to their temporary visa status. However, section 64 of the Social Security Act 2018 allows me to instruct MSD to provide Emergency Benefit to people who would not otherwise be entitled, in this case because of their temporary residence status.
- I am proposing that Cabinet agree to provide the Emergency Benefit to foreign nationals in hardship. This would be provided via the Ministry of Social Development, under section 64 of the Social Security Act, from 1 December 2020 to 28 February 2021. This is estimated to cost \$16m gross, or \$14m net, over the proposed three months.
- There are risks associated with implementing this proposal related to verification, the intelligence of IT

systems and possible welfare system inconsistencies. There will also be gaps that this proposal will not address, such as support for unaccompanied minors, sponsored people and deportees.

- Based on the timing constraints, the welfare implications and the lack of viable temporary alternatives available, I seek your agreement to this proposal and the associated funding.

Key issues

The Assistance for Foreign Nationals Impacted by COVID-19 Programme will end on 30 November 2020

- The Programme is a joint initiative between the Department of Internal Affairs (DIA) and the New Zealand Red Cross (NZRC) that has provided in-kind assistance only to foreign nationals in hardship, including food vouchers, rent arrears payments and medical costs (no cash payments).
- The Programme has supported over 11,000 people to date, with a total spend of \$22.3 million, involving significant resourcing from DIA, as well as wraparound support and intensive case management provided by NZRC.
- The Programme was intended as a short-term solution to an uncertain situation and reinforced the expectation that foreign nationals take all reasonable steps to support themselves or make plans to return home. s 9(2)(ba)(i) OIA

The outlook has since improved for the economy, labour market and international travel, but uncertainty remains

- Since the establishment of the Programme, the impacts of COVID-19 on flights, repatriation and employment have changed and continue to evolve. Commercial travel options are now more widely available, and the Treasury has forecast both lower and later peaks in unemployment.
- There remains a degree of uncertainty, however, around international travel, including regular flight cancellations, higher costs and difficulties meeting transit requirements. A subset of foreign nationals remains stranded in New Zealand, due to no flights operating, pre-departure testing, border requirements or limited quarantine capacity in their home country.

Providing no support to foreign nationals carries a range of risks, such as further increasing hardship, barriers to employment and impacts on the community s 6(a) OIA

- There are no legislative requirements to provide support to foreign nationals. Not doing so, however, could exacerbate hardship for foreign nationals who cannot return home, and there is a risk that a lack of support could create further barriers to their taking up employment or arranging travel.

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- This would likely result in increased demand for support from NGOs and community-based organisations, as well as flow-on impacts on friends and families.

• s 6(a) OIA

You are proposing that Cabinet agree to provide the Emergency Benefit (EB) to foreign nationals under section 64 of the Social Security Act (the Act)

- You seek Cabinet's agreement to continue providing financial support for foreign nationals in hardship, by paying EB under section 64 of the Act to people on valid temporary visas types from 1 December 2020 to 28 February 2021.
 - EB is a discretionary income and asset-tested main benefit, provided for people that are in hardship and are not eligible for another benefit. An example of when EB is paid is when a person is a New Zealand citizen or permanent resident in hardship but does not meet the residence criteria for New Zealand Superannuation (generally a person must be resident and present in New Zealand for 10 years since the age of 20 and at least 5 years since the age of 50).
 - Regardless of the date that a person is granted EB, it will cease on 28 February 2021 (ie, some people may receive three months of assistance and others may receive just two weeks of assistance).
 - Eligibility for EB is similar to that of the current Programme, and it has some natural alignment in that people must be in hardship and taking all reasonable steps to find alternative means of support, as well as arranging travel home, where possible. Under the Act, MSD can make receipt of EB subject to any conditions imposed by MSD.
 - No other financial assistance would be paid, however, as this cohort would not be eligible for anything other than EB under section 64.
 - EB recipients must meet the appropriate income test for the analogous benefit and have cash assets of less than \$4,300 if single or \$7,464 if in a relationship or a sole parent. MSD considers this existing asset threshold will allow people to retain enough savings to fund their travel home in most circumstances.
 - This provision of EB to foreign nationals in hardship is estimated to cost \$16m gross (\$14m net) over three months, noting there are data limitations and a high degree of uncertainty around the estimated volume of eligible
-

foreign nationals (5,800).¹ The current Programme has a projected underspend of approximately \$14m that will be returned to the Crown. Due to this underspend and the increase of \$16 million required under the proposals, it is expected that the net impact on the Crown operating balance will be minimal overall.

There are risks with operationalising financial assistance to foreign nationals, including limited capacity for verification, integrity checks and employment support...

