



17 October 2024

Tēnā koe

### **Official Information Act request**

Thank you for your email of 3 September 2024 requesting information relating to the debt to government policy framework.

I have considered your request under the Official Information Act 1982 (the Act). Please find my decision on your request set out below. For the sake of clarity, I will respond to your request in parts.

- 1. What progress has been made since August 2023 to adapt internal policies and processes to align with the debt to government framework at The Ministry for Social Development (MSD)?*

No progress has been made to date.

- 2. What are the current processes and policies for writing-off a debt owed to MSD in the case of the debtor being in financial hardship and how is financial hardship assessed?*

Please find attached an excerpt of the following report:

- REP/22/6/553 – Report - *Debt to Government: Comparing approaches to writing off income support payment debt*

Only the relevant parts of this report to your request have been provided.

- 3. What are the processes for writing off a debt owed to MSD in the case of an error caused wholly or in part by MSD staff and which the recipient received in good faith?*

The test to determine if a debt owed to the Ministry can be written off is set out under regulation 208 of the Social Security Regulations 2018 (SSR) and described in paragraphs 46 to 47.5 in the attached report excerpt. For more detail, you may be interested in the Ministry of Social Development's process for debt write-off on our website here: [www.workandincome.govt.nz/map/income-support/core-policy/current-client-debt/process-for-debt-write-off-decision-01.html](http://www.workandincome.govt.nz/map/income-support/core-policy/current-client-debt/process-for-debt-write-off-decision-01.html).

- 4. Have any changes been made to the processes for writing off debt in the case of hardship or where an error is caused by MSD since August 2023?*

There have been no changes made in relation to this since August 2023.

- 5. How does MSD practice the principles of the debt to government framework, of minimising hardship, fairness, consistency with Treaty*

*obligations, accounting for behavioral responses, public value and transparency, when creating and collecting debts owed to MSD?*

The framework has been published as guidance for staff on the Ministry's internal database. Additionally, we still consider the circumstances of the client when considering establishing a debt.

*6. What process does MSD use for distinguishing between an overpayment debt that is created due to intentional non-compliance versus an error?*

When the Ministry establishes an overpayment, it is checked against the debt write-off criteria set out under regulation 208 of the SSR. If the criteria has been met, the debt will be considered an error, and will be written off.

While your question relates only to debt due to intentional non-compliance or due to error, I note that overpayment debt also occurs when the Ministry receives late notice of a change in client circumstances. This is not considered as intentional non-compliance or an error debt.

*7. What process do MSD staff use to determine the rate and method for debt recovery and has this process changed since August 2023?*

The Ministry has a Ministerial Direction on Debt Recovery. Clause 4 refers to the rate and method of recovery. You can find the Ministerial Direction on our website here: [www.workandincome.govt.nz/map/legislation/ministerial-directions/debt-recovery-direction/ministerial-direction-on-debt-recovery.html](http://www.workandincome.govt.nz/map/legislation/ministerial-directions/debt-recovery-direction/ministerial-direction-on-debt-recovery.html). This has not changed since August 2023.

*8. Has MSD introduced, or does it plan to develop, training for staff so that they can effectively recognise and respond to client's that are experiencing family violence?*

The Ministry established a training programme that trains staff how to recognise, respond, and refer incidents of family and sexual harm. This training is currently being updated in accordance with the Te Aorerekura Workforce Capability Framework. In addition to this training, we have twenty specialist Family Violence Response Coordinators who provide day to day support and guidance for staff, managers, victims, and perpetrators of family and sexual violence.

Since April 2024, over 200 leaders have attended a half day workshop to provide more in-depth training on the Te Aorerekura strategy and how best to support victims of family and sexual violence. A further 130 are scheduled to undertake this training in September and October 2024.

*9. Has MSD introduced, or plan to develop, processes to limit how many times clients have to disclose that they are experiencing family violence?*

We understand that discussing experience of family and sexual violence can be difficult and traumatic for an individual and it is their right to withhold or disclose this information. Our staff are trained to recognise and respond to information and disclosures of family violence in a caring and compassionate way. Often this initiates a referral to special family violence staff or external support agencies. This is done to ensure there is a holistic, victim centred and trauma informed approach to support individuals and their family. Our approach is always to minimise the impact and harm, so clients are not required to disclose or discuss family violence if they choose not to.

