



Report

Date: 8 December 2016

Security Level: IN CONFIDENCE

To: Hon Anne Tolley, Minister for Social Development

Amending the Ministerial Direction on Debt Recovery - checking bank accounts of clients before issuing a debt deduction notice

Purpose of the report

- 1 This report seeks your signature on the attached instrument amending the *Ministerial Direction on Debt Recovery* (the Direction). Currently the Direction requires the Ministry of Social Development (MSD) to check bank balances and outgoings for every deduction notice issued. The amendment will:
 - only require bank balances to be checked when a debt deduction notice is being issued to a debtor's bank, and
 - allow MSD the discretion, when a debt deduction notice is issued to a debtor's source of income, not to check bank balances if it already holds sufficient information about a debtor's financial circumstances.
- 2 You agreed to this amendment on 2 September 2016 [REP/16/9/1061]. We noted in that report that we would provide you with an instrument amending the Ministerial Direction for your signature.

Recommended actions

It is recommended that you:

- 1 **approve and sign** the attached Ministerial Direction on Debt Recovery Amendment which will come into effect 28 days after being gazetted.
- 2 **arrange** for a copy of the Ministerial Direction on Debt Recovery Amendment to be tabled in the House of Representatives

Agree / Disagree

Agree / Disagree

3 **direct** officials to arrange for publication of the Ministerial Direction on Debt Recovery Amendment in the New Zealand Gazette.

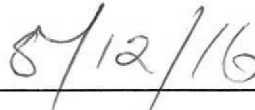
Agree / Disagree

4 **agree** to send a copy of the report to the Associate Minister for Social Development

Agree / Disagree

ppp: 

Sacha O'Dea
General Manager
Working Age Policy


Date

Hon Anne Tolley
Minister for Social Development

Date

The Direction obliges MSD to check bank balances before issuing a deduction notice

- 3 The Social Security Act 1964 requires MSD to take all reasonably practicable steps to recover debt. MSD has the power to issue deduction notices to recover debts, and the Direction sets out guidance for how MSD uses its power to recover debts from current and former clients.
- 4 Clause 6 of the Direction specifies the process that MSD should follow when issuing deduction notices. MSD is required to consider:
 - the amount of the debt,
 - the balance in various bank accounts that the debtor has,
 - the known outgoings of that person (such as essential automatic payments, home mortgage repayments, etc.), and
 - the amount that the debtor could reasonably be assumed to require to live on before determining the deduction rate.

Our current practice on checking back balances is inconsistent with the Direction

- 5 A debt deduction notice is issued when other reasonably practicable steps to recover debts have been unsuccessful. MSD may decide to issue a debt deduction notice to:
 - the debtor's source of income (for regular deductions)
 - the debtor's bank (for a lump sum deduction from a bank account).

MSD does not always check bank balances when issuing a deduction notice to a debtor's source of income

- 6 In cases when MSD will be issuing a debt deduction notice in respect of a debtor's source of income, and the debtor has provided MSD with information about their income and outgoings, we do not always then check bank balances.
- 7 MSD only checks bank balances when we are unable to obtain sufficient information about the debtor's source or amount of income and outgoings.
- 8 It is MSD's view that, in most cases, it is not necessary to check bank balances in order to determine a debtor's ability to repay their debt through regular income deductions. Our view is that in most cases the person's income and outgoings provide enough information to determine a person's repayment ability.

MSD always obtains bank balance information when issuing a deduction notice to a debtor's bank

- 9 MSD always obtains bank balance information when we are issuing a deduction notice to a bank. This is to ensure that there are sufficient funds in the debtor's account for the lump sum deduction, and that regular outgoings from that account have been taken into consideration.
- 10 However, the process for obtaining information from banks can be slow, and a high volume of requests can impose costs on the banks providing the information.

You agreed to amend the Direction to align it with current practice

- 11 You agreed to amend the Direction to align with current practice on 2 September 2016 [REP/16/9/1061], to:
 - only require bank balances to be checked when a debt deduction notice is being issued to a debtor's bank
 - allowing MSD the discretion not to check bank balances if it already holds sufficient information about a debtor's financial circumstances

- 12 There is unlikely to be any impact on debtors as a result of this amendment. This is because MSD would not be placing any further obligations on the debtor.

Next steps

- 13 Attached for your signature is the Ministerial Direction on Debt Recovery Amendment.
- 14 Once signed, the amending instrument needs to be tabled in the House of Representatives and published in the New Zealand Gazette as soon as practicable. Officials will organise gazetting subject to your direction. The amendment will come into effect 28 days after being gazetted.
- 15 At the same time, your Office should arrange for a copy of the instrument to be tabled in the House.

Report Number: REP/16/12/1627

Section 9(2)(h) Legal professional privilege

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