

Aide-mémoire



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

Cabinet paper

Date: 6 June 2019 **Security Level:** Cabinet Sensitive

For: Hon Tracey Martin, for the Minister for Social Development

File Reference: REP/19/6/499

Changes to the Exemption for Ex Gratia and Compensation Payments

Cabinet Committee Cabinet Social Wellbeing Committee

Date of meeting 12 June 2019

Minister Hon Tracey Martin, for the Minister for Social Development

Proposal You are seeking approval to amend the cash asset and income exemption for ex gratia and compensation payments in Schedule 8 of the Social Security Regulations 2018. This will extend the exemption beyond payments made by the Crown to include payments made by non-Crown entities and remove the 12 month time limit to make the exemption permanent.

Talking points

- Social assistance is generally means tested using cash asset and/or income tests.
- Cash asset and income exemptions are currently available for some payments. These exemptions are made when it would be unfair, unreasonable, or inequitable if the payment adversely affected a person's social assistance.
- One of these exemptions is for ex gratia and compensation payments that are made in recognition of harm or to settle a claim of harm. This exemption is for payments made by the Crown and is for a period of 12 months.
- In 2018, Cooper Legal made a complaint to the Regulations Review Committee regarding this exemption. Cooper Legal argued that the 12 month time limit should be removed, making the exemption permanent and that payments covered by the exemption should include those made by both Crown and non-Crown entities.
- The Minister for Social Development considers that payments made by the Crown and non-Crown entities should be treated the same way. The Minister for Social Development also considers the 12 month time limit unfair in the restrictions it places on how and when people can

spend the ex gratia or compensation payment.

- The Minister for Social Development proposes to extend the exemption beyond payments made the Crown to include non-Crown entities and remove the 12 month time limit.
- The Minister for Social Development proposes to further define "non-Crown entities" for the purpose of this exemption to be clear which payments this exemption is intended to include. This will include payments from non-Crown entities such as the Catholic Church, the Salvation Army, Youthlink, Barnardos, and Youth Horizons Trust.
- The Minister for Social Development also seeks a waiver to the 28 day rule, given that the Amendment Regulations confer only benefits to those affected by them.
- The Minister for Social Development seeks approval to submit the Amendment Regulations to the Executive Council on 17 June 2019 to give effect to the proposal.

Our advice

There is an existing income and cash asset exemption for ex gratia and compensation payments made by the Crown in recognition of harm or to settle a claim of harm

Ex gratia payments are payments made by the crown to a person for claims that are not actionable at law but for which there exists a moral obligation. Compensation payments include settlement payments and are as the result of a Court order (known as damages) or award by a tribunal, in settlement of a claim formally filed against the Crown, or in settlement of a claim that has not been filed in Court.

Ex gratia and compensation payments can be one-off for an individual or due to class action. Currently there is a 12 month income and cash asset exemption for ex gratia and compensation payments made by the Crown.

There was a complaint to the Regulations Review Committee raising concerns about the existing ex gratia and compensation exemption

Cooper Legal acts for a large group of people making civil claims against the Crown and/or non-Crown entities for physical, sexual or psychological abuse while in the care of those entities as children. Cooper Legal wrote to the Regulations Review Committee (RRC) raising concerns about the ex gratia and compensation exemption being restricted to payments made by the Crown and limited by 12 months.

In May 2018, Ministry of Social Development (MSD) officials attended a hearing with Cooper Legal before the RRC. Cooper Legal then provided a letter to the RRC in June 2018 and MSD contacted Cooper Legal to discuss their complaint. The RRC then invited MSD to appear to further discuss the letter provided to them in July 2018, which MSD officials attended.

We previously advised to remove the 12 month time limit and extend the exemption to include payments made by non-Crown entities

Advice was provided in 2018 on addressing the RRC complaint and the two main concerns from Cooper Legal. In August 2018, the Minister for Social Development agreed to extend the exemption for ex gratia and compensation payments from income and cash asset tests to include payments from non-Crown entities [REP/18/8/1158 refers]. Then in December 2018 the Minister for Social Development agreed to remove the 12-month limitation on the exemption period [REP/18/10/1365 refers].

Administering the ex gratia and compensation payment exemption

MSD will implement the changes to the ex gratia and compensation payment exemption for harm using existing systems and processes. This will be done by excluding the amount of the payment from cash asset and income tests permanently. MSD will continue to rely on the obligation beneficiaries have to notify MSD of changes in their circumstances. For example, if they spend \$5,000 of their \$10,000 payment, this will reduce the exemption to \$5,000.

This paper seeks Cabinet's approval to make changes to the cash asset and income exemption for ex gratia and compensation payments

It is proposed the exemption is changed to include payments made by non-Crown entities and to remove the 12 month time limit to make the exemption permanent.

With Cabinet's agreement, the exemption will be changed through the submission to the Executive Council of the Amendment Regulations:

- Social Security (Cash Assets and Income Exemptions – Ex Gratia and Compensation Payments) Amendment Regulations 2019
- Residential Care and Disability Support Services (Exempt Assets – Ex Gratia and Compensation Payments) Amendment Regulations 2019.

The paper seeks a waiver to the 28-day rule on the grounds that the Amendment Regulations confer only benefits for those affected by them.

The Cabinet paper also notes that the Minister for Social Development will amend the Ministerial Direction for the Special

Benefit to exempt ex gratia and/or compensation payments for harm using the power in section 7 of the Social Security Act 2018 to give MSD binding directions.

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