



Report

Date: 2 July 2019

Security Level: IN CONFIDENCE

To: Hon Carmel Sepuloni, Minister for Social Development

Seeking a cash asset and income exemption for MSD lump-sum payments

Purpose of the report

- 1 This report seeks your agreement to proceed with establishing a cash asset and income exemption for MSD lump-sum payments that correct benefit underpayments, and subject to that decision, agreement on the scope of the exemption.

Executive summary

- 2 A range of income and cash asset exemptions for specific payments have already been established to make sure people receive their financial assistance from MSD without interruption. The exemptions require amendments to the Social Security Regulations 2018 (the Regulations). You have asked us to look at how we can simplify the exemptions process through a first principles review.
- 3 We have commenced the first principles review but as part of a staged approach to streamline the exemption process and meet the needs of clients, we seek your agreement to proceed with establishing an exemption for MSD lump-sum payments that correct underpayments identified through retrospective entitlement reviews.
- 4 The full and correct entitlement review (the FACE Review), which is tasked with making sure clients are receiving their lawful entitlements under the Social Security Act 2018 (the Act), is likely to result in the identification of benefit underpayments.
- 5 While the scale and immediacy of the FACE Review is providing the initial impetus for the exemption, the Alignment Project and cases brought to us by clients and advocates will also identify situations where benefits have been underpaid. Through these processes MSD would correct underpayments with lump-sum payments to clients, so they receive their full and lawful entitlement.
- 6 Lump-sum payments may be subject to cash asset and income tests, unless specifically exempt by Regulations. This means the lump-sum payments may affect a client's entitlement to assistance such as Accommodation Supplement or Temporary Additional Support.
- 7 An exemption specifically for MSD lump-sum payments made after a review of eligibility by MSD, but separate from every day business transaction arrears, will help make sure clients are not penalised further or subject to additional hardship by delays in payments. It will also reduce the need to make multiple changes to the regulatory framework.

- 8 If you agree to proceed with the proposed exemption, there are two approaches provided in this paper for the exemption's scope:
 - exempt lump-sum payments arising from eligibility reviews by MSD to make sure clients are receiving their full and correct entitlement
 - only exempt lump-sum payments made to correct MSD errors.
- 9 The proposed exemption could also inform the wider exemptions review as we gather information on the exemptions process, including through FACE Review exemption outcomes.
- 10 The exemption would not cover payments made by other agencies or entities such as the Christchurch mosque attack support payments because different criteria must be applied. It will be necessary to continue to consider exemptions for these payment types on a case-by-case basis through the regulatory process.

Recommended actions

It is recommended that you:

- 1 **note** MSD has commenced the ground-work for a first principles review of the cash asset and income exemption process
- 2 **note** that an exemption for MSD lump-sum payments will facilitate client service and MSD's work programme including the FACE Review which is currently underway
- 3 **agree** to seek to an amendment to the Regulations and any related Ministerial Directions and Welfare Programmes to include a cash asset and income exemption for MSD lump-sum payments based on your preferred scope option outlined below

agree / disagree

- 4 **confirm** your preferred option for the extent of the scope of the exemption:
 - 4.1 Option one: exempt lump-sum payments arising from eligibility reviews by MSD to make sure clients are receiving their full and correct entitlement (**MSD's preferred option**)
 - 4.2 Option two: exempt MSD lump-sum payments only where they have been made to correct an MSD error

agree / disagree

agree / disagree

- 5 **Note** we propose the exemption does not cover payments generated by standard business processing transactions (specified in paragraph 66) because they are not the result of an error and it will assist with managing the volume of MSD payments considered under the proposed exemption

6 **direct** officials to draft a paper for the Cabinet Social Wellbeing Committee to consider in August 2019, seeking agreement to amend the Regulations to establish the proposed exemption

agree / disagree

7 **invite** MSD to work with the Parliamentary Counsel Office to draft the Regulations while the Cabinet paper is being drafted

agree / disagree

8 **note** we will report back to you by 30 July 2019 with the project plan and timelines of the first principles review of the wider exemptions process.