- Due to timeframes and legal constraints, EB payments to foreign nationals would be based on a relatively high-trust, basic model of assistance providing the equivalent main benefit rate only (eg Jobseeker Support, Sole Parent Support).
- Given the condensed implementation timeframe, visa verification and identification through an information-sharing or matching arrangement is not possible, but this can be mitigated through staff sighting ID, evidence of visa status, bank accounts and other relevant information. On a consent basis, MSD will seek to confirm visa status with Immigration NZ to assess eligibility for EB, and processes are currently being developed for this. Integrity checks for any fraudulent applications may not be possible in the time available.
- EB applications will be processed face-to-face at service centres. Unlike the Programme, which allowed a maximum of four-week block payments and additional checks upon reapplication (for example, assessing whether they have sought consular assistance or other forms of support), MSD will do no further checks for the three-month period but is still exploring the checks that can be done in the initial assessment.
- Some employment information could be made available, such as links to publicly available information on websites. Further employment support is unlikely to be consistent with legislative and funding frameworks, which provide for MSD employment services to citizens and residents only. Amending the scope of the relevant Multi-Category Appropriation is not recommended, as it is unlikely that MSD would be able to deliver a full employment support service for this additional cohort.
- MSD is working on further opportunities to collaborate with community and NGO providers to provide broader support (non-financial) to foreign nationals. There is also work

¹ This is an estimate of the total number of adults supported through the EB proposal. The actual number of EB grants may be lower, due to some people being paid the couple rate, in which only one person in the couple is considered the primary beneficiary and one rate of benefit is paid in respect of the couple.

underway at Immigration NZ § 9(2)(f)(iv) OIA

... and there are some gaps in the proposals to note

- EB payments may not be sufficient to cover the living expenses of foreign nationals with no other sources of income, particularly if they live in areas with high housing costs, such as Auckland and Queenstown.
- Unlike the Programme, there will not be specific coverage of medical costs under the proposals, and foreign nationals would be expected to meet these costs themselves through insurance or through consular assistance. Healthcare related to COVID-19 continues to be free-of-charge.
- Unaccompanied minors, sponsored people and deportees would not be eligible for EB under the proposals. § 9(2)(f)(iv) OIA

You requested some changes to the Cabinet paper in order to table a revised version

- Additional information has been included regarding other work to enable foreign nationals to support themselves (paragraph 30) and the support MSD is able to provide (paragraphs 50-51).
- The paper clarifies the rules and expectations for Emergency Benefit receipt (paragraph 48).
- § 9(2)(g)(i) OIA
- Detailed information of medical expenses under the current Programme has been removed (paragraphs 19, 70).

Our advice

MSD supports the proposal, particularly given its alignment with the Government's management of the response to the ongoing economic and public health impacts of COVID-19.

Our concerns regarding the rapid timeframe for implementation, operational capacity and data limitations are well outlined in the Cabinet paper and in this aide-memoire. The time-limited (ie, 3-month) nature of the proposals mitigates these risks to an extent.

There will be an unavoidable increase in demand for MSD's services, however, and some necessary diversion of staff away from core business at a time of unprecedented demand. This is compounded by the COVID-19 Income Relief Payment and Wage Subsidy payments ending at the same time, as well as the usual surge in business around the Christmas period. There

are risks for system integrity and deadweight loss as a result, including payments to some foreign nationals who can return home but who are choosing to stay in New Zealand.

Equity issues remain with regard to New Zealanders who are not eligible for income support under current settings, including those who are stranded overseas. This is a necessary trade-off in the provision of financial support to foreign nationals.

Next steps

If Cabinet agrees to the proposals, we will then provide you with a report for your written approval to extend EB to foreign nationals under section 64.

Author: § 9(2)(a) OIA Senior Policy Analyst, Income Support Policy

Responsible manager: § 9(2)(a) OIA, Policy Manager, Income Support Policy



Report

Date: 24 November 2020

Security Level: IN CONFIDENCE

To: Hon Carmel Sepuloni, Minister for Social Development and Employment

Approval for foreign nationals to access Emergency Benefit and operational settings

Purpose of the report

- 1 This report seeks your written approval for the Ministry of Social Development (MSD) to use section 64 of the Social Security Act 2018 (the Act) to allow foreign nationals in hardship to access Emergency Benefit.
- 2 Officials have been working through the development of the operational policy and business process for this initiative. This report also outlines these operational settings for this form of Emergency Benefit.

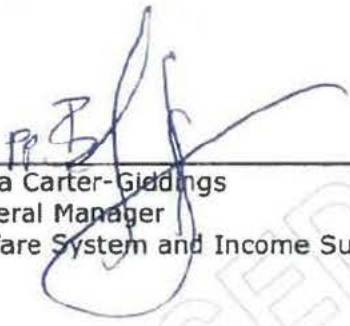
Recommended actions

It is recommended that you:

