



# Report

**Date:** 1 August 2019

**Security Level:** IN CONFIDENCE

**To:** Hon Carmel Sepuloni, Minister for Social Development

---

## Proceeding without the proposed exclusions for the MSD lump-sum payments exemption

### Purpose of the report

- 1 This report seeks your agreement to establish the proposed exemption for Ministry of Social Development payments from the cash asset and income tests so that the exemption includes lump-sum payments arising from business administration transactions [REP/19/6/568 refers].

### Recommended actions

It is recommended that you:

- 1 **note** that as agreed, officials are drafting a Cabinet paper for a cash asset and income exemption for Ministry of Social Development lump-sum payments
- 2 **note** that the policy rationale for this exemption is that clients should not be prevented from accessing financial assistance because MSD has made lump-sum payments to ensure the client is receiving their full and correct entitlement
- 3 **note** that the proposal in our earlier report [REP/19/6/568 refers], was to exempt MSD lump-sum payments arising from entitlement reviews, from the cash asset and income tests but not include payments relating to business administration transactions in the exemption eg arrears payments resulting from the grant of a benefit or supplementary assistance
- 4 **note** that as advised in our earlier report, defining the proposed exclusions is complex, and as a result of further analysis of drafting and operational design, we have identified some risks that come from the requirement to differentiate between payment types, and so we now propose proceeding without any exclusions
- 5 **note** that while we propose the exemption is applicable to all MSD lump-sum payments, in practice the exemption will only be activated for a small number of lump-sum payments because 90 percent of all MSD lump-sum payments are under the minimum cash asset threshold
- 6 **note** that removing the proposed exclusions will not impact the intent or implementation of the proposed MSD lump-sum payment exemption

- 7 **note** that if we remove the proposed exclusions, the central policy rationale will remain intact; that is no client should have their financial assistance adversely impacted by an MSD lump-sum payment lawfully owed to them, while ensuring clients do not gain advantage by the application of the exemption
- 8 **note** that given the proposed change in scope of the draft exemption to include the wider range of MSD lump-sum payments, MSD proposes reporting quarterly to the Minister for Social Development as part of monitoring how the exemption is applied
- 9 **note** that once we receive your decision, we will instruct the Parliamentary Counsel Office to continue drafting the Regulations with the intention that the proposed adjustment will not impact the projected timeframes for the Cabinet paper as outlined in our earlier report
- 10 **agree** to include lump-sum payments arising from business administration transactions into the draft cash asset and income exemption for Ministry of Social Development lump-sum payments, so that all MSD lump-sum payments are exempt.

**agree / disagree**

---

Justine Cornwall  
General Manager Policy

---

Date

---

Hon Carmel Sepuloni  
Minister for Social Development

---

Date

## Background

- 2 Following our earlier report on a cash asset and income exemption for Ministry of Social Development (MSD) lump-sum payments [REP/19/6/568 refers], you agreed to officials drafting a paper for the Cabinet Social Wellbeing Committee (SWC). The purpose of the Cabinet paper is to seek agreement to amend the Social Security Regulations 2018, exempting MSD lump-sum payments made as a result of client entitlement reviews, from cash asset and income tests.
- 3 In our report we recommended exempting MSD lump-sum payments from the cash asset and income tests, to preserve client entitlement to assistance such as Accommodation Supplement or Temporary Additional Support. The cash asset and income tests are set in legislation to determine eligibility for assistance, supporting the principle that individuals should use the resources available to them before seeking financial support from the Government (Social Security Act 2018 s 3(C)(i)).
- 4 Exemptions allow people to continue to receive financial assistance at their existing rate of entitlement, or future assistance in the period specified for the exemption, when a lump-sum payment pushes them above the cash asset or income threshold. Examples of current exemptions include the Accommodation Supplement boundaries arrears payments and the Temporary Additional Support arrears payments, which were payments resulting from the correction of MSD errors.
- 5 In our earlier report, we proposed not including business administration transactions in the exemption. These business-as-usual payments made as a consequence of the general administration of the benefit system include income declaration calculations, changes in address that result in an increase to the Accommodation Supplement and the grant of a benefit or supplementary assistance that results in an arrears payment. We advised we would work to define the exclusions and that there was some complexity involved with this.
- 6 Through the process of progressing the drafting and operational design for the exemption, we have become more aware of the level of complexity involved with excluding business administration transactions, and the challenge of providing consistent administration as a result.
- 7 We now propose the exemption is applied to all MSD lump-sum payments so that no payments made to provide full and correct entitlement, whether they are transactions relating to the administration of the benefit system or that address underpayments identified through eligibility reviews, are excluded from the exemption.
- 8 We have assessed that making this change does not add risk to the proposal but enables flexibility to ensure no client is penalised for receiving an MSD lump-sum payment owed to them. We also do not intend it to affect the agreed timeframes for the Cabinet paper, with a paper being prepared for you to take to SWC in early September 2019. However, this will depend on providing updated instructions to the Parliamentary Counsel Office (PCO) and the turnaround of the Regulations being drafted.

## Taking a broader approach to future-proof client entitlements and MSD's targeted work programme

- 9 As part of the design of the MSD lump-sum payments exemption, we proposed not including payments arising from MSD business administration transactions. This was because these payments are made as a consequence of the way the benefit system is administered, for example the payment of benefits in arrears, rather than as the result of a direct review of a client's entitlement.
- 10 In our earlier report, we indicated the potential complexity in drafting and implementing an exemption that excluded some payments. This is because of the need to differentiate between the different payment types.