Justine Cornwall
General Manager Policy

Date

Hon Carmel Sepuloni
Minister for Social Development

Date

Cash asset and income tests support a needs-based system

- 11 The welfare system is founded on a needs-based approach. A core principle is that individuals use the resources available to them before seeking government financial support. Income and cash asset tests are set in legislation to determine eligibility for assistance.
- 12 Main benefits are income tested. Certain supplementary assistance is cash asset tested as well, for example, a single person is not entitled to:
 - Accommodation Supplement (AS) if their cash assets are over \$8,100 or
 - Temporary Additional Support (TAS) if their cash assets are over \$1,095.16.
- 13 A lump-sum payment made by MSD to correct a benefit underpayment can push a client's cash assets over the stated threshold, impacting their eligibility for supplementary assistance.

Lump-sum payments make sure clients get their correct entitlement

- 14 MSD makes lump-sum payments to correct underpayments in financial assistance. The underpayments might be due to an MSD error or because a client did not provide us with the all the information we needed to make a correct entitlement assessment.
- 15 In 2017 MSD made around one million lump-sum payments to clients and the majority were for \$999 or less. There is no consolidated data to show why each payment was made but there are many reasons including suspended benefits that are restarted, generating arrears.
- 16 This means that for most clients, an MSD lump-sum payment alone would not push them over the cash asset threshold. For those clients already holding cash assets under the threshold, a lump-sum payment could push them over the threshold, impacting their eligibility for ongoing supplementary assistance and potentially one-off payments such as Special Needs Grants.

Exemptions prevent unreasonable reductions in financial assistance

- 17 Putting an exemption in place prevents unreasonable reductions in a client's financial support by excluding it from the cash asset test. Exemptions have been established for certain payments (refer to Appendix A) to allow people to continue receiving financial assistance at their existing rate of entitlement or future assistance in the specified period, when a lump-sum payment pushes them above the income or asset threshold.
- 18 If an exemption applies to a lump-sum payment, people do not have to use the payment on day-to-day expenses. Instead the payment can be used to address debts or liabilities the client may have incurred from earlier benefit underpayments.
- 19 Lump-sum payments by MSD must be specifically exempted from being included in cash asset or income tests through regulatory change. Exemptions generally last 12 months.
- 20 Existing exemptions can be grouped into three broad types:
 - **ex gratia, compensation and settlement payments** in recognition of harm or in respect of a claim of harm such as historic abuse settlements made to people who allege harm while in State care

- **specific lump-sum arrears payments** that correct MSD errors in financial assistance payments such as the AS arrears payments
- **other payments for a specific purpose that is not an 'income-related purpose'** such as Housing New Zealand Corporations' payments for alleged methamphetamine contamination.

21 This paper addresses exemptions under the second bullet point above, but it also considers lump-sum payments made to correct underpayments that are not the direct or obvious result of an MSD error.

Developing individual exemptions impacts clients

- 22 Amending regulations each time a new payment should be exempt from income and cash asset tests is resource and time intensive requiring about six months in a best practice process. It involves MSD, Parliamentary Counsel Office (PCO), Cabinet Committees, Cabinet, the Executive Council, and you and your Office.
- 23 This impacts clients who risk having their lump-sum payments delayed or their supplementary assistance reduced or stopped. These are clients who may have been experiencing hardship because of underpayments in the rate of their benefits or supplementary assistance.
- 24 Clients who do not receive ongoing supplementary assistance, may not be immediately affected by a lump-sum payment they receive. Others will spend a lump-sum payment almost immediately and in some cases, not having an exemption may encourage people to spend their payment unwisely.
- 25 MSD is also aware of other examples that support change. Following a 2016 case, the Social Security Appeal Authority (SSAA) asked MSD to consider amending the Regulations so the cash asset definition excludes any arrears of unpaid benefit to which clients had been lawfully entitled.
- 26 In the 2016 case, the SSAA awarded the appellant approximately \$26,000 in arrears. The arrears were higher than the cash asset tests for AS and TAS, so both forms of financial assistance were suspended by MSD. While the SSAA concluded this was the correct application of the law, it noted its discomfort with the decision.

Working on a first principles review and a cash asset and income exemption

- 27 We have commenced the ground-work for a first principles review of the current suite of exemptions to make sure our approach is still fit for purpose and that a clear principles-based framework for exemptions is in place. This review has been resourced and discussions are scheduled this week on developing a principle-based framework to review current exemptions and to assess best practice for any future exemptions.
- 28 Ideally, any new exemption would be deferred until this review is complete. However, given the importance of progressing the FACE Review currently underway, we recommend putting an exemption in place before the wider review is completed. This will support good client service and preserve their entitlements, given we will identify a range of underpayments that will need to be addressed.
- 29 If you choose to proceed with establishing the exemption, it will inform the first principles review and the processes and systems that best support its

implementation. We will report to you by 30 July 2019 with a project plan and timelines for the review.