- 1 **note** that section 64 of the Social Security Act 2018 allows the Ministry of Social Development to pay Emergency Benefit to any person, regardless of residency status, if there is an epidemic management notice in effect and you provide written approval of this
- 2 **note** that Cabinet agreed to provide financial support to foreign nationals who are in hardship in New Zealand through the provision of an Emergency Benefit via the Ministry of Social Development from 1 December 2020 [CAB-20-MIN-0476 refers]
- 3 **approve** the Ministry of Social Development to grant emergency benefits under section 64 of the Social Security Act 2018 from 1 December 2020 until the close of 28 February 2021 to the following two groups of people in hardship who would not otherwise be entitled to be granted emergency benefits under the Social Security Act 2018:
 - 3.1 holders of valid temporary entry class visas which do not include a sponsorship provision imposed under section 48 of the Immigration Act 2009; and
 - 3.2 for the avoidance of doubt, holders of valid Recognised Seasonal Employer limited visas, including those visas granted by special direction under section 61A of the Immigration Act 2009

YES/NO

- 4 **note** that the usual policy settings for Emergency Benefit will apply to foreign nationals
- 5 **note** that the Cabinet paper for the foreign nationals proposal did not account for the fact that foreign nationals on Emergency Benefit could be eligible for Working for Families tax credits, and this issue was discovered while developing the operational policy design for this initiative
- 6 **note** that a report seeking approval from the Ministers of Finance and Revenue to account for the additional funding needed to pay Working for Families tax credits to foreign nationals on Emergency Benefit is due tomorrow, and you will be copied into this report
- 7 **note** that officials have developed the operational policy design of this initiative, and this paper outlines the approach to these settings.



Fiona Carter-Giddings
General Manager
Welfare System and Income Support Policy

24/11/2020

Date



Hon Carmel Sepuloni
Minister for Social Development and Employment

26/11/20

Date

Background

- 3 The temporary *Assistance for Foreign Nationals Impacted by COVID-19 Programme* (the Programme) administered by the Department of Internal Affairs and the New Zealand Red Cross, was established to support foreign nationals stranded in New Zealand. The Programme will end on 30 November 2020.
- 4 On 16 November 2020, Cabinet agreed to continue providing financial support to foreign nationals who are in hardship in New Zealand through the provision of an Emergency Benefit via MSD from 1 December 2020 [CAB-20-MIN-0476 refers].
- 5 There is a provision in section 64 of the Act that allows MSD to pay Emergency Benefit to any person, regardless of their residency status, if there is an epidemic management notice in effect and you give written notice of this.
- 6 Emergency Benefit will only be available to foreign nationals who meet the specified eligibility criteria, including that they must hold one of the visa types specified in recommendation three.

Your written approval is needed to use section 64 of the Act to allow foreign nationals to access Emergency Benefit

- 7 On top of the epidemic management notice being in effect, your written approval is also required to enact section 64 to allow foreign nationals in hardship to access Emergency Benefit.
- 8 Legal advice is that subject to your signature and agreement to the recommendations, this report is the written approval, and nothing further is required. This includes no publishing or tabling requirements. As you are aware, this initiative has already been publicly announced.
- 9 Section 64 of the Act is a broad provision that allows the granting of emergency benefits to people who would not otherwise be entitled, meaning further detail is required to specify who can receive this particular form of Emergency Benefit. Recommendation three in this report specifies the two groups of foreign nationals that will be eligible for Emergency Benefit under section 64 of the Act:
 - 9.1 holders of valid temporary entry class visas which do not include a sponsorship provision imposed under section 48 of the Immigration Act 2009; and
 - 9.2 for the avoidance of doubt, holders of valid Recognised Seasonal Employer limited visas, including those visas granted by special direction under section 61A of the Immigration Act 2009.

We have developed the operational settings for this form of Emergency Benefit

- 10 Officials have been working to develop the operational policy design and business process for this form of Emergency Benefit. The subsequent paragraphs outline the approach being taken to these operational settings.

Working for Families tax credits

- 11 On 25 March 2020, the Income Tax Act 2007 was amended to ensure that people on a temporary visa who are granted an Emergency Benefit will qualify for the same Working for Families tax credits (WFF) as other beneficiaries. The change was made through the COVID-19 Response (Taxation and Social Assistance Urgent Measures) Bill, and you were forwarded a report about this matter on 24 March 2020 (REP/20/3/289 refers). You and the Minister of Revenue approved this change in 2019, when the original legislative mechanism was the next available tax bill (REP/19/10/1073 refers).

