

Report



MINISTRY OF SOCIAL
DEVELOPMENT
TE MANATŪ WHAKAHIATO ORA

Date: 14 November 2016 **Security Level:** IN CONFIDENCE
To: Hon Anne Tolley, Minister for Social Development

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** 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

- 2 **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

- 3 **note** that the exemption ensures that clients do not erode the capital gained from the sale of their family home if they intend to repurchase and supports the Government's objective to encourage home ownership for New Zealanders

YES/NO

Either

- 4 **agree** to progress amendment regulations 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

Or

- 5 **direct** officials to change operational practice to align with legislation so that the proceeds from the sale of a family home are no longer exempt from income and cash asset tests for clients who intend to repurchase a home within 12 months

AGREE/DISAGREE

6 **note** that, depending on your decision above, regulations to exempt the proceeds from the sale of the family home will be progressed alongside other amendments as part of a wider Alignment Project Cabinet paper

YES/NO

7 **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

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

AGREE/DISAGREE



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

11/11/16

Date

Hon Anne Tolley
Minister for Social Development

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 income¹ and cash asset tests for benefit assistance for 12 months if clients intend to repurchase a home.
- 3 In March 2016, you were advised that:
 - 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)²
 - MSD found there was also no legislative authority to make the exemption in relation to any other benefit assistance [REP/16/3/200 refers].
- 4 With various government initiatives supporting low-income households into home ownership³, 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 that 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 the March 2016 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.

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

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

³ 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. 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.

Option one: Provide a legislative basis to support current operational practice

Helps clients retain the capital from their previous home, so that they can get back into the property market

- 14 Legislative change would ensure that clients do not erode the capital gained from the sale of their family home if they intend to repurchase. It also supports the Government's objective to encourage home ownership for New Zealanders.

The exemption provides for future Crown savings

- 15 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)⁴.
 - 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

- 16 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

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

exemption is approximately \$5 million. This is an opportunity cost, as MSD is already applying the exemption and the expenditure is already being absorbed by the Crown.

Option two: Change current practice to align with legislation

- 17 MSD can change operational practice so that the proceeds from the sale of a family home are no longer exempt from income and cash asset tests for clients who intend to repurchase a home within 12 months.

Provides equity with those people who are saving for their own home

- 18 Removing the exemption would ensure that clients who sell their family home and intend to repurchase, are treated the same as clients who do not own their own home but are saving to buy a family home. For example, someone who is receiving AS but is saving for a home would lose entitlement to AS once the amount they have saved exceeds the cash asset limit.

Removing the exemption provides for immediate Crown savings

- 19 As noted earlier, MSD is unable to estimate how many clients would be impacted by changing operational practice. Based on MSD estimates on the current annual expenditure on the exemption, it is likely that this option will provide immediate savings by reducing benefit expenditure by approximately \$5 million per annum.

Recommendation

- 20 MSD recommends regulatory change to provide a legislative basis to support current operational practice. 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 while waiting to repurchase.

- 21 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.*

- 22 Note that amendments made to the *Social Security (Income and Cash Assets Exemptions) Regulations 2011* will flow through to eligibility tests for social housing⁵.

- 23 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.

- 24 If you want to provide a legislative basis for the exemption, the regulations will be progressed alongside other regulatory amendments as part of the Alignment Project.

⁵ 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*.

Next steps

25	Section 9(2)(f)(iv) Active Consideration
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