30 s 9(2)(f)(iv) [Redacted]

- █ [Redacted]
- █ [Redacted]
- █ [Redacted]
- █ [Redacted]
- █ [Redacted]
- █ [Redacted]

Facilitating the FACE Review

- 31 The FACE Review facilitates proactive engagement with clients to make sure they are receiving their full and correct entitlement. This is done through retrospective entitlement reviews intended to better support people, so they can meaningfully participate in their communities.
- 32 Where MSD identifies a client has not received their full entitlement, a lump-sum payment will be made. The payments are subject to cash asset and income tests to determine the client's eligibility for ongoing supplementary assistance such as AS or TAS.
- 33 It will be challenging to maintain momentum and integrity of the FACE Review without the appropriate exemptions in place. If the payments are not exempt from the tests, we may be seen to be penalising clients for receiving the lump-sum payments for financial assistance to which they were lawfully entitled. This will undermine the intent of the FACE Review and further impact families who often have a high use of hardship assistance.
- 34 It is likely we will also need more than one type of exemption for lump-sum payments generated by the Face Review alone. Each client's situation is unique, and there may be more than one reason for a lump-sum payment. Applying for individual exemptions will impact the pace at which we can progress entitlement reviews under the FACE Review, because each category of exemption requires regulatory change. This would not be a good use of time and resources and we cannot anticipate every situation that should be exempt.

The Alignment Project is also generating lump-sum payments

- 35 Cases where clients have not received their full entitlements are identified through reviews of client circumstances, including specific programmes of work like the FACE Review, through regular scheduled client reviews and when clients come directly to us because of advocate advice or media interest.

36 s 9(2)(f)(iv) [Redacted]

Seeking a cash asset and income exemption for MSD lump-sum payments

- s 9(2)(f)(iv)
- [REDACTED]
- [REDACTED]

37 s 9(2)(f)(iv)

We propose establishing an exemption for MSD lump-sum payments

38 We have used the following principles when considering the establishment of an exemption for when MSD makes a lump-sum payment:

- provides a fair and equitable outcome for MSD clients
- facilitates MSD’s immediate and long-term work programme
- supports consistent application of the rationale for exemptions; that is, we should not unfairly impact a client’s current or future entitlements
- makes sure the exemption option is easy to administer.

39 An exemption for MSD lump-sum payments can be applied to different underpayments depending on the scope you choose (refer to paragraphs 57 - 74). It will help us take a client centred approach by avoiding unnecessary impact on a client’s entitlements. It will also significantly reduce demand on MSD resources as new payment errors are identified through the FACE Review, other programmes of work and every day interactions with clients.

40 The exemption can be modelled on existing exemptions including the four exemptions for payments made to address MSD errors (refer to Appendix A) and the principles underpinning the ex gratia and compensation payment exemption. This includes a framework for implementation and administration.

41 The exemption in Regulations would apply to financial assistance such as AS and TAS and other cash asset or income tested assistance. If this change progresses, we would prepare consequential changes to the Ministerial Direction on Special Benefit to ensure the same exempt lump-sum payments are also excluded from Special Benefit assessments.

42 However, for certain types of hardship assistance such as Special Needs Grants, MSD must consider the person’s ability to meet the need from their own resources and any lump-sum payments are taken into consideration at that point.

Aligning policy settings with existing exemptions

43 In line with existing exemptions, we propose the exemption would:

- exempt lump-sum payments made by MSD where the payment is a result of a retrospective review of the client’s full and correct entitlement such as those done through the FACE Review and Alignment
- exempt lump-sum payments and any income derived from the lump-sum payment for a 12-month period
- apply to assistance the client is receiving at the date of the lump-sum payment and to any assistance applied for within the 12-months from the payment date

- apply to the net amount of any lump-sum payment (money the client receives in their hand)
- be subject to normal review and appeal processes.