*10. What consideration was given to the debt to government framework throughout the development of the Traffic Light System and the introduction of sanctions?*

*11. What advice did the Minister receive about recovering debts owed to MSD when developing the Traffic Light System and the introduction of sanctions?*

The Ministry has not undertaken any modelling and no new obligations have been introduced, therefore your request for this information is refused under section 18(e) of the Act as this information does not exist.

Phase one of the Traffic Light System, which was implemented on 12 August 2024 did not introduce any additional obligations and did not change the nature of financial sanctions or who they apply to. Instead, the current Traffic Light System serves as a resource to assist beneficiaries in comprehending and adhering to their current obligations, enabling them to prevent sanctions and the related consequences.

*12. What advice did the Minister receive about recovering the emergency housing contribution?*

The way Emergency Housing Contribution (EHC) works has not been changed as part of the tightening the gateway work programme, but it was identified as one of the existing expectations clients have that should be incorporated into the new responsibilities framework.

As part of developing the responsibilities framework, Ministers were advised that when an applicant does not pay the EHC, in addition to receiving a warning/non-entitlement period, they are required to set up a debt recovery payment plan with the Ministry for the amount not paid. This debt recovery is a continuation of the previous practise used when EHC is not paid.

Ministers were also advised to retain settings for the EHC level (25% of income from night 8) due the following rationale:

- Ensuring the contribution was equitable and consistent across the housing system.
- People in Emergency Housing (EH)/Transitional Housing have higher housing costs compared to those in Social Housing (SH), and justifies contribution being lower than what some in SH pay.
- Increasing contribution rate above 25% can mean some applicants may become eligible for Accommodation Supplement. This is not intended and we would be required to change primary legislation to add an exclusion for EH Special Needs Grants (like Kāinga Ora /Community Housing Provider Social Housing has).

*13. Was there any consideration of the debt to government framework while developing the Emergency Housing Grants Programme?*

Whilst not explicitly included as rationale in written advice to Ministers, the framework was considered by officials when developing the Emergency Housing Grants Programme, specifically when formulating and justifying our advised settings change to remove the ability to make grants recoverable.

The Ministry advised that recoverable grants were intended to be used as a consequence for an applicant not meeting their responsibilities, but they were rarely used as they were ineffective in changing behaviour and increased applicant debt to the Crown. As a result, the Ministry recommended removing the ability to make grants recoverable, which Ministers agreed to.

Our advice considered the impact this debt can have on clients, which could be thousands of dollars (due to the high costs of motels) and would not support people in being able to access more suitable permanent accommodation. We also advised that removing recoverability was supported by all stakeholders we engaged with.

I will be publishing this decision letter, with your personal details deleted, on the Ministry's website in due course.

If you wish to discuss this response with us, please feel free to contact [OIA\\_Requests@msd.govt.nz](mailto:OIA_Requests@msd.govt.nz).

If you are not satisfied with my decision on your request, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or 0800 802 602.

Ngā mihi nui

pp. 

Magnus O'Neill  
**General Manager**  
**Ministerial and Executive Services**

Excerpt - REP/22/6/553 - Debt to Government: Comparing approaches to writing off income support payment debt, pages 7-10.

## **The Ministry of Social Development's approach to Recoverable Hardship Assistance and benefit overpayment debt**

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### **Recoverable Hardship Assistance and Overpayment debt**

35. As at 31 March 2022, there was more than 578,000 people with debts to MSD, which average \$3,498 per person.<sup>4</sup> In the 2021/22 full year to 31 March 2022, MSD has written off around \$16.3 million in debt or approximately 0.76 percent of the total debt of \$2.133 billion (as at 31 March 2022). \$1.3 billion is attributed to current clients (62 percent).

*Recoverable Hardship Assistance debt is established to help the client meet an immediate and essential need*

36. Hardship assistance is the third tier<sup>5</sup> of assistance in the welfare system. It provides discretionary assistance and is generally one-off. It consists of Special Needs Grants (SNG), of which some are recoverable, and Advance Payments of Benefits (Advances) and Recoverable Assistance Payments (RAPs), which are always recoverable.<sup>6</sup>
37. Hardship Assistance is relatively unique in that hardship is the driver for granting recoverable assistance. Eligibility for hardship assistance is targeted at those with limited cash and assets who have immediate and specific needs that cannot be met by their own resources. For recipients of recoverable hardship assistance, debt occurs when clients contact MSD and request support to meet their immediate and essential needs.