- 12 Before this change was made, those receiving Emergency Benefit in New Zealand on temporary visas could not access WFF because they did not meet the residency requirements. This exclusion was intended to prevent short-term visitors from accessing WFF. It was not intended to prevent those in exceptional circumstances (such as refugees who hold temporary visas) from accessing WFF.
- 13 The policy rationale for this change was to create greater alignment between the financial assistance that Emergency Benefit recipients on temporary visas can receive, compared to 'standard' Emergency Benefit recipients who meet MSD's normal residency requirements.
- 14 As a result of this change, foreign nationals who receive Emergency Benefit could be eligible for Family Tax Credit and Best Start, provided they meet all the other eligibility criteria for these payments. Foreign nationals receiving Emergency Benefit will not be eligible for the In-Work Tax Credit or the Minimum Family Tax Credit given their respective work requirements.
- 15 As MSD discovered this Working for Families issue when developing the operational policy design for this initiative, the Cabinet paper for this proposal did not account for this. Instead, the Cabinet paper outlined that foreign nationals would be eligible for Emergency Benefit only.
- 16 We estimate that paying Family Tax Credit to foreign nationals receiving Emergency Benefit would cost \$1.636 million in Family Tax Credit expenditure over 3 months. This assumes that the estimated 616 families who could be eligible for Emergency Benefit have two children each, and that they would be receiving Family Tax Credit for that whole 3-month period.
- 17 The cost estimate for Best Start is \$0.160 million – so combined with the Family Tax Credit cost estimate, an estimated maximum cost of \$1.796 million in total.
- 18 Treasury has advised that accounting for this funding can be done via approval from the Ministers of Finance and Revenue to make the appropriate adjustment in Vote Revenue. This is because the main policy changes have already been agreed to, and the Family Tax Credit appropriation is a permanent legislative authority¹ and regularly adjusted by forecasting changes agreed between Ministers. Cabinet approval of this funding is not required, and Treasury is supportive of this.
- 19 We will provide a report to these Ministers on 25 November 2020 seeking this approval, and you will be copied in this report. This additional funding will be charged against the COVID-19 Response and Recovery Fund.

Recognised Seasonal Employers visa holders

- 20 Under the current Programme administered by the Department of Internal Affairs and the New Zealand Red Cross, Recognised Seasonal Employers (RSE) visa holders have special provisions. For example, they are not required to demonstrate that they are in serious hardship to access the Programme, and can have high cash assets (for example, officials are aware of RSE visa holders with \$10,000 in cash assets). The RSE visa specifically targets those from the Pacific region, by providing seasonal employment to enable individuals to earn more to support their communities in their home countries. These parameters are misaligned with the hardship requirement and asset test for Emergency Benefit eligibility.
- 21 MSD's proposed approach for RSE visa holders is to apply the Emergency Benefit cash asset threshold (\$4,300 for a single client, \$7,464 if they are in a relationship or a sole parent). This is consistent with welfare system settings and how all other people are

¹ Under a permanent legislative authority-type appropriation, the appropriation authority does not need to be sought from and approved each year by Parliament.

treated when assessing eligibility to Emergency Benefit. However, this is at odds with one of the intents of the RSE visa – to enable individuals to take earned income back to their home countries and communities.²

- 22 There is a separate group of RSE visa holders with expired work conditions who are waiting for their updated visa to be processed. When able to work, this group will be able to work with any RSE employer.
- 23 MSD's proposed approach for this particular group of RSE visa holders is to grant Emergency Benefit on the condition that when their circumstances change and they are able to work, they must inform MSD. This granting of Emergency Benefit could be for a time-limited period, for example two weeks, and then their eligibility for Emergency Benefit will be assessed again after that period.
- 24 This approach is reliant on the foreign national coming back to MSD when their circumstances have changed. We will not know this information otherwise, given we are unable to develop the appropriate information sharing agreements with the Ministry of Business, Innovation and Employment within the required implementation timeframes.

Advance payments of benefit

- 25 Under the Act, MSD can make an advance payment of benefit (Advance), when particular circumstances are met. Clients who need assistance to meet a particular immediate need for an essential item, may get an Advance of up to 6 weeks of their benefit.
- 26 This provision will also apply to Emergency Benefit for foreign nationals. However, there is discretion embedded into this provision. Consideration must be given to whether an Advance would best meet the immediate need. Case managers must also investigate whether the client has other sources of assistance to meet the immediate need, and consider the client's ability to repay the Advance. There is a stricter hardship test applied to granting an Advance than Emergency Benefit. A person cannot receive an Advance if their cash assets exceed \$1,113.36 for a single person or \$1,855.15 for those who are in a relationship (with or without children) or a sole parent.³
- 27 MSD's operational policy guidance will be clear that case managers should use their discretion when considering an Advance for a foreign national client, particularly in regard to whether MSD will be able to recover the debt, and the person's ability to repay the debt. As this is a short-term initiative, it is unlikely that Advances would be granted in most cases.
- 28 Unlike other forms of Hardship Assistance (for example Special Needs Grants), the provision for Advances exists in primary legislation, as it relates to instalments of benefits. Consequently, removing this provision for foreign nationals is not possible in the required implementation timeframes. Foreign nationals are not eligible for other forms of Hardship Assistance under the Emergency Benefit proposal.

² There is some discretion to disregard some or all of the income and assets for Emergency Benefit in exceptional circumstances. Being a RSE visa holder is not in and of itself an exceptional circumstance, and MSD's operational policy guidance will reflect this.

³ If exceptional circumstances exist, MSD may make an Advance where the client's income or cash assets may exceed the limits.

