

# Report



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

**Date:** 1 July 2016

**Security Level:** IN CONFIDENCE

**To:** Hon Anne Tolley, Minister for Social Development

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## Temporary exemption of proceeds from the sale of the family home, if clients intend to repurchase

*This document may contain legal advice and be legally privileged.  
It should not be disclosed on an information request, without further legal advice.*

### Purpose of the report

- 1 This report responds to a request for advice as part of the Alignment Project on exempting the sale proceeds from the sale of a home from income and cash asset tests for benefit assistance for a period of 12 months if a client intends to repurchase a home.

### Recommended actions

It is recommended that you:

- 1 **note** this report responds to a request for advice as part of the Alignment Project on exempting the sale proceeds of a family home for clients who intend to repurchase a home  
**YES/NO**
- 2 **note** the current operational practice is that case managers generally apply the exemption to all forms of benefit assistance, which is consistent with other exemptions in the welfare system  
**YES/NO**
- 3 **note** the Ministry for Social Development does not have a legislative basis for the operational practice of exempting the proceeds from the sale of family homes for 12 months  
**YES/NO**
- 4 **invite** officials to prepare a Cabinet paper seeking agreement to exempt the proceeds from the sale of a home from income and cash asset tests for all benefit assistance for a period of 12 months after the sale where clients intend to repurchase a home  
**AGREE/DISAGREE**
- 5 **note** that amendments to exempt the proceeds from the sale of the family home will be progressed alongside further amendments to income exemptions as part of the Alignment Project  
**YES/NO**

6 **agree** to forward a copy of this report to the Minister for Social Housing due to the links with the Social Housing portfolio

**AGREE/DISAGREE**

7 **agree** to forward a copy of this report to the Associate Minister for Social Development.

**AGREE/DISAGREE**



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Sacha O'Dea  
General Manager – Working Age Policy, Social Policy

1/7/16

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Date

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Hon Anne Tolley  
Minister for Social Development

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Date

## **As part of the Alignment Project, you sought advice on exempting the proceeds from the sale of a family home**

- 2 The Ministry of Social Development's (MSD) operational practice since 1993 has been to exempt the proceeds from the sale of a family home, and any income derived from them, from any income and cash asset tests for benefit assistance for 12 months if clients intend to repurchase a home<sup>1</sup>.
- 3 In March 2016, you were advised that [REP/16/3/200 refers]:
  - the Social Security Appeal Authority (SSAA) held that MSD does not have a legislative basis for the policy of exempting the proceeds from the sale of family homes for 12 months for the purpose of entitlement to Accommodation Supplement (AS)<sup>2</sup>
  - MSD found there was also no legislative authority to make the exemption in relation to any other benefit assistance.
- 4 With various government initiatives supporting low-income households into home ownership<sup>3</sup>, you sought further advice from MSD on establishing a 12 month exemption for the proceeds from the sale of a family home where there is an intention to repurchase.
- 5 In your discussion with officials, you indicated MSD should continue the current practice of exempting the proceeds of the sale of family home for 12 months if a client intends to repurchase.

*Exempting the proceeds from the sale of a family home is generally applied to all types of means tested assistance*

- 6 In earlier advice, MSD noted that:
  - the operational practice to exempt the proceeds from the sale of a family home was only applied for the purposes of entitlement to AS, and *some* case managers apply it to other types of means tested assistance
  - the exemption is not recorded in the system and therefore MSD does not know exactly how widespread the practice is of extending the exemption to other means-tested assistance.
- 7 After further investigation, MSD found that *generally* case managers exempt the sale proceeds for all types of means tested assistance. This is because other income or asset exemptions are applied across the board to all forms of means-tested assistance (and therefore this practice is consistent with other exemptions).

## **The current exemption means clients who have sold their family home, but intend to repurchase, do not erode their capital funds**

*Most government benefit assistance is income and/or asset tested*

- 8 Income and cash asset tests ensure that government assistance is only provided to those without sufficient resources to meet their general essential living costs.

<sup>1</sup> Previous advice omitted to specify that interest derived from sale proceeds is also exempted.

<sup>2</sup> There is no discretion under section 61 (EC) to pay AS to a person with cash assets exceeding \$16,200.

<sup>3</sup> For example, *KiwiSaver, HomeStart* and *Welcome Home Loans*.

- 9 All main benefits are subject to an income test, and the various forms of supplementary and hardship assistance (including the AS, Disability Allowance and Special Needs Grants) are also subject to income and/or cash asset tests.

