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Office of the Minister for Social Development and Employment  
Chair, Cabinet Legislation Committee

**Social Security (Additional General Provisions Child Support Payments) Amendment Regulations 2023**

**Proposal**

- 1 This paper seeks approval to submit the Social Security (Additional General Provisions Child Support Payments) Amendment Regulations 2023 (Amendment Regulations) to the Executive Council.
- 2 The Amendment Regulations relate to the recently enacted Child Support (Pass On) Acts Amendment Act 2023 and are required to ensure that child support payments can be correctly classified and charged as income, in accordance with the policy intent.

**Policy**

- 3 The Child Support (Pass On) Acts Amendment Act 2023 (the Amendment Act) removes the different treatment of people on a sole parent rate of main benefit from other beneficiaries. From 1 July 2023, child support is being passed on to parents on a sole parent rate of main benefit and treated as income for calculating benefits and other assistance under the Social Security Act 2018 (the Act).<sup>1</sup>
- 4 Inland Revenue will share information on all child support payments which they administer with the Ministry of Social Development (MSD) via a daily transactional file under the Approved Information Sharing Agreement (AISA) between the two agencies.<sup>2</sup> The information shared (disclosed) includes child support payment information in respect of all receiving carers, including those who are not MSD clients.
- 5 This information is matched against the corresponding information for current MSD clients (who have an active record) and are receiving specified types of income-tested benefit or other assistance.<sup>3</sup> Matching will only occur if key criteria are matched, such as an IRD number. This allows the payments to be correctly attributed to the correct client. Any child support payment information

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<sup>1</sup> Child support in respect of a child for whom Unsupported Child's Benefit is payable is not being passed on as part of these amendments.

<sup>2</sup> Formula assessment child support and child support paid under a voluntary agreement that relates to a period after 1 July 2023.

<sup>3</sup> Any main benefit as defined in the Social Security Act 2018 or Accommodation Supplement, Community Costs Payment, Disability Allowance, Employment Transition Assistance, Special Benefit, Temporary Additional Support, Childcare Assistance, New Zealand Superannuation with a non-qualified partner included, or Veteran's Pension with a non-qualified partner included or where the client is under 65 years of age.

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not matched to an MSD client through this process will be discarded in accordance with the Information Privacy Principles of the Privacy Act 2020.<sup>4</sup> This means the information will not be brought into MSD's systems and as such will not be visible to any MSD staff.

- 6 The matched child support payment information is automatically charged forward as income over the next four or five weeks in accordance with new Part 3A, Schedule 3 of the Act (special income charging rules for information share child support payments). This removes the need for these clients to declare the child support payments they receive as income, thus reducing the compliance burden for clients and improving the consistency and accuracy of income charging.
- 7 A child support payment is only intended to be charged as income under the specific income charging rules for 'information share child support payments' when the child support payment information is disclosed and matched.
- 8 Clients who are not in receipt of specified income-tested assistance from MSD and apply for one-off hardship assistance should self-declare any child support administered by Inland Revenue that they receive. Any self-declared child support would then be charged as income according to the general income charging rules.

### Issue identified with current definitions

- 9 MSD has identified an issue with the definition of 'general provisions child support payment' introduced through the Amendment Act.
- 10 A child support payment is one of the following:
  - 10.1 an 'information share child support payment' which relates to child support payments that are matched and are subject to new automated income charging rules (under new Part 3A of Schedule 3), or
  - 10.2 a 'general provisions child support payment' which relates to child support payments that need to be self-declared by clients (because they are not matched via the information share) and are subject to the existing general income charging rules (i.e., manually assessed and charged as income by staff).
- 11 The Act currently defines child support payments that are disclosed to MSD under the AISA with Inland Revenue, and are not specified under the definition of 'general provisions child support payment', are classified as an 'information share child support payment'.<sup>5</sup> This is because all child support administered by Inland Revenue is disclosed to MSD via the AISA.

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<sup>4</sup> The Privacy Act 2020 requires organisations to only collect personal information for a lawful purpose connected with their functions or activities it is necessary for. MSD must only keep personal child support payment information that is matched to a current MSD client. Any information that is not required at that time for MSD to carry out its functions and will be discarded in accordance with Information Privacy Principles 1 and 9 of the Privacy Act 2020.

