



17 February 2026

Tēnā koe

Official Information Act Request

Thank you for your request of 5 November 2025, and your clarification of 19 November 2025, requesting information about section CW 52B of the Income Tax Act 2007.

I have considered your request under the Official Information Act 1982 (the Act). Please find my decision on your request set out below.

The following documents are in scope of your request and are being released in full:

- *Cabinet Social Wellbeing Committee Minute – Disability Support System Transformation – Policy and Regulatory Issues*
- *Cabinet Paper: Disability Support System Transformation – Paper 2: Policy and Regulatory Issues*
- *Student Allowance Amendment Regulations (NO 2) 2018 – Letter to Regulations Review Committee*

The following document is being withheld in full under section 9(2)(ba)(i) of the Act as it is subject to an obligation of confidence, and if released, could prejudice the supply of similar information in the future. The greater public interest is in ensuring that such information can continue to be supplied:

- *Correspondence between the Ministry and an individual regarding section CW 52B of the Income Tax Act 2007.*

The following document is being released in part with some information withheld under section 9(2)(g)(i) of the Act to protect the effective conduct of public affairs through the free and frank expression of opinions. I believe the greater public interest is in the ability of individuals to express opinions in the course of their duty.

Please note that as per our email on 6 November 2025, some staff contact details have been withheld as out of scope.

- *Tax policy report: appropriate treatment of disability support payments for income tax purposes*

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.

If you are not satisfied with my decision on your request for documents relating to section CW 52B of the Income Tax Act 2007, 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 or 0800 802 602.

Ngā mihi nui

pp.

A handwritten signature in black ink, appearing to read 'Anna Graham', written in a cursive style.

Anna Graham
General Manager
Ministerial and Executive Services

In Confidence

Office of the Minister of Health
Office of the Minister for Disability Issues
Office of the Associate Minister of Health

Chair, Cabinet Social Wellbeing Committee

DISABILITY SUPPORT SYSTEM TRANSFORMATION - PAPER 2: POLICY AND REGULATORY ISSUES

Proposal

1. This paper supports the transformation of the disability support system through proposing:
 - a. clarifications of the income tax and financial assistance treatment of disability support payments;
 - b. topping up disability support payments to address issues relating to GST; and
 - c. a future policy work programme relating to the transformation.

Executive summary

2. The move to make payments into disabled people's bank accounts in advance of support being purchased ('direct payments of disability support') may lead to them being counted as income and/or assets, cash assets or realisable assets for some income tax and financial assistance purposes.
3. This issue can be addressed through treating direct payments of disability support as:
 - a. exempt income for income tax purposes;
 - b. exempt from being treated as income, assets, cash assets or realisable assets for financial assistance purposes (eg, under the Social Security Act 1964, the Housing Restructuring and Tenancy Matters Act 1992, and the Education Act 1989).
4. The move to direct payments of disability support also has an impact on GST treatment:
 - a. Currently, support is usually delivered by GST registered providers who can claim GST back from Inland Revenue.
 - b. In future, people who purchase support themselves will be unable to claim back from Inland Revenue the GST they incur in purchasing support.
5. We recommend that the GST issue be addressed through grossing up direct payments of disability support by the estimated average of the gross up required. This is currently estimated to be 4.5% of direct payments of disability support, but will need to be reviewed periodically.
6. The cost of grossing up the personal budgets will be met through increasing the prototype's funding. This is expected to be approximately fiscally neutral, as this funding will likely be returned to the Crown in the form of GST revenue and increased income tax payable by the people delivering support.
7. The approach to the high-level design of the nationwide transformed system will reflect what is learnt during the MidCentral prototype, especially what makes the biggest difference to the lives of disabled people and whānau, together with the prototype's financial implications.

8. There is a range of other policy issues likely to significantly influence the final high-level design and how it is implemented. This paper outlines a work programme for addressing those issues.