Foreign nationals without Inland Revenue Department (IRD) numbers

- 29 One condition of granting benefits, including Emergency Benefit for foreign nationals, is that the applicant has to provide an IRD number via the application form. There is an exemption to this if a client cannot provide an IRD number because of a health condition, injury or disability.
- 30 Foreign nationals who are visitors or students are unlikely to have an IRD number. MSD has confirmed with Inland Revenue that there is nothing to stop a visitor or a student who is not working from applying for an IRD number, as long as they can provide the required identification documents:
- passport details
 - Immigration New Zealand Application Number
 - most recent overseas tax number (if they have one)
 - a New Zealand bank account or customer due diligence (if they have one).
- 31 Consequently, foreign nationals who do not have an IRD number will need to first apply for and receive an IRD number before they can apply for Emergency Benefit. In cases where foreign nationals are unable to provide all of the required documentation and therefore cannot obtain an IRD number, Emergency Benefit will be granted and the foreign national will have ten days to provide an IRD number. If they do not provide an IRD number, their Emergency Benefit will stop.
- 32 Inland Revenue aims to process applications for IRD numbers within two working days if the applicant has requested to receive the number by text or email, and ten working days if by post.

International students

- 33 International students who are foreign nationals may be eligible for Emergency Benefit if they meet all other eligibility criteria. Sponsored students will not be eligible.
- 34 A person applying for a student visa to study in New Zealand must prepay their fees and provide a tuition fee receipt, and proof that they have NZD \$15,000 funds per year. Despite needing these funds, some students may have been in New Zealand longer than intended, depleting these funds and creating hardship. Where students are in hardship and are either unable to return home or are arranging to return home, Emergency Benefit may be paid.
- 35 MSD will need to assess the assets available to students to determine eligibility to Emergency Benefit. If a student has over the Emergency Benefit asset threshold (\$4,300 NZD for a single client, \$7,464 if they are in a relationship or a sole parent), they will be ineligible for Emergency Benefit.
- 36 Work expectations will be set for people based on their circumstances. Eligible students may have to meet these work expectations, particularly if they are no longer studying or on a study break, and are able to work. Some students have visa limitations regarding work (such as only able to work 15 hours, or not able to work). These limitations will need to be considered by MSD staff when assessing a student's work expectations.

Foreign national refuses suitable work or opportunities to find work

- 37 There may be situations where a foreign national has the ability to earn a sufficient livelihood (eg through employment), but has chosen not to earn that livelihood or take other steps to address their hardship. In these cases, the person may be considered to have contributed to their own hardship and Emergency Benefit can be declined or cancelled.
- 38 However, all the person's circumstances must be considered to determine why the client is unable to earn a sufficient livelihood. If there are other reasons contributing to this, they may still be eligible for Emergency Benefit. There is existing operational

policy on how to determine if someone is unable to earn a sufficient livelihood in relation to eligibility for Emergency Benefit, such as considering whether they have a health condition or caring responsibilities. There is also discretion involved with this decision to account for the complex nature of people's circumstances.

Foreign nationals who are in a relationship, and both are on temporary visas

- 39 Where both a foreign national and their foreign national partner are in New Zealand, the partner must also meet the requirements for Emergency Benefit for them to be included as a partner.
- 40 In situations where a foreign national partner (of a foreign national) does not meet the requirements for Emergency Benefit, say because they have refused suitable work, the other foreign national can still be eligible for Emergency Benefit if they meet the requirements alone. However, in this situation the eligible partner will be paid the half-married rate, and the other partner's income and cash assets will still be taken into account when assessing eligibility for Emergency Benefit.

Foreign nationals in a relationship with a New Zealand permanent resident or citizen

- 41 There could be situations where a foreign national eligible for Emergency Benefit is in a relationship with a New Zealand permanent resident or citizen who is eligible for benefit. In this situation, the couple could not be paid a couple rate through the New Zealand 'primary' beneficiary.
- 42 To maintain consistency with the current welfare system and settings, MSD proposes to take the relationship status into account in these circumstances. If both members of the couple are beneficiaries, then the New Zealand 'primary' beneficiary would be paid half the married rate of their benefit, and the foreign national client would be paid half the married rate of their equivalent benefit through Emergency Benefit. Any income and assets would have to be calculated based on their status as a couple.

Foreign nationals in a relationship with someone who is overseas

- 43 Foreign nationals could also be in a relationship with someone who is overseas. Together, there could be income and assets to draw on which may impact eligibility for Emergency Benefit.
- 44 If a client is stranded in New Zealand and their partner is still overseas, and they still consider themselves to be in a marriage or civil union type relationship, MSD proposes to give consideration to the reason for the partner being overseas before deciding the rate of payment.
- 45 To maintain consistency with the current welfare system and settings, MSD proposes to, in this situation:
- 45.1 pay the appropriate half-married rate of the equivalent benefit through Emergency Benefit.
 - 45.2 assess any income or assets received by the partner overseas against the benefit rate.

Foreign nationals who would be eligible for the equivalent of Jobseeker Support on the grounds of a health condition, injury or disability

- 46 The rate of Emergency Benefit that eligible foreign nationals will receive depends on the analogous main benefit. For some foreign nationals who are unwell or injured, they may be eligible for the equivalent rate of Jobseeker Support on the grounds of a health condition, injury or disability (JS-HCD). JS-HCD applicants are generally required to provide a medical certificate from a health practitioner so that MSD can be satisfied that they have restricted work capacity. Some foreign nationals in hardship may not be able to meet the costs of obtaining a medical certificate.

