

In Confidence

Office of the Minister for Social Development
Cabinet

Social Security (COVID-19—Childcare Assistance) Amendment Regulations 2020

Proposal

- 1 I seek approval for the Social Security (COVID-19—Childcare Assistance) Amendment Regulations 2020 (the Amendment Regulations) to be submitted to Executive Council. This change will ensure that funding levels for early learning and Out of School Care and Recreation (OSCAR) services will be maintained throughout the COVID-19 Alert Levels, by allowing the Ministry of Social Development (MSD) to continue to pay Childcare Assistance. This change is fiscally neutral.

Relation to government priorities

- 2 This proposal contributes to the Government's response to, and recovery from, the COVID-19 pandemic by ensuring that funding levels for early learning and OSCAR services will be maintained throughout the COVID-19 Alert Levels.

Background

- 3 The Ministry of Social Development pays Childcare Assistance to support low- and middle-income caregivers with the costs of childcare to support labour market participation. These subsidies are paid directly to childcare providers. There are two main subsidies within Childcare Assistance¹:
 - Childcare Subsidy – for families with children under 5 years, to attend early learning services or for children up to 6 years if the child receives a Child Disability Allowance (though the majority of government funding for early learning comes from the Ministry of Education).
 - OSCAR Subsidy – for families with children aged between 5 and 13 years to attend before and after school care and school holiday programmes, or up to 18 years old if the child receives a Child Disability Allowance.
- 4 As at 31 July 2020, 17,780 children received the Childcare Subsidy and 6,449 children received the OSCAR Subsidy. In the 2018/19 financial year, the Ministry of Social Development spent about \$123 million in total on Childcare Subsidy and \$52 million in total on OSCAR Subsidy.
- 5 During the Alert Level 4 lockdown period, early learning and OSCAR services were closed. § 9(2)(h) [REDACTED] Given this, MSD suspended all Childcare Assistance payments from 6 April 2020, which was the

¹ There are also two smaller payments MSD makes in relation to childcare - the Guaranteed Childcare Assistance Payment (GCAP), a payment that provides financial assistance to young parents in education with childcare costs, and the Early Learning Payment (ELP), which provides earlier access to early learning services for families with specific needs. The legal authority for GCAP and ELP exists in their respective welfare programmes, not the Social Security Regulations 2018. MSD will ensure that any changes to Childcare Assistance will be appropriately reflected in how GCAP and ELP are treated, including making amendments to these welfare programmes if needed.

earliest possible implementation timeframe, to the end of the Alert Level 4 lockdown period. When New Zealand moved to Alert Level 3, Childcare Assistance payments were resumed for children who were in attendance and whose parents were still eligible.

- 6 While funding from the Ministry of Education for early childhood providers and from MSD for OSCAR providers continued through the lockdown, a number of early learning providers and sector groups raised concerns about revenue loss due to MSD's suspension of Childcare Subsidy payments during Alert Level 4. The wage subsidy was also available to childcare providers, however some providers did not meet the 30 percent revenue loss threshold due to the continuation of the Ministry of Education's funding during lockdown. This was particularly the case for early learning services in low socio-economic areas, who often rely quite heavily on MSD's Childcare Subsidy.
- 7 To address these concerns, the Cabinet Social Wellbeing Committee, with Power to Act, approved a lump sum grant that was paid by the Ministry of Education to early learning providers. This grant was intended to be roughly equivalent to what these providers would have likely received in the Childcare Subsidy under normal circumstances, and was funded via a fiscally neutral adjustment from Vote Social Development to Vote Education [SWC-20-MIN-0029 refers].
- 8 The total cost of these lump sum grants was estimated at \$8.733 million, with an additional cost of \$1.899 million per week if Alert Level 3 was extended. As only 40 percent of services opted in to receive the grant (likely due to the wage subsidy, as services could choose which one would be more beneficial for them), the total amount spent was \$3.016 million.