Background

9. In April 2018, Cabinet Social Wellbeing Committee (SWC) agreed to implement a prototype of a transformed disability support system in the MidCentral DHB region from 1 October 2018 [SWC-18-Min-0029 refers]. At the same time, SWC invited report backs on a range of issues relating to the transformation. The issues on which SWC sought report backs are covered in three papers on the following topics:
 - a. Paper 1: Prototype Implementation and Funding Allocation, which is being considered at the same SWC meeting as this paper.
 - b. Paper 2 (this paper): Policy and Regulatory Issues.
 - c. Paper 3: Funds within the Scope of the Transformed System. It is expected that this paper will be considered by SWC on 12 September 2018.
10. This paper, Policy and Regulatory Issues, responds to invitations for report backs on three matters:
 - a. The appropriate tax treatment of the proposed disability support system payments.
 - b. The proposed changes to legislation to exempt personal budgets as chargeable income or cash assets for the purpose of determining eligibility for benefits, supplementary assistance or public housing.
 - c. Broader policy proposals to support the transformation.
11. The transformation involves changing some fundamental underpinnings of the disability support system. Changes include asking disabled people and whānau a different underlying question (from 'what support do you need?' to 'what's a good life for you and how can we help you get there?') and when and how the system supports people (from 'support for people with the highest need as determined by the system' to 'responding early to the things that people and whānau are concerned about and build their capability to respond better').
12. The fundamental nature of these changes means that the transformation raises a range of policy and regulatory issues. These policy issues are discussed in the following sections.

Changes to the Tax and Financial Assistance System

ISSUES RELATED TO TAX AND FINANCIAL ASSISTANCE

13. Disability support is a form of government funded financial assistance. Its purpose is to assist disabled people and their whānau to overcome the barriers they face as a result of living in a disabling society. This purpose would be undermined if the operation of the tax and social assistance regimes resulted in the value of support being reduced.
14. The transformation involves a fundamental shift in the way that disability support is purchased that has the unintentional effect of reducing the value of that support to disabled people. The change in the way in which support is purchased is the following:
 - a. ***The current system is based on the 'purchaser-provider' model***, with support primarily delivered to disabled people through contracted providers. Funds are typically paid to providers in arrears, with the provider required to meet their own tax responsibilities in relation to disability support payments. Payments are not generally made to disabled people unless they are to reimburse recipients for actual or intended costs arising from their disability. As a result, those payments are not

treated as income of the disabled person for income tax or financial assistance purposes.

- b. ***The transformed system is based on a 'direct support' model***, with disabled people able to purchase support themselves if they wish to do so. In many cases, this leads to funds being paid into bank accounts that are controlled by (or on behalf of) a disabled person in advance of the actual support being purchased (although some support will continue to be delivered through contracted organisations).
15. Although these types of changes will primarily be made in the MidCentral prototype, similar changes are being, or have already been, made in others parts of the disability support system. This includes direct funding of support in an Enabling Good Lives demonstration in Waikato, and the nationwide introduction of Flexible Respite Budgets (in place of the current carer support subsidy payments which have tight rules over how they can be used).
 16. The move to payments being made into disabled people's bank accounts in advance of support being purchased ('direct payments of disability support') may lead to them being counted as income and/or assets, cash assets, or realisable assets for some income tax and financial assistance purposes. This will result in the inequitable treatment of people who receive the assistance through a direct support model, compared to those who receive support through the purchaser provider model.
 17. The possible consequences that have been identified to date are that direct payments of disability support:
 - a. may be subject to income tax under the Income Tax Act 2007. Working for Families tax credit entitlements and student loan repayment obligations may also be affected;
 - b. may adversely affect people's eligibility for main benefits (e.g. Jobseeker Support, Supported Living Payment) and hardship assistance (e.g. Temporary Additional Support) or supplementary assistance (e.g. the Accommodation Supplement, the Disability Allowance or through Ministerial welfare programmes) under the Social Security Act 1964;
 - c. when held in a person's bank account, may adversely impact on their eligibility for public housing and increase the level of Income Related Rent charged under the Housing Restructuring and Tenancy Matters Act 1992 (HRTMA);
 - d. may adversely affect a disabled person's, or their son's or daughter's, eligibility for a Student Allowance under the Student Allowances Regulations 1998; and
 - e. may adversely affect people's eligibility for Residential Care Subsidy or the level of contribution to the cost of care or living costs that people are required to make when they live in long term residential care, including care that is wholly or partially funded by the Ministry of Health and District Health Boards.