- 47 For those who are required to obtain a medical certificate, MSD proposes to pay Emergency Benefit but include a condition of grant that the client must return with the verification of their health condition, injury, or disability in a reasonable time period. This allows for some payment to be paid to the person to help with some of the costs of getting the medical certificate.
- 48 This approach could involve only granting Emergency Benefit for a limited time period (eg two weeks), which would automatically end if the foreign national did not produce a medical certificate by the end of the two weeks.

COVID-19 tests for travel

- 49 While COVID-19 related medical care is free to all in New Zealand, including foreign nationals, the specific COVID-19 tests required by airlines for travel, or by other countries, have a cost associated with them (about \$200-\$300). MSD will not be able to assist with this cost, such as through a specific hardship grant, though some foreign nationals may be able to meet this cost through Emergency Benefit.
- 50 Immigration New Zealand has confirmed that they will meet the costs of pre-departure COVID-19 testing when foreign nationals are referred to them by MSD. Meeting this cost is part of assisting individuals with the costs of repatriation. Immigration New Zealand notes that they may need to review their ability to meet these costs over time, given that there is a finite amount of funding available to support repatriation of foreign nationals. Under current immigration policy settings, individuals who are assisted with costs related to their repatriation must repay those costs to the Crown prior to a further visa for entry to New Zealand being granted.
- 51 MSD will maintain contact with Immigration New Zealand throughout the three- month time period in which Emergency Benefit will be available to foreign nationals. Further advice will be provided should it become likely that Immigration New Zealand can no longer fund pre-departure COVID-19 testing for foreign nationals.

Foreign nationals who can return home but choose not to for fear or other reasons

- 52 Some foreign nationals in hardship may choose to not return to their home countries even if there are flights and repatriation options available. These countries might be experiencing a COVID-19 surge or other unrest (and people may have auto-immune conditions making them more susceptible to serious side effects from COVID-19, if they caught it). As New Zealand is a relatively safe place to be in this context, some people may choose to remain in New Zealand, but will not be meeting the criteria for Emergency Benefit of arranging options to return home if they also have no other way of supporting themselves.
- 53 The underlying intent of the Emergency Benefit proposal is to provide support to foreign nationals in hardship who cannot otherwise support themselves, and who are arranging options to return home or cannot return home. Providing Emergency Benefit to people who can return home but actively choose to remain in New Zealand does not meet this intent.
- 54 As a result of this, MSD's approach to this situation will be to not provide Emergency Benefit as the person has contributed to their own hardship. This is consistent with MSD's current practice for assessing eligibility for Emergency Benefit.
- 55 However, there are risks to this approach, namely:
- scrutiny of the New Zealand government by other nations or organisations around contributing to situations that make people return to potentially difficult situations in their home nations
 - a complaint could be made under the Human Rights Act 1993 or Bill of Rights Act 1990
 - foreign nationals in this situation may feel compelled to return to home nations and may enter difficult situations upon their arrival

- 9(2)(g)(i)

- MSD staff may be involved in difficult conversations, situations and decisions regarding humanitarian situations.

56 While it is expected that this group would be relatively small, as they would need to be unable to support themselves some other way (eg through employment) and choose not to return home, this situation may still occur.

57 Note that if a foreign national applied for refugee status and was successful, they will become eligible to a range of assistance from the income support system, which could include re-establishment grants and Temporary Additional Support.

58 The alternative of providing Emergency Benefit to this group does not meet the intent of the payment and have may have unintended consequences and behavioural impacts of incentivising people to stay in New Zealand which may lead to an increase in people seeking Emergency Benefit for this reason.

Next steps

59 MSD is working to ensure that Emergency Benefit will be available to eligible foreign nationals from 1 December 2020. 9(2)(iv) OIA

File ref: REP/20/11/1104



Inland Revenue
Te Tari Taake



**MINISTRY OF SOCIAL
DEVELOPMENT**
TE MANATU WHAKAHIAATO ORA

Report

Date: 25 November 2020 **Security Level:** IN CONFIDENCE

To: Hon Grant Robertson, Minister of Finance
Hon David Parker, Minister of Revenue

CC: Hon Carmel Sepuloni, Minister for Social Development and
Employment

Additional funding required to pay Working for Families tax credits to foreign nationals receiving Emergency Benefit

Purpose of the report

- 1 This report seeks your approval to adjust Vote Revenue to cover the costs of paying Working for Families tax credits (WFF) to foreign nationals in hardship receiving Emergency Benefit. The cost would be charged to the COVID-19 Response and Recovery Fund. This adjustment is required to take account of an earlier legislative change as part of the Government's COVID-19 response to extend WFF to Emergency Benefit recipients on temporary visas. This was inadvertently not taken into account in the original Cabinet proposal.