<sup>5</sup> Schedule 2, Dictionary general provisions child support payment (i).

- 12 As a consequence, all child support payment information disclosed to MSD would be required to be charged as income under the new automated income charging rules (unless specifically classified as a 'general provisions child support payment'). This applies regardless of whether the information is subsequently matched to an MSD client record, or if it is not matched and is discarded. This is contrary to the policy intent [CAB-22-MIN-0091 refers] and system design.

**Proposed regulatory solution to amend a definition**

- 13 To resolve this inconsistency, I propose using the regulation making power introduced through the Amendment Act (section 418(1)(na) of the Act) to amend the Social Security Regulations 2018 to specify additional 'general provisions child support payments' (refer to new subpart 5A of Part 8, which includes new regulations 294A and 294B).<sup>6</sup>
- 14 The Amendment Regulations would ensure that any child support payment information that is not matched to a current MSD client (and as such is discarded by MSD) is defined as a 'general provisions child support payment'. This means that if a non-matched beneficiary self-declares a child support payment that has been discarded from the information share, MSD is able to correctly charge that income under the general income charging rules.
- 15 The Amendment Regulations do this by listing the income-tested benefits or other assistance MSD will be matching to, under the current design ('matched assistance'). The Amendment Regulations make it clear that a child support payment made to someone who is not receiving matched assistance ('relevant non-matched beneficiary') is a 'general provisions child support payment.' This also clarifies that a child support payment that is disclosed through the information share is only an 'information share child support payment' if it is paid to someone who is getting matched assistance.
- 16 If this change is not made, MSD will be unable to charge child support payments as income under the general income charging rules when that information is discarded and subsequently self-declared as income for one-off assistance. Most types of assistance that are administered under Welfare Programmes and Ministerial Directions are not matched assistance and do not have an ongoing income test in the same way as matched assistance. This means applying the new automated income charging rules and charging the child support income forward over a specified period would not be possible.
- 17 For example, a person who is not a current MSD client may apply for one-off hardship assistance, such as a food grant and may also be receiving \$200 a month of child support via Inland Revenue. Based on the current law, this child support would meet the definition of an 'information share child support payment' and be subject to the automated income charging rules. However, MSD will have discarded this child support payment information as they are

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<sup>6</sup> By way of (f) of the definition of general provisions child support payment in Schedule 2 of the Social Security Act 2018.

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not receiving matched assistance. As such, this child support payment information is not available to MSD in order to automatically charge it.

- 18 In this situation, the intention is that the client would be required to self-declare their child support and the income would be charged according to the general income charging rules (i.e., non-automated).
- 19 With this approach, if in the future a new type of assistance is established and MSD consider it appropriate to apply the new automated child support income charging rules, the regulations would need to be amended to include the new benefit or other assistance in the list of matched assistance to make it an 'information share child support payment' (Regulation 294B).

### Timing and 28-day rule

- 20 I propose that the 28-day rule be waived pursuant to Cabinet Manual principle 7.101, and that the Amendment Regulations come into force on 22 August 2023. The 28-day rule reflects the principle that the law should be publicly available and capable of being ascertained before it comes into force.
- 21 The changes under the Amendment Act came into force on 1 July 2023. Child support payments for one month are due to be paid to Inland Revenue on the 20<sup>th</sup> of the following month (or the next working day if the 20<sup>th</sup> falls in the weekend). The payment for July is due to be paid to Inland Revenue on 21 August. The first payment to receiving carers will be made from 22 August 2023. As such, the regulations need to come into force by 22 August 2023 in order for all child support payments to be charged according to the right income charging rules.
- 22 The Cabinet Manual (principle 7.101) permits a waiver to be sought in certain circumstances. The waiver is necessary as MSD would be unable to operationalise the current law when the first child support payments are passed on under the new regime in August 2023 and further this is not consistent with the agreed policy.
- 23 To comply with the law as currently drafted, MSD would need to retain all child support information disclosed through the information share, including in respect of non-current clients. This would conflict with the Privacy Act 2020, as there is no lawful purpose for MSD to hold this information. In addition, the system is not built to retain unmatched child support.
- 24 As such, I seek a waiver of the 28-day rule in order to ensure the law gives effect to the policy agreed by Cabinet and operates as intended.