RESPONDING TO THE IDENTIFIED ISSUES RELATED TO TAX AND FINANCIAL ASSISTANCE

18. Each of these issues that have been identified to date can be addressed through primary legislation, regulation or welfare programme amendments. The issues in paragraph 17 (a) can be addressed by amending the Income Tax Act 2007 to clarify that the direct payment of disability support is exempt income. This exemption would currently apply in the MidCentral prototype, the Enabling Good Lives Waikato demonstration, and to Flexible Respite Budgets.

19. The issues in paragraph 17 (b) to (e) above can be addressed through amending the relevant definitions of income and/or assets, cash assets, and realisable assets in the applicable legislation, regulation or Ministerial welfare programme. These amendments will make it clear that the direct payments of disability support will not be treated as income and/or assets, cash assets or realisable assets.
20. The rewrite of the Social Security Act includes rewriting the regulations. The changes to the Social Security Regulations to exclude disability support payments from being treated as income or assets are being amended in tandem with the rewrite changes.
21. Legislative amendments are not required in respect of the Working for Families tax credits or student loan repayment obligations. The Minister of Revenue has agreed that disability support will neither be included in the relevant adjustments to net income for student loan purposes nor treated as family scheme income for Working for Family calculations.
22. The recommended changes to legislation and regulations are described in Appendix One. Each of these changes will have minimal compliance costs and be fiscally neutral. That is because the changes seek to leave disabled people and whānau in the same financial situation that they are in under the current disability support system.

FURTHER ISSUES RELATED TO TAX AND FINANCIAL ASSISTANCE

23. The Legal Services Act, 2001 may require legislation and/or regulation change, to ensure that personal budgets do not impact the eligibility of legal aid. We will continue to work with Ministry of Justice to determine how to resolve this issue.
24. It is possible that further issues related to tax and financial assistance may be identified as we learn how the MidCentral prototype operates in practice, and disabled people's experiences. As required, advice will be provided to Cabinet on the most appropriate way of responding to them.

Addressing the impact of moving to direct payments on Goods and Services Tax

THE ISSUE RELATED TO GST

25. The move to payments being made into a disabled person's bank account in advance of support being purchased leads to a different GST treatment (see Appendix Two for a diagram of the differences in the treatment):
 - a. ***Under the current system***, support is delivered by contracted providers, most of which are registered for GST. These GST-registered providers can claim back from Inland Revenue GST they have incurred in purchasing goods and services on behalf of a disabled person.
 - b. ***Under the transformed system***, people who receive direct payments of disability support cannot claim back any GST they incur in purchasing goods and services. That is because they are either not registered for GST, or if they are registered, the spending is not related to a taxable activity.
26. If disability support payments are not grossed up to account for this, purchasing power is reduced when disabled people purchase goods and services for themselves, compared with the scenario where support is delivered by a contracted provider. There is an equivalent reduction in the fiscal cost to the Crown. The actual amount of the reduction in purchasing power depends on the proportion of support that is directly funded (i.e. paid into bank accounts controlled by disabled people (or their nominee) and, of that, the proportion of goods and services purchased that are subject to GST.
27. The net impact on people who manage their own funding not being able to claim GST from the Crown is estimated to be around \$112,000 in the first year of the prototype, rising to about \$220,000 in the third year. These estimates are based on the GST incurred by people who manage their own funding on the combination of:

- a. **the amount of funding that disabled people choose to manage themselves** (i.e. it is paid into a bank account that they control). Our indicative forecasts are that this could be around \$2.5 million in the first year of the prototype, rising to about \$4.9 million by the third year of the prototype; and
 - b. **the proportion of funding that is paid into people's bank accounts that attracts GST**. Our previous experience suggests that around 30% of that funding will attract GST, with the remainder used to employ staff directly or to purchase support from non-GST registered organisations (which do not attract GST).
28. While these estimated amounts are based on our previous experience with flexible budgets, they should be treated with some caution. That is because the MidCentral prototype represents a more fundamental transformation than has previously been carried out.
29. It should also be noted that the focus of this response is on learning about the best way to resolve the GST issue through the MidCentral prototype. This issue has, however, arisen (and has not been resolved satisfactorily) in various other initiatives, including the Enabling Good Lives demonstrations in Waikato and Christchurch, the nationwide Individualised Funding scheme, and will arise through the nationwide introduction of Flexible Respite Budgets.