Recommended actions

It is recommended that you:

- 1 **note** Cabinet agreed to provide financial support to foreign nationals who are in hardship in New Zealand through the provision of Emergency Benefit via the Ministry of Social Development for three months from 1 December 2020 [CAB-20-MIN-0476 refers]
- 2 **note** that the eligibility criteria for Working for Families tax credits was changed earlier this year through the *COVID-19 Response (Taxation and Social Assistance Urgent Measures) Act 2020*, so that those receiving Emergency Benefit on a temporary visa could be eligible for Working for Families in the same way as other main benefit recipients
- 3 **note** that the eligibility criteria change outlined in recommendation two also covered those who could receive Emergency Benefit by virtue of section 64 of the Social Security Act 2018

- 4 **note** that as a result of the changes outlined in recommendations one and two, foreign nationals in hardship became eligible for the Family Tax Credit and the Best Start Tax Credit, and the expenses associated with these schemes are expected to increase
- 5 **note** that the Cabinet paper for the foreign nationals proposal did not account for the fact that foreign nationals on Emergency Benefit would also be eligible for Working for Families tax credits, and this issue was identified while developing the operational policy design for this initiative
- 6 **note** that foreign nationals receiving Emergency Benefit would only be eligible for Working for Families tax credits while they are still receiving Emergency Benefit (ie a maximum of three months)
- 7 **note** the following changes to appropriations in accordance with Subparts MG and MD of the Income Tax Act 2007, reflecting the changed expenses described in recommendation six above, with a corresponding impact on the operating balance and/or net core Crown debt:

Vote Revenue Minister of Revenue	\$m – increase/(decrease)				
	2020/21	2021/22	2022/23	2023/24	2024/25 & Outyears
Non-departmental Output Expense: Best Start Tax Credit PLA	0.160	-	-	-	-
Family Tax Credit PLA	1.636	-	-	-	-

- 8 **note** that the above changes to appropriations for 2020/21 will be reported and disclosed in the 2020/21 Supplementary Estimates

- 9 **agree** that the expenses incurred as a result of recommendation seven above be charged against the COVID-19 Response and Recovery Fund established as a part of Budget 2020, consistent with the treatment of the Emergency Benefit change in recommendation one.

Agree/ Disagree

Minister of Finance

Agree/Disagree

Minister of Revenue

Fiona Carter-Giddings
Welfare System and Income
Support Policy
Ministry of Social Development

Maraina Hak
Policy Lead
Policy and Strategy
Inland Revenue

Hon Grant Robertson
Minister of Finance

Hon David Parker
Minister of Revenue

The eligibility criteria for Working for Families tax credits was changed earlier this year

- 2 On 25 March 2020, as part of the *COVID-19 Response (Taxation and Social Assistance Urgent Measures) Act 2020*, a change was made to the eligibility criteria for Working for Families tax credits (WFF). The change allows Emergency Benefit recipients on temporary visas to qualify for WFF in the same way as other main benefit recipients.
- 3 The intention was to create greater alignment between 'standard' Emergency Benefit recipients who meet the Ministry of Social Development's (MSD) residency criteria, and people who receive Emergency Benefit without meeting MSD's standard residency criteria.
- 4 MSD can grant Emergency Benefit to a person on a temporary visa in exceptional circumstances, such as the person being a refugee or protected person. MSD also has discretion to grant Emergency Benefit in other circumstances¹ when those residency criteria are not met. The WFF legislation does not contain any comparable discretion.
- 5 This meant that 'standard' Emergency Benefit recipients were eligible for WFF, but Emergency Benefit recipients on a temporary visa were not because they did not meet the residency criteria for WFF.
- 6 The residency criteria for WFF were amended to include being granted Emergency Benefit under section 63 or 64 of the Social Security Act 2018 (the Act). This ensured that those receiving Emergency Benefit on temporary visas could also be eligible for WFF.

Cabinet has agreed to pay Emergency Benefit to foreign nationals from 1 December 2020, for a period of three months

- 7 The temporary *Assistance for Foreign Nationals Impacted by COVID-19 Programme* (the Programme), administered by the Department of Internal Affairs and the New Zealand Red Cross, was established to support foreign nationals stranded in New Zealand. The Programme will end on 30 November 2020.
- 8 On 16 November 2020, Cabinet agreed to continue providing financial support to foreign nationals who are in hardship in New Zealand through the provision of Emergency Benefit via MSD from 1 December 2020 for three months [CAB-20-MIN-0476 refers].
- 9 Paying Emergency Benefit to foreign nationals is possible without legislative change due to a provision in section 64 of the Act that allows MSD to pay Emergency Benefit to any person, regardless of residency status, if there is an epidemic management notice in effect and the Minister for Social Development and Employment provides written approval of this. A report is currently with the Minister for Social Development and Employment, which will be this written approval (subject to her agreement to the recommendations and signature).