*Overpayment debt can occur when a client's personal or financial circumstances change*

38. Overpayment debt can occur when a clients' circumstances change and MSD does not receive this information in time to update their payments accordingly. Clients are required to notify MSD of any change in their circumstances, including income they receive that affects their benefit entitlement.
39. A few examples include debts created when a client is late in declaring a change in income which would lead to a reduction in MSD payments, or as the result of data matching with other agencies or following a fraud investigation.

### **Legislative provisions to write off and recover debt**

40. The Social Security Act 2018 (the Act) imposes a legislative duty on MSD to take all reasonably practicable steps to recover debt and empowers MSD to recover debts to the Crown.<sup>7</sup> This is reflected in MSD's current recovery and write-off provisions.<sup>8</sup>
41. Section 362 of the Social Security Act 2018 establishes MSD's duty to recover debts. It recognises that welfare assistance is a major form of public expenditure and that the public is entitled to expect that MSD will effectively recover welfare debts. This is also part of MSD's obligations to manage public money responsibly under the Public Finance Act 1989.

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<sup>4</sup> Note that this figure includes all types of debts, including recoverable assistance, overpayments, social housing debt, Student Allowance debt, and fraudulent debt.

<sup>5</sup> The first tier of support in the welfare system is main benefits, the second tier is supplementary assistance.

<sup>6</sup> The third tier also includes on-going support in the form of Temporary Additional Support (TAS) which is a supplementary limited time payment for those who cannot meet their regular essential living costs from chargeable income and other resources, and Emergency Housing Special Needs Grants (EHSNGs) and Housing Support Products (HSPs) which are both recoverable.

<sup>7</sup> Defined at regulation 206 of the Social Security Regulations 2018.

<sup>8</sup> Social Security Act 2018, section 362.

42. MSD must determine a rate or method<sup>9</sup> of debt recovery, but MSD has discretion about what this can be, including the option to defer (suspend) recovery, and these can be amended as clients' circumstances change.<sup>10</sup>
43. MSD does not enforce penalties on debt except in cases of fraud, but this is only used in a small number of circumstances.
44. The Act also provides for exceptions to the duty to recover debt made in the Social Security Regulations 2018 (the Social Security Regulations) and Ministerial Directions.<sup>11</sup> There are currently four main exceptions to MSD's duty to recover debt:
  - 44.1 if the debt was caused by error;
  - 44.2 if exceptions are provided for in the Social Security Regulations;
  - 44.3 if the debt is uneconomic to recover; or
  - 44.4 if the Ministers of Finance and Social Development and Employment have agreed to exceptions for public finance reasons.
45. These exceptions are explained further below.

*Social Security regulations provide for how to test debts to determine whether the debt was caused by MSD error*

46. Social Security Regulations provide for new debts, including recoverable assistance and overpayment debts, to be tested to determine if that debt was created by MSD error to establish whether it should be recovered.<sup>12</sup>
47. Debt caused by MSD error must meet all of the following five criteria to be considered non-recoverable:
  - 47.1 the debt is a result of an error by MSD;
  - 47.2 the client did not intentionally contribute to the error – i.e., whether the client intentionally or deliberately took some action, or failed to take action, or delayed action which resulted in an overpayment;
  - 47.3 the client changed their position – i.e., when a client makes different financial decisions with the overpayment received than they would have without that additional money;
  - 47.4 the client received the money in good faith – i.e., the client received the money without any knowledge of their lack of entitlement to it; and
  - 47.5 it would be inequitable to recover the debt – this requires full consideration of their current circumstances, including their financial position, whether they have the resources to repay the debt, and the degree of any error made by Work and Income.

*The Minister for Social Development and Employment and the Minister of Finance have jointly given an authorisation about some debts that can be written off<sup>13</sup>*

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<sup>9</sup> Including court proceedings and deductions from benefits and other sources.

<sup>10</sup> Clause 4 of the Ministerial Direction states MSD must give consideration to certain matters in relation to rate and method of recovery.

<sup>11</sup> Ministerial Direction on Debt Recovery Amendment 2016 and Delegation from the Minister of Finance and the Minister for Social Development and Employment to the Chief Executive of the Ministry of Social Development to Write-off Crown Assets 2020.