RESPONDING TO THE ISSUE RELATED TO GST

30. The best way to address the GST issue is through additional funding for a GST gross up, as legislation change is not feasible given the complexity of the change and the resulting substantial compliance costs. Furthermore, any changes to the Goods and Services Tax Act 1985 to address the GST issue would be inconsistent with New Zealand's broad based low-rate GST framework. New Zealand's GST is regarded throughout the world as a model consumption tax as it is broad-based with very few exemptions. This ensures that GST is as efficient and equitable as possible.
31. Ideally, a gross up would be fiscally neutral, with the amount of the gross up balanced by the amount of additional government revenue that is collected. This scenario is reflected in the diagram entitled, 'Implications of grossing up or not grossing up personal budgets' in Appendix Two. This has the same fiscal impact as the current situation in which support is purchased from contracted providers.
32. In order to be fiscally neutral there either needs to be a reconciliation process at the end of the year or the amount of the gross up needs to be equivalent to the amount of the spent GST. These elements are discussed below.

Reconciliation process

33. Whatever the amount of the GST gross up at the start of the year, requiring a reconciliation process at the end of the year would result in the gross up being fiscally neutral. This option is not, however, supported for several reasons:
- a. It could result in some disabled people having insufficient funds to meet any repayments due at the end of a year, or unnecessarily cutting back on worthwhile expenditure during the year out of concern that a repayment would be required.
 - b. It would impose significant compliance costs on disabled people.
 - c. It would be administratively challenging for many disabled people and whānau to use, and is likely to cause considerable anxiety.

Amount of the 'gross up'

34. If there is no reconciliation process, direct payments of disability support would need to be grossed-up by an estimated \$112,000 in 2018/19 and \$220,000 in 2019/20 to cover the expected amount of GST incurred. This additional funding would likely be returned to the Crown in the form of additional GST incurred or increased income tax payable by the people delivering support.

35. There are two main options for deciding how much each person's budgets should be grossed up:

- a. **An average percentage gross up**, based on the estimated amount of GST that would be payable. We estimate that this will lead to direct payments of disability support being grossed up by 4.5% in 2018/19. This would be easy to use and straightforward to administer and manages the government's fiscal risk well.

Against this, there will be a poor match between the amount of the gross up and the additional GST payable by some people. Furthermore, the percentage gross up required will only become clear over time in light of experience within the prototype. The percentage would need to be adjusted periodically to reflect that.

- b. **An individually calculated gross-up**, based on the amount of GST that each disabled person expects to pay, given how people plan to spend their personal budget. This approach may be slightly harder to administer and harder to use.

On the other hand, it may lead to a better match between the amount of the gross up and the amount of GST that people pay when purchasing goods and services. Experience to date with personal budgets, however, is that there are often many differences between what people expect to spend the funding on and what they actually spend the money on. Furthermore, there is a risk that this will increase costs as a result of people over-estimating the amount of GST they expect to incur.

36. On balance, the preferred approach is topping up direct payments of disability support by the estimated average of the gross up required, with the amount of the gross up reviewed periodically. Its advantages of administrative simplicity, ease of use and effective management of fiscal risks outweigh the possibility of more closely matching the actual amount of GST incurred with individually calculated gross up amounts.

37. The preferred approach will, however, mean that the amount of the GST gross up is for some people more, and for some people, less than the GST incurred. Furthermore, there will need to be review of the actual amount of the gross up that is required, to inform future advice on the possible national roll out of the transformed system.