Now that Auckland is in Alert Level 3, decisions need to be made urgently on the most appropriate way to maintain funding levels for childcare services

- 9 Since midday on 12 August 2020, Auckland has been in Alert Level 3, with the rest of New Zealand in Alert Level 2. These Alert Levels are intended to be in place until at least 26 August 2020.
- 10 Early learning services have been advised that they may remain open if they can safely do so, for children of parents who need to work outside the home (including essential workers). We do not have complete information on the exact number of services currently open in Auckland, however it has been indicated that while most early learning services in Auckland are open, they are reporting no or very low attendance. OSCAR providers in Auckland have been advised to stay closed during Alert Level 3.
- 11 MSD officials estimate that there are about 1,178 childcare providers that receive Childcare Assistance in Auckland. Some providers have already queried MSD as to whether or not their Childcare Assistance will continue being paid, especially given the last suspension during Alert Level 4.
- 12 The Ministry of Education is continuing to fund early learning services over this period, and OSCAR providers will continue to receive their standard grant funding from MSD. In addition to this, providers may be able to receive the COVID-19 Resurgence Wage Subsidy should they meet the eligibility criteria. s 9(2)(f)(iv)

However, this

funding alone may not be sufficient to support providers to remain viable due to the loss of Childcare Assistance payments, parental fees or other income streams.

- 13 It is important that current funding levels for childcare services be maintained to ensure the ongoing viability of the childcare sector, especially when maintaining this funding will help providers to continue to support both labour market participation of parents, and the education and care of children. A durable and workable solution to maintaining this funding is needed as New Zealand moves between Alert Levels.

- 14 s 9(2)(h) [REDACTED]
[REDACTED] This is both in response to the current temporary closures of services in Auckland and in preparation for the possibility of more widespread closures should Auckland (or another area in New Zealand) move to Alert Level 4, or another area in New Zealand move to Alert Level 3.

I propose making amendments to the Social Security Regulations 2018 to allow MSD to continue to pay Childcare Assistance...

- 15 As noted in paragraph 5, at the beginning of the previous lockdown, the decision to suspend Childcare Assistance was made. This was based on s 9(2)(h) [REDACTED] and the availability of other supports such as the wage subsidy.
- 16 However I now propose to maintain funding levels for childcare services.
- 17 The most practical way to maintain funding levels for childcare services is to allow MSD to continue to pay Childcare Assistance during Alert Levels 3 and 4 by amending the Social Security Regulations 2018. This approach provides security of funding for childcare providers in the event of further regional or national movements to Alert Levels 3 or 4. With this approach, providers will receive roughly what they otherwise would have received had Alert Levels 3 or 4 not occurred.
- 18 This is based on the significant administrative difficulties and resultant time delays of suspending Childcare Assistance at a regional level, and in a way that is responsive to potential shifts in Alert Levels moving forward, as well as learnings from the Alert Level 4 lockdown and the impact on the sector from the temporary suspension of Childcare Assistance.

This approach prevents significant administrative impacts for MSD systems and frontline staff

- 19 This approach will be less administratively burdensome than continuing to suspend and then resume Childcare Assistance payments every time childcare services have to close, or a child cannot attend a service, due to being in Alert Levels 3 or 4. MSD's IT systems are not flexible enough to quickly suspend Childcare Assistance payments if regions move to Alert Levels 3 or 4. The time it would take to make the changes would inevitably be longer than the notice period provided before a change in Alert Levels. Further, Childcare Assistance payments cannot be resumed automatically. After the last suspension, 27,000 client records had to be manually resumed. This resumption work is a highly specialised area, limiting MSD's ability to share this work among many frontline staff and reducing capacity of MSD frontline services to support clients.

- 20 Under the current circumstances, having to limit a suspension of Childcare Assistance payments to a particular area or to some services in a particular area, on top of having to suspend payments for children who are staying at home during Alert Level 3 even when a service is open, adds an additional layer of complexity. This would add a logistical burden to the already significant administrative process.