<sup>12</sup> Social Security Regulations 2018, regulation 208

<sup>13</sup> Social Security Regulations 2017, regulation 207(3)

48. The Minister of Finance and the Minister for Social Development and Employment can also use the ability in Social Security Regulations<sup>14</sup> to specify certain types of debt which can be written off and delegate, pursuant to the Public Service Act 2020, the authority to write off debts under a specific set of circumstances to the Chief Executive of MSD. An authorisation to this effect has been given, and specified circumstances include when:
- 48.1 the proceeds of the sale of assets seized by Court order are paid to the Crown;
  - 48.2 the debt or identity of the debtor cannot be proven;
  - 48.3 the debtor is insolvent;
  - 48.4 the agent is insolvent;
  - 48.5 the debtor is deceased;
  - 48.6 the debt is due to foreign exchange balances (due to agreement of payment amount in foreign currency and fluctuations of exchange rates);
  - 48.7 all economic avenues of collection have been exhausted and the debt is \$50 or less;
  - 48.8 the debt cannot be recovered due to estoppel in accordance with the Property Act 2007 (this is in relation to student debt);
  - 48.9 the debtor is a participant in a Witness Protection or Relocation Programme;
  - 48.10 the debt cannot be proven to the Court's satisfaction; or
  - 48.11 the debt established cannot be recovered in accordance with debts caused wholly or partly by errors to which debtors did not intentionally contribute (regulation 208 of the Social Security Regulations<sup>15</sup>).

*MSD may defer (provisionally write off) debts of less than \$20,000*

49. MSD defines uneconomic to recover<sup>16</sup> to be when the cost of recovery outweighs the expected return of debt. MSD currently automatically writes off debts of \$50 or less of non-current clients after 70 days of non-payment.
50. This threshold is based on analysis from 2015 that found that the average cost of collection is \$59.80 per debt. At the time, increasing the write-off limit to \$50 aligned MSD with other agencies' write-off powers and was appropriately balanced with the risk of changing client repayment behaviours.
51. This approach was reaffirmed through the 2020 Delegation from the Minister of Finance and the Minister for Social Development to the Chief Executive of the Ministry of Social Development to Write-off Crown Assets (discussed above).
52. Debts of higher amounts can also be assessed to determine whether collection of that debt is appropriate if:<sup>17</sup>
- 52.1 the debt is less than \$200 and there have been no repayments during the previous six months;
  - 52.2 the debt is less than \$1000 and there have been no repayments during the previous 12 months;
  - 52.3 the debt is less than \$2000 and there have been no repayments during the last 2 years; or

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<sup>14</sup> Social Security Regulations 2018, regulation 207(1)(d)

<sup>15</sup> Previously section 86(9A) Social Security Act 1964.

<sup>16</sup> Social Security Regulations 2018, regulation 207(1)(c).

<sup>17</sup> These timeframes only apply in cases where fraud is not a factor i.e., there are separate conditions for cases of fraud. Some values of debt also require other conditions regarding client identification to be met.

52.4 the debt is more than \$2000 but less than \$20,000 and there has been no ability to gain repayment or communicate with the debtor for at least six years.

53. Debts written off under these grounds can be reactivated once the client accesses social security (including superannuation) again, as recovery is once again feasible. This approach aligns with MSD's duty to recover debt.

*Debt recovery is written off according to conditions in the Social Security Regulations*

54. The Act empowers regulations to be made permitting changes to debt write-off settings.<sup>18</sup> However, since the changes to primary legislation in 2014 which clarified MSD's duty to recover debt, no further debt recovery regulation changes have been made by Government.

55. When making new or amending existing regulations to permit any methods of write-off, the Minister for Social Development and Employment must be satisfied that these changes are likely to:

55.1 prevent accumulation of debt by any category of beneficiary and assist those beneficiaries to reduce their levels of debt while on a benefit;

55.2 assist any category of beneficiary to move from dependence on a benefit to self-support through employment by ensuring that those beneficiaries do not face increasing benefit debt repayments when they enter the workforce;

55.3 provide a positive incentive for beneficiaries to enter employment or stay in employment; or

55.4 achieve more than one of these objectives.

56. Any changes to current settings would have fiscal and operational implications.