38. There was support from some people in the disability community for an approach of topping up personal budgets by 15%, which would allow all disabled people to cover any GST that was incurred. This option would, however, result in the prototype needing to fund an estimated \$371,000 in 2018/19 and \$540,000 in 2018/19 and 2019/20, which is above what could be met within the funding available for the prototype. This amount of grossing up would have net fiscal costs of \$221,000 or \$321,000, and would reduce the amount of funding available to purchase support from providers.

Future Policy Work

39. Cabinet has asked Ministers for advice on the high-level design of the transformed system and the approach to implementation issues in late 2020. In general, the approach to these issues will reflect what is learnt during the MidCentral prototype. That will be especially influenced by what makes the biggest difference to the lives of disabled people and whānau, and what influences the financial implications of transforming the system.

40. There are, however, several policy issues that could have a significant influence on the high-level design and approach to implementation. The most significant of those issues are discussed below.

SYSTEM SCOPE

41. The MidCentral prototype is focused on people who are eligible for support funded through the Disability Support Services group in the Ministry of Health (DSS), with funding predominantly coming from Vote Health. There are, however, other groups of disabled people who are outside the scope of the MidCentral prototype, and who have access to differing levels of disability support across government.
42. For example, within Vote Health, people with long-term health conditions are eligible for a limited range of disability support through DHBs, while people with neurological disorders (such as Foetal Alcohol Syndrome Disorder, which also has an overlap with mental health) are not eligible for any disability support. In contrast, other government agencies typically have broader eligibility criteria.
43. A crucial question for the design of the nationwide transformation, therefore, will be the scope of people covered by it. There are two broad options:
- a. **Option one: Anyone with a disability who seeks support is eligible.** Under this approach, a specific diagnosis is not required. On initial analysis, this approach is more consistent with the design of the transformed system.
 - b. **Option two: Expand eligibility to specified groups of disabled people.** Under this approach, eligibility for support would continue to be based on the diagnosis of a specific impairment, together with information on the impact this has on them.
44. Future policy work will seek to understand the benefits and implications of these two options, and the most appropriate pathway for transitioning to the preferred alternative.

MACHINERY OF GOVERNMENT REVIEW

45. A Machinery of Government review, of the organisational form and governance arrangements for the transformed system has previously been agreed to by Cabinet [SWC-18-Min-0029 refers]. Consistent with the overall approach to the transformation, that review will be carried out jointly by representatives from the disability sector and officials. Ministerial approval of the terms of reference for this review will be sought by 30 September 2018, with the review commencing after the MidCentral prototype begins operating.
46. Commencing the review after the prototype has begun will allow it to be informed by what is learned in the MidCentral prototype. It is envisaged that a report back from this review will be provided in late 2020, alongside the more general advice on system transformation.

FAMILY CARERS

47. The approach to the payment of family carers in the MidCentral prototype will reflect the Government's overall policy, which is being addressed through a paper on, "Options for Change to Funded Family Care" that is due to be considered by SWC on 5 September 2018. Funded Family Care will, however, take place in a very different environment from the current system. In the transformed system, people will typically work with Connectors to build broader support networks, and develop safeguarding arrangements that reduce the reliance on family carers. Over time, this is expected to reduce the expectation that family carers will focus on supporting their disabled family member full-time.