The fact that foreign nationals would be eligible for WFF was inadvertently not taken into account in the original proposal to Cabinet

- 10 The eligibility criteria change to WFF outlined in paragraphs 2-6 also covered those who could receive Emergency Benefit by virtue of section 64 of the Act. As a result of this change, foreign nationals receiving Emergency Benefit will be eligible for WFF provided they meet the remaining eligibility criteria. They will qualify for the same

¹ These circumstances can include not being eligible for another benefit, that they are in hardship and unable to earn a sufficient livelihood.

WFF components as other main beneficiaries – Family Tax Credit and potentially Best Start. Foreign nationals on Emergency Benefit will not be eligible for other WFF components (In-Work tax credit and Minimum Family tax credit) as these payments are not available to people receiving a main benefit.

- 11 The Cabinet paper that was agreed to on 16 November 2020 outlined that foreign nationals would be eligible for Emergency Benefit only and did not take account of the legislative change to extend WFF entitlement to Emergency Benefit recipients on a temporary visa. MSD identified this oversight when developing the operational policy design for the initiative. Foreign nationals who receive Emergency Benefit would only be entitled to WFF while they are receiving Emergency Benefit (ie a maximum of three months). This is because their eligibility for WFF is dependent on receiving Emergency Benefit.
- 12 While WFF is funded from Vote Revenue, WFF is paid out by MSD to people in receipt of a main benefit.
- 13 Family Tax Credit is paid at a maximum of \$113.04 per week for the first child, and \$91.25 for additional children. Foreign nationals on Emergency Benefit would be paid the maximum rate of Family Tax Credit, given that the rate of their Emergency Benefit would not exceed the abatement threshold for Family Tax Credit. Their Family Tax Credit would be on top of the rate of Emergency Benefit – for example, if the foreign national's analogous main benefit was Sole Parent Support, they would be paid \$375.17 per week in Emergency Benefit (a total of \$488.21 per week including Family Tax Credit, if that foreign national had one child).
- 14 Best Start is \$60 per week until the child turns 1, regardless of family income. It then can continue to be paid until the child turns 3, with entitlement being based on family income, abating at 21 cents in the dollar for family income over \$79,000. Best Start would also be paid in addition to Emergency Benefit to qualifying families.

Your joint approval is required for the funding source to pay WFF to foreign nationals

- 15 Approval is needed to account for the funding required to pay WFF to foreign nationals receiving Emergency Benefit. This requires an adjustment to Vote Revenue and would be charged against the COVID-19 Response and Recovery Fund consistent with the treatment of the increase in Emergency Benefit approved by Cabinet.
- 16 If you do not agree to this proposal, the COVID-19 Recovery and Response Fund will not be reduced accordingly, the higher spending will be included in the updated appropriation spending in the Supplementary Estimates, and net debt will be increased. While this is what usually happens when a Permanent Legislative Authority increases, as this change is the result of a policy decision that was originally charged against the COVID-19 Recovery and Response Fund, the preferred approach is to tag the funding to the COVID-19 Recovery and Response Fund.
- 17 In terms of the cost of paying WFF to foreign nationals receiving Emergency Benefit, officials do not have robust data on the children that foreign nationals have.
- 18 However, conservative costings estimate that this would cost \$1.636 million in Family Tax Credit expenditure over three months. This assumes that the estimated 616 families² who could be eligible for Emergency Benefit all have two children, and that they would be receiving Family Tax Credit for that whole 3-month period.

² This number is estimated from the weekly inflow data from the current Programme administered by the Red Cross and the Department of Internal Affairs. This figure assumes that the number of Additional funding required to pay Working for Families tax credits to foreign nationals receiving Emergency Benefit

- 19 The cost estimate for Best Start is \$0.160 million – this is based on an assumption of 205 children receiving Best Start, and no abatement.
- 20 The total combined cost of the Family Tax Credit and Best Start is an estimated maximum cost of \$1.796 million.
- 21 We seek approval for an adjustment to Vote Revenue to recognise the increased expenditure from providing foreign nationals with temporary access to Emergency Benefit, with the cost to be a charge against the COVID-19 Response and Recovery Fund. The adjusted appropriations will be reported in the 2020/21 Supplementary Estimates.
- 22 The WFF appropriation is a permanent legislative authority under section 185(1) of the Tax Administration Act 1994, and regularly adjusted by forecasting changes agreed between Ministers. As the main policy changes have already been agreed to, this adjustment can be made with approval from joint Ministers and does not need Cabinet approval.
- 23 The Treasury supports this approach.

Next steps

- 24 Emergency Benefit and WFF will be available for eligible foreign nationals in hardship from 1 December 2020, for a period of three months.
- 25 Subject to your joint approval, these appropriation changes will be automatically incorporated into the next Fiscal Update document.

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foreign nationals receiving assistance is kept stable for forecasting November and December numbers. From January onwards, we assume that the number of new inflows of foreign nationals gradually decrease, as a percentage (95%) of the previous month's inflows.

Additional funding required to pay Working for Families tax credits to foreign nationals receiving Emergency Benefit