### Compliance

- 25 The proposed regulation complies with:
  - 25.1 the principles of the Treaty of Waitangi;
  - 25.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;

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- 25.3 the principles and guidelines set out in the Privacy Act 2020;
  - 25.4 relevant international standards and obligations;
  - 25.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
- 26 Child support pass-on removes the discriminatory treatment of parents and caregivers receiving a sole parent rate of main benefit and as such enhances human rights. These Amendment Regulations are necessary to ensure child support pass-on, and in particular the charging of child support income accords with the agreed policy intent and previous Cabinet decisions.

### **Regulations Review Committee**

- 27 There are no recognised grounds for the Regulations Review Committee to draw the Order in Council or Amendment Regulations to the attention of the House of Representatives under Standing Order 327.

### **Certification by Parliamentary Counsel**

- 28 The draft regulations were certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet.

### **Impact Analysis**

- 29 The Treasury's Regulatory Impact Analysis team has determined that the proposal to add to the definition of 'general provisions child support payment' is exempt from the requirement to provide a Regulatory Impact Statement. This exemption is on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities, given it will be adjusting settings to reflect the original policy intent.
- 30 A Regulatory Impact Statement and Addendum were prepared for the Amendment Act. These were submitted at the time that Cabinet approval for the policy items was sought [CAB-22-MIN-0535 and CAB-22-MIN-0091 respectively refers].
- 31 The regulation proposed in this paper aims to ensure that the changes introduced by the Amendment Act align with the policy intent, as agreed by Cabinet.

### **Publicity**

- 32 I consider that no additional communication of the change is necessary, as it reflects the policy intent which has already been used as the basis for internal and external communications.

## Proactive release

- 33 I propose to proactively release this Cabinet paper, associated minutes, and key advice papers with appropriate redactions in accordance with the usual process, within 30 business days following the decision of Cabinet.

## Consultation

### *Government departments*

- 34 The following government departments were consulted on the development of the proposed regulatory change: Inland Revenue, Child Wellbeing Unit and Poverty Reduction Group and the Policy Advisory Group in the Department of Prime Minister and Cabinet, the Treasury, Public Service Commission, the Ministry for Pacific Peoples, the Ministry for Women, Te Puni Kōkiri, the Ministry of Justice, Te Arawhiti – the Office for Māori Crown Relations, Manatū Hauora – Ministry of Health, the Ministry of Housing and Urban Development, the Ministry of Youth Development, the Ministry for Ethnic Communities, Whaikaha – Ministry of Disabled People, the Office for Seniors, the Youth Service, Oranga Tamariki—Ministry for Children, and Veteran’s Affairs.

### *Public consultation*

- 35 There was no formal public consultation on the amendments to pass on child support, however this amendment was recommended by the Welfare Expert Advisory Group in 2019 as part of a package of changes to the welfare system. The regulation proposed in this paper aims to ensure that the changes introduced by the Amendment Act align with the policy intent. No formal public consultation has been undertaken on the proposed regulation.

## Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that an issue has been identified with the child support payment definitions in the Child Support (Pass On) Acts Amendment Act 2023 which will mean that some child support payments will be subject to incorrect income charging rules;
- 2 **note** that the Social Security (Additional General Provisions Child Support Payments) Amendment Regulations 2023 are required to address the issue described in recommendation one and ensure that all child support payments can be correctly classified and charged as income where appropriate, in accordance with the policy intent;
- 3 **note** the Social Security (Additional General Provisions Child Support Payments) Amendment Regulations 2023 address the issue described above by:
  - i) listing the income-tested benefits or other assistance MSD will be matching to (‘matched assistance’); and

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- ii) specifying that a child support payment made to a relevant non-matched beneficiary is a general provisions child support payment;
- 4 **note** that a waiver of the 28-day rule is sought to ensure that when the first child support payments passed on under the new regime on 22 August 2023 can be correctly charged as income in line with the policy intent and in compliance with the law;
- 5 **agree** to waive the 28-day rule in order for the Social Security (Additional General Provisions Child Support Payments) Amendment Regulations 2023 to come into force on 22 August 2023;
- 6 **authorise** the submission to the Executive Council of the Social Security (Additional General Provisions Child Support Payments) Amendment Regulations 2023.

Authorised for lodgement

Hon Carmel Sepuloni

Minister for Social Development and Employment