I consider this approach to be justified under the current exceptional circumstances

- 21 While it is not typically MSD's role to support provider viability, these are exceptional circumstances and there is still significant uncertainty ahead.
- 22 There is anecdotal evidence that some early learning and OSCAR providers are struggling to remain viable as they face reductions in attendance due to circumstances outside the services' control. This issue will likely be ongoing for the foreseeable future - for example, even during Alert Level 2, demand for childcare services may be lower than usual as parents may wish to avoid sending their children to childcare if possible. Overall, it is clear that many services are in a worse financial position now than they were at the beginning of the Alert Level 4 lockdown.
- 23 It is also worth noting that to continue to support parents into employment, ultimately childcare services need to continue to be available. Maintaining current funding levels for childcare services, particularly those that support low- to middle- income families, will help them to continue to support both labour market participation of parents, and the education and care of children.
- 24 I propose that this change will apply to both Childcare Subsidy and OSCAR Subsidy. It will not affect any of the eligibility criteria for Childcare Assistance or other financial assistance clients may be receiving. Clients will still be obligated to advise MSD of changes in their circumstances that affect their entitlement to Childcare Assistance (for example, losing a job). Where the change is not related to an absence or closure due to Alert Levels 3 or 4, that change will be actioned accordingly.
- 25 Should the continued payment of Childcare Assistance be agreed to, MSD will monitor the situation and review it as necessary, to make sure this change remains fit for purpose. MSD will report to the Minister for Social Development by December 2020.

This approach will also largely have positive impacts on providers and clients

- 26 Continuing to pay Childcare Assistance during Alert Levels 3 and 4 will help provide greater certainty for parents, which is an important factor in a time that already has significant uncertainty. It will also support a smoother transition back into early learning services once they re-open or as parents return to their physical workplace. This is because parents will have the certainty of knowing that the amount of Childcare Assistance the provider receives has not changed, unless the client's individual circumstances have changed, and therefore when children return to care, their parents will know how much they will need to personally contribute in terms of childcare fees.
- 27 During the last lockdown, some early learning services continued to charge fees to parents despite being closed. Given this, it is likely that some centres will do this again if they need to close due to being under Alert Levels 3 or 4. There is no regulatory body to determine when centres can and cannot charge fees so it will depend on the individual centre's service fee policy.

28 Where centres are already continuing to charge fees despite being closed, the continuation of Childcare Assistance will help to alleviate some of the financial pressure this will present to parents. However, there is a risk that MSD continuing to pay Childcare Assistance could contribute to early learning services deciding to charge fees while they are closed.

29 To mitigate this risk, MSD officials will work with the Ministry of Education to provide clear communications to early learning services that the expectation is for them to not charge fees to parents, should they need to close due to being in Alert Levels 3 or 4.

s 9(2)(f)(iv)

30 s 9(2)(f)(iv)

31 s 9(2)(f)(iv)

32 s 9(2)(f)(iv)

33 s 9(2)(f)(iv)

34 s 9(2)(f)(iv)

35 s 9(2)(f)(iv)

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

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

Financial Implications

38 The proposals outlined in this paper are fiscally neutral as MSD would have provided usual operating funding for Childcare Subsidy and OSCAR Subsidy to the same or similar levels if centres were able to operate in normal circumstances.

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

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

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

Timing and 28-day notice period for legislation

42 The Amendment Regulations, if approved, will be submitted to the Executive Council for consideration on 24 August 2020. They will be published in the New Zealand Gazette on the next available date for gazetting and will come into force on 25 August 2020. I seek a waiver to the 28-day rule on the grounds that the changes in these Amendment Regulations only confer benefits to the public.

Compliance

43 The Amendment Regulations comply, where applicable, with the following:

- the principles of the Treaty of Waitangi;
- the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
- the principles and guidelines set out in the Privacy Act 1993;

- relevant international standards and obligations; and
- Legislation Guidelines: 2018 Edition, published by the Legislation Advisory Committee.

Regulations Review Committee

44 The Amendment Regulations amend regulation 28 of subpart 6 of the Social Security Regulations 2018 to allow MSD to continue to pay Childcare Assistance throughout Alert Levels 3 and 4 (when centres are either operating with limited numbers of children or closed).