*As previously indicated, defining the exclusions is complex and we have identified additional risk with having exclusions form part of the exemption*

- 11 As we approached the drafting of the exclusions, we did further analysis and work on how this would be operationalised. This highlighted difficulties in drafting and implementing the exclusions because of the need to distinguish between those payments we had proposed to exempt and those we had proposed to exclude.
- 12 A specific challenge is the consistent administration of an exemption with excluded payments. Other cash asset and income exemptions currently in place are administered with direct oversight from MSD's national office. This is because these exemptions are ring-fenced to a specific event and are therefore easily identified, such as the Housing New Zealand payments for alleged methamphetamine contamination. Therefore, their specificity means they can be readily and easily administered by a small number of staff at national office, allowing for consistent application.
- 13 In contrast, the proposed MSD lump-sum payments exemption is largely generic in nature because of the different types of payments it intends to cover and so its implementation is best resourced and administered at the frontline. Designing the exemption in this way enables MSD to be responsive to the different circumstances that require exemptions but that still relate to MSD lump-sum payments.
- 14 Requiring frontline staff to further differentiate excluded payments would likely result in inconsistent application and a high error rate that may adversely impact policy and practice alignment. s 9(2)(h)

*Because most lump-sum payments are below the cash asset threshold, there is little risk in exempting all payments*

- 15 While the exemption would be applicable to all MSD lump-sum payments, most payments, including the many business-as-usual transactions MSD makes every day, will not require the exemption to be activated. This is because most payments are for less than the lowest cash asset limit of \$1095.16 (and typically clients also spend their money immediately) so they will not need to be actively exempt from the cash asset and income tests.

16 The following information has informed our view that there is little risk in exempting all payments and that it is unlikely clients will gain advantage by having all MSD lump-sum payments exempt:

- In the 12 months ending February 2019, MSD made 405,430 lump-sum payments to 149,631 clients, of whom 81,623 received two or more payments. Of those 405,430 payments, 90 percent were under \$1000<sup>1</sup>. Of that 90 percent, half were for less than \$100. This shows that most payments, including business administration transactions, are low value and do not amount to cash assets.
- We looked at examples where clients received multiple MSD payments over a full year. The examples included payments for income declaration calculations, changes of address and changes in living arrangements. Generally, total payments did not exceed the cash asset threshold. Where a single payment did exceed the threshold, it was not identified in the system as a cash asset, conceivably because it was spent by the client.
- We also looked at the eight percent of all working age adult clients who have cash assets recorded in MSD's system. While we cannot provide exact data on the source or nature of the assets because the information is collected through a free-text field, the information available does provide an indicative picture. It shows cash assets held by clients are most often sourced from elsewhere rather than from MSD lump-sum payments.

*An exemption will not be required for most payments, but one that is applicable to all MSD lump-sum payments will enable a consistent application of policy*

17 MSD makes many lump-sum payments every day. Every payment made, whether a business administration transaction or one that addresses a benefit underpayment, ensures a client's full and correct entitlement.

18 Changing the scope of the exemption by including business administration payments will mean the exemption is applicable to all MSD lump-sum payments. However, in practice it will only be relevant to the small number of payments that are over the applicable cash asset threshold (and that are not spent by the client) and so including business administration payments is unlikely to result in the exemption being activated more frequently.

19 Consequently, we consider that the rationale for proceeding with an exemption for all MSD lump-sum payments is more robust than proceeding with the proposed exclusions. It will future-proof the Regulations and enable the consistent administration of the proposed policy while ensuring no individual is disadvantaged.

20 It will also support MSD to be more responsive to situations where an exemption is needed, specifically future-proofing larger payments over the threshold. These include payments generated through MSD's targeted work programmes like the FACE Review and the Alignment Project. Ultimately this will ensure no client is delayed in

---

<sup>1</sup> We have counted multiple payments to a client made on the same day as one payment to establish whether a client receiving more than one payment remained under the cash asset threshold.

receiving payments owing to them while also facilitating the progress of specific programmes of work.

## **MSD will take steps to make sure the exemption is applied appropriately and transparently**

- 21 If you agree to proceed with drafting the MSD lump-sum payment exemption to include business administration payments, MSD will put reporting processes in place to monitor how the exemption is applied. We propose that this reporting includes:
- the number of times the exemption is recorded in MSD's system and the number of times the exemption is applied (the latter being when a client's payments are over the cash asset threshold and need to be actively exempt from the cash asset and income tests)
  - demographic details for situations where the exemption is recorded and applied such as the client's benefit type
  - a requirement in the Cabinet paper that MSD reports quarterly to the Minister for Social Development on the use of the MSD lump-sum payments exemption

## **Next steps**

- 22 If you agree to draft the MSD lump-sum payment exemption to include business administration payments, we will continue working with PCO on drafting the Regulations, and on the Cabinet paper for SWC, with the view for it to be lodged at the end of August 2019.

File ref: REP/19/7/656

Author: s 9(2)(a) Senior Policy Analyst, Income Support Policy

Responsible manager: s 9(2)(a) Policy Manager, Income Support Policy