Time limits on holding exempted cash assets

- 44 The time limits on how long a lump-sum payment can be exempted from income and cash asset tests will be considered in the broader exemptions review.
- 45 In the interim, the current 12-month time limit applied to existing MSD error exemptions would apply to the proposed exemption so that a person can continue to receive the same level of assistance they were receiving on the date the lump-sum payment was made. This strikes a balance between allowing people enough time to decide the best way to use their payments and the principle that people should use resources available to them before calling on the Act for assistance.
- 46 Lump-sum payments made by MSD to correct underpayments can help address the hardship imposed on an individual, where it can be reasonably expected the person may have incurred debt from being on a reduced income.
- 47 A 12-month period, which starts from when the payment is made, gives a client time to address any debts and get back to the position they should have been at before the underpayments occurred. It would be unreasonable to assume that every lump-sum payment made is a cash asset immediately after it is made.
- 48 The exception to the 12-month time limit is ex gratia and compensation payments that are made to recognise harm to the individual such as illness or injury from neglect or abuse. The recent removal of a time limit on a client's ability to hold these payments enhances the meaningfulness of the compensation making sure the rationale for the payment is preserved.

Maintaining the status quo risks disadvantaging clients

- 49 The exemption process requires regulatory change which takes time and means we cannot respond to clients in a timely way. Clients are likely to have their lump-sum payments delayed while exemptions are sought. s 9(2)(f)(iv)
- 50 Alternatively, clients risk having their current or future entitlement reduced or stopped if no exemption is in place. They will then need to reapply for the financial assistance creating further client stress and administrative demands on MSD resourcing. s 9(2)(f)(iv) we recommend establishment of the proposed exemption.

We looked at other mechanisms to address the issue

- 51 We disregarded the option of dispersing all lump-sum payments through weekly instalments. This approach would be unfair because it would delay clients receiving money owed to them. Given the different levels of income and cash asset thresholds for different types of assistance, careful analysis of each case would be required to make sure lump-sum payments do not adversely impact a client's ongoing supplementary assistance.
- 52 This approach would result in higher administrative costs including increased monitoring and compliance to avoid further over or underpayments. It would also require a specific provision to allow us to withhold payments.

- 53 We also disregarded exempting payments over a certain limit. This could improve the administrative ease of the proposed exemption by only exempting lump-sum payments over \$1000. The lowest cash asset test for supplementary assistance is \$1,062.51 so a lump-sum payment itself would not push someone over a cash threshold.
- 54 However, clients with existing cash assets may be pushed over the limit when they receive a lump-sum payment. These clients will be penalised for receiving lump-sums lawfully owed to them. This would mean clients who had a small amount of cash asset already would be more affected than clients who had no cash assets.
- 55 On balance we decided a cash asset and income exemption for MSD lump-sum payments is the best way to manage income and cash asset exemptions for MSD lump-sum payments particularly given the importance of concluding the FACE Review.
- 56 If you do choose to proceed with the exemption, options for the extent of how the exemption might be applied are outlined below. Refer to Appendix B for a summary of the scope options.

Option one: exempt all lump-sum payments arising from eligibility reviews by MSD to make sure clients are receiving their full and correct entitlement (MSD's preferred option)

- 57 This option would exempt from cash asset and income tests lump-sum payments arising from eligibility reviews by MSD to make sure clients are receiving their full and correct entitlement. This includes reviews undertaken as part of the FACE Review and Alignment where we are making retrospective decisions on client entitlements in a systemic way.
- 58 We propose it would also include any lump-sum payments made to back-date a benefit under s 318 of the Act¹, and payments that are the result of formal reviews, appeals and judicial reviews.
- 59 It will also operate at the individual level, for example where a client queries the level of assistance they are receiving, and a retrospective review finds they have been underpaid.
- 60 Where a client has not been receiving their full and correct assistance, MSD would make lump-sum payments irrespective of the reason for the underpayment which could include MSD error, client error, system failure or omission of information.
- 61 The scope of this option would provide certainty for a wide range of MSD clients who would continue to receive their assistance without interruption for the 12-month exemption period.
- 62 MSD recommends specifying exclusions from the exemption. This is to preserve the rationale for exemptions which is to prevent assistance being unreasonably stopped

¹ S 318 provides that the Minister for Social Development may consent to backdate a benefit to before a person applied for that benefit, in certain circumstances. You have delegated this power to the Chief Executive of MSD.

or declined, with supporting effective and efficient administration of the system by reducing the volume of exemptions. This is done by limiting the exemption to those where it would be unreasonable to have assistance stopped or declined.

