

Aide-mémoire



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

Cabinet paper

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For: Hon Anne Tolley, Minister for Social Development

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Correcting entitlements to the Accommodation Supplement

Cabinet meeting 12 September 2016

Minister Hon Anne Tolley, Minister for Social Development

Proposal In 2014, the Ministry of Social Development (MSD) identified a significant error in its assessment and payment system which affected the calculation of client entitlements for the Accommodation Supplement (AS). The AS error has been in effect since 1993 and has resulted in some clients being over or underpaid their AS entitlements. When the issue was identified MSD took immediate action to fix the error in the payment so that new clients would receive their correct entitlements.

The system fix, implemented in December 2014, prevented the error from being perpetuated for new clients. It did not, however, correct entitlements for those clients already impacted by the error.

This Cabinet paper proposes a phased approach to correct entitlements to AS for current and former clients.

The financial impact of the recommended approach to correct AS entitlements will be on the 2015/16 financial year.

Key issues The Cabinet Social Policy Committee considered this paper, and its proposed approach to correct entitlements to AS, on 7 September. Two key elements were discussed:

- the transition period provided to the 278 current clients who continued to be overpaid (phase one); and
 - whether lump sum back-payment of AS provided through phases two and three could be used to offset debts owed.
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Correcting entitlements for current clients who continue to be overpaid (phase one)

Phase one of the proposed approach to correct entitlements to the AS is to correct entitlements for the 278 current clients who continue to be overpaid.

MSD intend to make contact with individual clients prior to confirming the level of overpayment of the AS and the duration of their transition period.

This will enable MSD to tailor an appropriate transition period for individual clients depending on when they will be able to adequately adjust their circumstances (unless their circumstances change in the interim for another reason). Discussion at the Cabinet Social Policy Committee made it clear that a 26 week transition period may be appropriate in certain circumstances (such as the individual who will receive \$80 less each week).

I have directed MSD to report to me before any final decision is made regarding the transition period for any clients who consider that 26 weeks is an insufficient amount of time to adjust their circumstances. The report back from the Cabinet Social Policy Committee has included updated recommendations which include this direction to MSD.

Conversations with the 278 current clients will also provide an opportunity for MSD to undertake a comprehensive assessment of entitlements for those clients who are particularly adversely affected by the correction of their entitlements to AS.

Use of lump sum back-payments of AS to offset client debt with MSD

At the Cabinet Social Policy Committee Ministers discussed the opportunity for the lump sum back-payments of AS to be used to offset client debt and debts owed across government.

We agreed to only consider MSD debt for this specific situation but I have asked MSD to think about cross-government debt for the future.

Information on debts to MSD

14,534 former and current clients who are owed a lump sum back-payment of AS also have debt with MSD (4,869 and 9,665 respectively). These debts range from less than \$1 to \$210,820.

Of those people who are owed more than \$500 in lump sum back-payment of AS:

- 15.6% of former clients have debt with MSD; and
- 21.5% of current clients have debt with MSD.

There was no correlation between the size of the lump sum back-payment of AS owed and the amount of debt with MSD.

22 out of the 25 largest lump sum back-payments (between \$13,714 and \$28,539) will be provided to clients with no client

debt. The other three payments within that cohort owe \$9, \$98 and \$974 respectively.

Legislative provisions regarding debt recovery

In seeking to recover debt, the Chief Executive must take into account all relevant considerations¹. In accordance with the legislation, MSD has long-standing policy on what constitutes a “relevant consideration” in order to determine the appropriate methodology for debt recovery. These relevant considerations include (but are not limited to): the individual circumstances of the client and their dependants, and whether repayment of the debt using the underpayment would cause hardship.

Options for debt recovery

Section 9(2)(h) Legal professional privilege

As there are more than 14,000 clients who are owed a lump sum back-payment of AS that also have a debt with MSD, it is not practical to proactively seek individual conversations with these clients that would enable a decision regarding the appropriate level of debt recovery (without significantly undermining the timelines and budget for the project). 4,869 of this group are not current clients of MSD which would make it extremely difficult to proactively contact them before their lump sum back-payment of AS was provided.

However, it is important that MSD assists clients to use their lump sum back-payments of AS to repay MSD debt where possible. **Therefore, when MSD writes to clients to advise of the lump-sum back payment of AS, it proposes to clearly include the amount of debt the client has with MSD, encourage them to take up the opportunity to use this lump sum to pay off their MSD debt and detailed information about how to do this.**

MSD considered whether it would be possible to propose an automated deduction of debts owing from the lump sum back-payment of AS which clients could opt-out of by a certain date if they met the criteria. However, this option was deemed inappropriate because active “consideration of all relevant circumstances” would not have occurred for all clients before the debt was recovered. Section 9(2)(h) Legal professional privilege

¹ Social Security Act 1964, s86(1BA)(a) refers.

MSD could investigate a legislative change to make it easier to recover debt in circumstances like this in the future.

Additional background information

As at 1 August, there were approximately 127,000 clients who receive or have received AS between 1993 and December 2014 and are affected by the error (including 278 current clients who are currently being overpaid).

The records MSD have relied upon in undertaking this work are official records and there are no better sources of information available.

The total value of underpayments to all affected clients is up to \$29 million (affecting ~22,000 current clients and ~29,000 former clients).

The total cost of overpayments, since 1993, is around \$53 million (~29,000 current clients and ~36,000 former clients).

MSD has applied a net approach to calculate the fiscal impacts of the AS issue. This means that in instances where a client has been subject to both overpayment and underpayment of their AS entitlements these have been offset against each other.

The net impact has been calculated on this basis because:

- this is MSD's standard practice when calculating arrears payments; and
- it is consistent with the CE's responsibilities for stewardship of public resources under the Public Finance and State Sector Acts.