*Home ownership is a Government goal for all New Zealanders, but the number of low income homeowners receiving AS is decreasing*

- 10 Government supports home ownership as a goal for New Zealanders because there is a strong relationship between home ownership and better social and economic outcomes (including higher average living standards in retirement).
- 11 In the three years to December 2015, the number of homeowners receiving the AS has reduced by approximately 5,300, from around 39,800 households in January 2013 to 34,500 households in December 2015.

*The current exemption helps clients retain the capital from their previous home, so that they can get back into the property market*

- 12 The current operational practice exempts the proceeds from the sale of a family home from benefit income and cash asset test for 12 months, where clients intend to repurchase a family home.
- 13 This ensures that low-income homeowners who sell their family home, but intend to repurchase, do not erode capital from their previous home to fund high housing costs (i.e. housing costs over the AS entry threshold) while waiting to repurchase.
- 14 The 12 month period allows for a reasonable period to buy or build a family home during which the amount of a client's benefit assistance is not affected.
- 15 Without the exemption, clients may no longer qualify for the benefit assistance they would have previously been eligible for. As clients would have to use their sale proceeds to meet high housing costs until a new home is purchased, their purchasing power would be reduced, making it harder for them to re-enter the property market.

*The exemption also provides for future Crown savings*

- 16 The exemption helps to support future Crown savings, in two ways.
- It costs around \$400 less a year to support a homeowner than a renter. The average annual AS cost of supporting homeowners (\$3,900) is lower than the cost of supporting renters (\$4,300)<sup>4</sup>.
  - The AS cost of supporting an individual homeowner reduces over time. As a household pays down, or off, their mortgage, their housing costs reduce. Therefore the amount they can claim for AS reduces and so does their AS payment.

*No additional funding is required*

- 17 As noted earlier, MSD does not currently record the number of these exemptions and therefore it is difficult to accurately assess the cost of exempting the sale proceeds from income and asset tests. However, MSD estimates that the current annual expenditure on the exemption is approximately \$5 million.
- 18 This is an opportunity cost, as MSD is already applying the exemption and the expenditure is already being absorbed by the Crown.

<sup>4</sup> Based on a snapshot of average AS weekly payments to homeowners and renters, as at 25 February 2016.

## **MSD recommends regulatory change to provide a legislative basis to support current operational practice**

- 19 MSD recommends regulatory change to provide a legislative basis to support current operational practice. This would ensure that clients do not erode the capital gained from the sale of their family home if they intend to repurchase. It would also support the Government's objective to encourage home ownership for New Zealanders.
- 20 An exemption applied to income and asset tests for all forms of benefit assistance can be achieved by amending the:
- *Social Security (Income and Cash Assets Exemptions) Regulations 2011*
  - *Social Security (Temporary Additional Support) Regulations 2005*
  - *Ministerial Direction in relation to Special Benefit.*
- 21 Note that amendments made to the *Social Security (Income and Cash Assets Exemptions) Regulations 2011* will flow through to eligibility tests for social housing<sup>5</sup>.
- 22 The regulations would be applied retrospectively to ensure there is a legislative basis to support the historical practice of exempting the proceeds from the sale of a family home. Whilst generally legislation should not have retrospective effect, the Legislation Design and Advisory guidelines note that it might be appropriate in instances where it is intended to be entirely to the benefit of those affected. Section 132AA of the Social Security Act 1964 enables regulations exempting items from treatment as income or cash assets to have retrospective effect.
- 23 Subject to your agreement, MSD will prepare a Cabinet paper seeking approval to exempt the sale proceeds of a family home for clients who intend to repurchase.

### *Further amendments to income exemptions as part of the Alignment Project*

- 24 As noted in the report *Alignment Project: Progress update and decision required [REP/16/6/703]*, there will be advice on two further legislative changes to income exemptions by the end of August 2016. It is proposed that the advice will recommend exempting income from power trusts and Funded Family Care payments.
- 25 The amendments to exempt proceeds from the sale of the family home outlined in this report will be progressed alongside these amendments.

## **Next steps**

- 26 The proposals in this report have a link to the AS, which falls within the responsibilities of the Minister for Social Housing. MSD recommend that you forward a copy of this report to the Minister for Social Housing.
- 27 Subject to your agreement, MSD will prepare a paper to seek Cabinet agreement to exempt the proceeds from the sale of a home from income and cash asset tests for all benefit assistance for a period of 12 months where clients intend to repurchase a home.
- 28 It is proposed that, subject to your agreement, this Cabinet paper will also include further amendments to income exemptions as part of the Alignment Project noted in paragraph 24.

<sup>5</sup> Clause 6 of the Ministerial Direction on Eligibility for Social Housing uses the AS cash assets definition in section 61E of the Act, which refers to the *Social Security (Income and Cash Assets Exemptions) Regulations 2011*.