- 63 Clients receiving lump-sum payments that are not exempt and which push them over the cash asset threshold, will be given 28-days to decide how to best spend their money before MSD considers any remaining money as a cash asset. This is covered by existing policy.

Defining the exclusions to support better outcomes for MSD clients

- 64 MSD makes millions of standard benefit administration transactions a year, many of which lead to multiple lump-sum payments being made. These regular business transactions are not the result of errors or mistakes by MSD or the client but are a consequence of the way the benefit system is administered, for example, benefits are paid in arrears.

- 65 MSD proposes it is not unreasonable to consider money from a regular business transaction to be a cash asset where, in the unlikely event, it is retained and not spent by a client.

- 66 We propose to work with PCO to define the exclusions but intend these to cover:

- general benefit administration such as a change in a client's income, or a change of address that results in an increase to AS
- the grant of benefit or supplementary assistance. When a client makes an application for a benefit they generally need to meet with us and provide documentation, so we can assess and process their application. Benefits are often granted from a prior date and paid in arrears, so this regularly results in arrears payments to clients
- a due paid assessment of the client's income. Some clients such as sole parents can have their income annualised at their annual review if they have declared income throughout the year that reduced their benefit rate. The income is averaged across the full 52-weeks which can result in benefit arrears being paid.

Option two: exempt MSD lump-sum payments only where they have been made to correct an MSD error

- 67 This approach would restrict the exemption to lump-sum payments made to correct MSD errors and not those made by clients. This presents some equity and fairness issues.

- 68 Restricting the exemption in this way would mean some clients entitled to a lump-sum payment, would not have that payment exempt from the cash asset test. In effect MSD could be seen to be penalising some clients for receiving a payment they are lawfully entitled to receive.

- 69 This could include a client who had s 192 reduction in place because they would not disclose the name of the other parent. The child was the result of an inappropriate relationship and when the client moved out of the immediate family home, she felt safe enough to disclose the name of the other parent. The client is paid arrears but with this option, those arrears would not be exempt from the cash asset test if the client needed additional assistance. The client would, however, have 28 days to consider what they do with this money before any remaining amount is considered as a cash asset.

Seeking a cash asset and income exemption for MSD lump-sum payments

Implementation issues

- 70 This option has some implementation issues making administration more difficult than option one. This includes the process for identifying those lump-sum payments made to correct MSD errors. These issues would need to be manually addressed, requiring case managers to check notes fields which are often buried deep in the system, needing time to search and identify.
- 71 Case managers will also need to be supported to make decisions about determining fault for benefit underpayments where the error is not clearly with MSD. Not all situations are black and white, and we would need to consider carefully whether the client intentionally contributed to or caused the error that resulted in an underpayment. In these cases, a subjective evaluation would be required with a second level approval to make sure the right decisions are made. This will add more complexity and time to an involved decision-making process.

Using existing definitions to define MSD error

- 72 If you choose to proceed with option two, the definition of MSD error could be aligned with the existing definition for debt caused by an error to which the client did not partly or wholly contribute (refer to Appendix C). Error is defined in this context as (reg 208(2) and (3)):
- the provision of incorrect information by MSD
 - any erroneous act or omission of MSD while inquiring into benefit entitlement
 - any other erroneous act or omission of MSD.
- 73 The definition can relate to errors to an individual's payments or to system errors identified as part of business as usual or through a specific project.
- 74 The definition of error for the exemption could also include a similar provision included in the current debt provisions (208(2)(b)), to make sure it does not include every day transactions that are part of a benefit administration not caused, wholly or partly, by any erroneous act or omission of MSD.

Next steps

- 75 If you agree to the establishment of a cash asset and income exemption and your preferred scope, we will develop a Cabinet paper to reflect these decisions.
- 76 It is important for the exemption timeframes to align with the FACE Review to support the intent of both processes. If you agree to proceed, we will talk with individual clients currently impacted by the process about their payment options until an exemption is put in place.
- 77 We have provided an indicative timeline below to progress the regulatory change so that the exemption could be in place by mid-September 2019. We note potential drafting delays to this proposed timeframe that may be caused by the complexity of the proposed exclusions.