45 Giving the Ministry of Social Development the legal authority to continue paying Childcare Assistance during Alert Levels 3 and 4 could be considered to be contradictory to the policy intent of providing Childcare Assistance. This policy intent is stated in section 76 of the Social Security Act 2018 - to "...provide targeted financial assistance to help certain people meet the costs of childcare." s 9(2)(h)

[Redacted]

46 s 9(2)(h) [Redacted]

47 s 9(2)(h) [Redacted]

48 s 9(2)(h) [Redacted]

49 s 9(2)(h) [Redacted]

s 9(2)(h)

Certification by Parliamentary Counsel

- 50 The Amendment Regulations have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Regulatory Impact Statement

- 51 The Treasury has provided the following exemption from a Regulatory Impact Statement:

The Treasury has determined that the regulatory proposals in this paper are exempt from the requirement to provide a Regulatory Impact Statement (RIS) because they are intended to alleviate the short-term impacts of a declared emergency event of COVID-19 outbreak. These proposals are required urgently to be effective, making a complete, robust and timely impact analysis unfeasible. s 9(2)(h)

Population Implications

- 52 Childcare Assistance is specifically targeted to low-income families, so by definition continuing to pay Childcare Assistance during Alert Levels 3 and 4 will directly benefit low-income families.
- 53 About 36 percent of parents receiving Childcare Subsidy and 29 percent of parents receiving OSCAR Subsidy identify as Māori, so Māori parents would be disproportionately impacted if MSD continues to pay Childcare Assistance during Alert Levels 3 and 4.
- 54 The early learning workforce is predominately female (approximately 97%). Therefore, any closures or job losses as a consequence of COVID-19 would disproportionately impact women.
- 55 Childcare Assistance comes with specific settings to cover disabled children and parents – for example, even if a parent is not in work, they may be able to receive Childcare Subsidy for up to 50 hours a week if they are seriously disabled, or receiving a Child Disability Allowance for a child or their sibling. There is also an extended eligibility age range for Childcare Assistance for children who receive Child Disability Allowance. Continuing to pay Childcare Assistance throughout Alert Levels 3 and 4 will ensure these settings are maintained during these periods.

Consultation

- 56 The Department of the Prime Minister and Cabinet (Policy Advisory Group) has been informed. The Treasury and the Ministry of Education have been consulted and are comfortable with the proposals in the paper.

Communications

- 57 Should this change be agreed to, MSD will communicate this to providers and clients, including drawing on the Ministry of Education’s communications channels where relevant.

Proactive Release

- 58 This Cabinet paper will be proactively released, subject to redactions as appropriate under the Official Information Act 1982.

Recommendations

The Minister for Social Development recommends that Cabinet:

- 1 **note** that the Ministry of Social Development has no legal authority to pay Childcare Assistance when childcare services are not available
- 2 **note** that the Ministry of Social Development suspended Childcare Assistance payments during the Alert Level 4 lockdown from 6 April 2020
- 3 **note** that due to the administrative difficulties of suspending Childcare Assistance and in order to maintain funding levels for childcare services throughout the COVID-19 Alert Levels, it is proposed that the Social Security Regulations 2018 are amended to allow Childcare Assistance to continue to be paid throughout the COVID-19 Alert Levels
- 4 **note** that, the Ministry of Social Development will monitor the situation and review it as necessary, to make sure the continued payment of Childcare Assistance remains fit for purpose and the Ministry of Social Development will report to the Minister for Social Development by December 2020
- 5 **agree** to minimise disruption to the Ministry of Social Development services and maintain funding levels for childcare services throughout the COVID-19 Alert Levels by continuing to pay Childcare Assistance
- 6 **s 9(2)(f)(iv)** [Redacted]
- 7 **agree** to amend the Social Security Regulations 2018 to allow Childcare Assistance to continue to be paid throughout the COVID-19 Alert Levels
- 8 **note** that the attached Social Security (COVID-19—Childcare Assistance) Amendment Regulations 2020 will enact the change outlined in recommendations 5 and 7
- 9 **agree** to a waiver of the 28-day rule on the grounds that the changes being made by the Amendment Regulations will only confer benefits to the public
- 10 **authorise** the submission to the Executive Council of the Social Security (COVID-19—Childcare Assistance) Amendment Regulations 2020
- 11 **s 9(2)(f)(iv)** [Redacted]

s 9(2)(f)(iv)

[Redacted]

s 9(2)(f)(iv)

[Redacted]

12

s 9(2)(f)(iv)

[Redacted]

13

s 9(2)(f)(iv)

[Redacted]

14

s 9(2)(f)(iv)

[Redacted]

Authorised for lodgement

Hon Carmel Sepuloni

Minister for Social Development