Date	Action
Fri 12 July	Minister agrees to proceed to Cabinet and to instruct PCO to start drafting Regulations

Fri 12 Jul to Thurs 8 Aug	MSD application for Regulatory Impact Assessment exemption PCO drafts amendments to Regulations (note potential delays)
Thurs 8 (until 23 Aug)	Draft SWC paper to Minister for cross-party consultation
Wed 11 Sept	Consideration of paper at Social Wellbeing Committee (lodged 22 Aug)
Mon 16 Sept	Consideration of paper at Cabinet
Mon 16 Sept	Order in Council made
Thurs 19 Sept	Notification in the NZ Gazette (28-day rule waived)

REP/19/6/568

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

Appendix A: Current exemptions

Payment Group	Specific payment	Income exemption	Cash asset exemption
Ex gratia, compensation and settlement payments	EVSA (Neville Wallace Memorial) Children's and Grandchildren's Trust payments	Yes - 12 months	Yes - 12 months
	Lake Alice compensation or ex gratia payments	Yes - 12 months	Yes - 12 months
	Personal injury from hepatitis C infection contracted through New Zealand blood supply	Yes - 12 months	Yes - 12 months
	Viet Nam veterans' ex gratia payments	Yes - no time limit	Yes - no time limit
	Viet Nam Veterans and Their Families Trust payments	Yes - 12 months (no time limit for income from trust)	Yes - 12 months
	General ex gratia and compensation payments made by the Crown	Yes - no time limit	Yes - no time limit
Lump sum payments when MSD has made an error	Accommodation Supplement arrears payments	Yes - 12 months	Yes - 12 months
	Temporary additional support arrears payments	Yes - 12 months	Yes - 12 months
	Best Start tax credit arrears payments	Yes - 12 months	Yes - 12 months
	Accommodation Supplement boundaries arrears payment	Yes - 12 months	Yes - 12 months
Other payments that are for a specific purpose that is not an 'income-related purpose'	Health services and disability support services funded or provided by the Crown	Yes - no time limit	Yes - no time limit
	Payments to victims of crime	Yes - 12 months	Yes - 12 months
	Employment and Work Readiness Assistance Programme lump sum payments	Yes - 12 months	Yes - 12 months
	Operational allowances (made to some operational members of the New Zealand Defence Force or the police)	Yes - 12 months	N/A
	Housing New Zealand Corporation payments for alleged methamphetamine contamination	Yes - 12 months	Yes - 12 months
	Direct disability support payments	Yes - no time limit	Yes - no time limit
	Canterbury earthquake payments	Yes - 12-48 months	Yes - 12-48 months
	Payments of energy trust dividends	Yes - 12 months	N/A
	Home-based care	Yes - no time limit	N/A
	Superannuation schemes	While locked-in	While locked-in
	Payments under Sleepover Wages (Settlement) Act 2011	Yes - no time limit	Yes - 12 months
	Christchurch Mosques Attack Support Payments	Yes - 12 months	Yes - 12 months

Appendix B: Options summary for managing income and cash asset exemptions for MSD lump-sum payments

Approach	Client outcome	Administrative ease	Risks
<p>1. No generic exemption is in place</p>	<p>Unfair and inequitable because it will impact peoples' entitlements.</p> <p>Client either has arrears delayed or supplementary assistance cancelled.</p> <p>Clients do not receive timely service resulting in increased frustration.</p>	<p>Administratively onerous.</p> <p>Ongoing requests to Minister and Cabinet for individual exemptions.</p> <p>Impedes MSD's work programme with specific delays to FACE Review.</p> <p>Where clients have their AS or TAS cancelled, they will have to reapply, exacerbating client frustration and MSD resourcing.</p>	<p>Risk: Trust and confidence in the welfare system is undermined because of delays to paying lump-sum payments or because supplementary assistance is reduced or stopped.</p> <p>Mitigation: Continued client discussions so client is aware of process and options. Consider options for generic exemption to facilitate lump-sum payments.</p>
<p>2. Option one: Exempt all MSD lump-sum payments made to ensure a client receives full and correct entitlements following a review of eligibility by MSD (with exclusions)</p>	<p>Equitable option.</p> <p>Exclusions mean all clients receive their arrears and lump-sum payments without their supplementary assistance interrupted except where the arrears are the result of normal expected business transactions and processing.</p>	<p>Easier to administer.</p> <p>Significantly reduced requests for individual exemptions reducing time and resource burden.</p> <p>Facilitates MSD's work programme.</p>	<p>Risk: A small number of clients may feel they should have BAU transactional arrears exempt.</p> <p>Mitigation: Clear and early messaging and guidance about the purpose of the exemption and how MSD processes work.</p> <p>RISK: There may be delay in drafting because of the complexity of drafting for inclusions.</p> <p>Mitigation: Maintain a close working relationship with PCO on drafting.</p>
<p>3. Option two: Exempt MSD lump-sum payments only</p>	<p>Some potential inequity.</p>	<p>Some early administrative challenges but will ease over time.</p>	<p>Risk: potential reputational risks where despite a client being lawfully awarded a lump-sum payment, they are not exempt from the asset test and feel</p>

<p>where they have been made to correct an MSD error</p>	<p>Most clients receive their lump-sum payment without their supplementary assistance interrupted.</p> <p>Some clients receiving lump-sum payments have their supplementary assistance cancelled or reduced.</p> <p>Some grey areas where some clients may disagree they were at fault; potential increased client frustration particularly as entitlements impacted.</p>	<p>Initial manual implementation processes with staff required to identify MSD error related lump-sum payments.</p> <p>Some subjective evaluations of cases required.</p> <p>Significantly reduced requests for individual exemptions reducing time and resource burden.</p> <p>Facilitates MSD's work programme.</p>	<p>they are penalised for receiving the payment owed (clients who received lump-sums not related to MSD errors).</p> <p>Mitigation: Clear and early client communication to explain the purpose of lump-sum payments made for different reasons – MSD is taking ownership of its mistakes; allow client 28 days to decide how to utilise lump-sum payments.</p> <p>Risk: Grey areas exist for attributing fault.</p> <p>Mitigation: Provide robust operational guidance for case managers making assessments. Put in place a second person evaluation check. Gather data and examples of decisions over time to inform ongoing decision-making.</p>
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Appendix C: Definitions of error in social security legislation

Social Security Regulations 2018

208 Debts caused wholly or partly by errors to which debtors did not intentionally contribute

- (1) MSD cannot recover under the Act a sum comprising that part of a debt that was caused wholly or partly by an error to which the debtor did not intentionally contribute if—
 - (a) the debtor—
 - (i) received that sum in good faith; and
 - (ii) changed the debtor's position in the belief that the debtor was entitled to that sum and would not have to pay or repay that sum to MSD; and
 - (b) it would be inequitable in all the circumstances, including the debtor's financial circumstances, to permit recovery.
 - (2) In this regulation, **error**—
 - (a) means—
 - (i) the provision of incorrect information by MSD;
 - (ii) any erroneous act or omission of MSD that occurs during an inquiry under [section 298](#) of the Act;
 - (iii) any other erroneous act or omission of MSD; but
 - (b) does not include the simple act of making a payment to which the recipient is not entitled if that act is not caused, wholly or partly, by any erroneous act or omission of MSD.
 - (3) In subclause (2), **MSD** includes a contracted service provider whose action or inaction is under [section 377\(c\)](#) of the Act treated as if it were action or inaction by MSD.
- Compare: 1964 No 136 ss [86\(9A\)](#), [\(9B\)](#), [125G\(3\)](#)

Social Security Act 2018

318 No consent unless benefit not granted earlier because of error

- (1) The Minister must not give consent under [section 317](#) unless satisfied that,—
 - (a) in the case of a particular applicant, the particular applicant—
 - (i) could not reasonably have been expected to apply at the earlier time because of some erroneous action or inaction by MSD; or
 - (ii) at or before the earlier time, tried to apply, or applied incompletely, and did not proceed because of an erroneous action or inaction by MSD; or
 - (b) in the case of applicants of a stated kind or description,—
 - (i) applicants of that kind or description could not reasonably have been expected to apply at earlier times because of an erroneous action or inaction by MSD in relation to applicants of that kind or description; or
 - (ii) at earlier times, some applicants of that kind or description tried to apply, or applied incompletely, and did not proceed because of an erroneous action or inaction by MSD.
 - (2) Examples of erroneous action or inaction, for the purposes of subsection (1), include—
 - (a) giving wrong advice;
 - (b) failing or refusing to provide information, help, or some document or form.
 - (3) In this section, **action or inaction by MSD** includes action or inaction by a contracted service provider contracted under [section 373\(1\)\(a\)](#) to provide services in relation to young people.
- Compare: 1964 No 136 ss [80AA\(2\)](#), [\(4\)](#), [125G\(1\)](#)