RESIDENTIAL CARE

48. Reforming residential care is crucial to achieving better outcomes for disabled people and for the overall financial viability of the transformed system. Concerns about the limited choices and decision making authority of disabled people in, and the high costs of, residential care compared with people living in the community (e.g. costs increase by more than \$50,000 a year on average when people move to residential care) are a strong driver for system transformation. The significance of these concerns is highlighted by the high proportion of adults supported by DSS who live in residential care eg, in the MidCentral region about 38% of working age people (370 out of 947 people) live in residential care.
49. Within the transformation, there will be an early focus on supporting people to remain living independently in the community rather than entering residential care. Where possible, people will also be supported to move from residential care to the community. But, there is also a need to revisit the current arrangements for funding residential care that were agreed to by Cabinet in the 1990s [CAB (94) M33/3A refers]. Further analysis is required to determine the most appropriate alternatives to the current residential care arrangements within the transformed system. Cabinet approval for the new funding arrangements will likely be sought in 2019.
50. In addition, Housing New Zealand Corporation (HNZC) has approximately 1,100 Community Group Housing (CGH) houses nationwide which are used for intellectual, physical and psychiatric residential care purposes. These houses are often large and significantly modified. If a significant number of occupants of these houses were to move out of residential care this creates two potential implications.
 - a. HNZC may need to dispose of large, modified properties.
 - b. Occupants will need to secure appropriate housing in the community which may require some form of government support.
51. HNZC is comfortable that any changes to its portfolio will initially be small. However, before any decisions are made about extending the prototype, HNZC and other Crown housing agencies' will work with the Ministry of Health to ensure the potential housing implications are understood.

COMPULSORY CARE AND REHABILITATION UNDER THE INTELLECTUAL DISABILITY (COMPULSORY CARE AND REHABILITATION) ACT 2003

52. The Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (ID (CC&R) Act) provides a care and rehabilitative framework for individuals with an intellectual disability who are going through the criminal justice system. Individuals receive a range of supports currently funded by DSS and coordinated by a Forensic Coordination Service.
53. Within the MidCentral prototype, the focus is on providing early support to disabled people and their whānau. Early and effective support is essential to managing the risk of individuals entering the criminal justice system. Careful consideration will need to be given to this group during further development of the prototype.
54. This could include consideration of whether care and rehabilitation provided (including the ID (CC&R) Act) could be brought more into line with the EGL vision and principles. That would involve analysing the Act's provisions against the EGL vision and principles, to determine what changes it might be desirable to recommend, within the constraint that an element of compulsion underpins the Act. This analysis, and associated consultation, would likely take several years to complete.

IMPROVEMENTS TO SAFEGUARDING ARRANGEMENTS

55. Effectively safeguarding disabled people requires a whole community response to preventing, detecting and reporting neglect and abuse of disabled people and includes specific responses for safeguarding vulnerable adults. Although disabled people are at significantly greater risk of abuse and neglect than New Zealanders generally, there is a concern that current legislation and policy settings may not protect them to the same extent. There would be benefit from further exploring the extent of this issue across government and, where it is identified, possible options for improving the protection for disabled people. Much of this work is, of necessity, across government and is appropriately led by the Office for Disability Issues, which has broad oversight of issues for all disabled people.

Supported decision making

56. One particular area where further development is required is supported decision making, which is an essential underpinning of effective safeguarding within the transformed system. Under supported decision making, the focus is on supporting disabled people in a form that matches their abilities, along with appropriate safeguarding, so their will and preference drives decision making about them. This contrasts with substituted decision making, under which another person is appointed to make decisions on behalf of a disabled person (such as that provided by the Protection of Personal and Property Rights Act 1988).

57. Supported decision making is a difficult and challenging subject because it is a very different way of enabling a disabled person to make choices and exert control over their lives than is often practised now. The Minister for Disability Issues has recently asked the Ministry of Social Development to engage with community stakeholders to develop a shared understanding of what supported decision making means for New Zealand. This work will draw on evolving international practice with applying supported decision making in real situations, as well as how different jurisdictions have responded with policy and legislative changes. It will also be consistent with requirements in the Convention on the Rights of Persons with Disabilities.

58. The development of a shared understanding of supported decision making is expected to be completed by the end of 2019. This timeframe will enable the work to be informed by the MidCentral prototype's use of supported decision making. The prototype itself will be informed by applying supported decision making in its work with individual disabled people and whānau within the MidCentral DHB region, as well as more general feedback from the disability community in the region.

59. The Minister for Disability Issues intends to report back to Cabinet on the outcome of this work, and the extent to which current policy and legislation makes implementing the approach more difficult. Although this work will not propose legislative change itself, it should inform future decisions on changing legislation.

Health and Disability Services (Safety) Act 2001

60. The approach to monitoring and certifying residential disability providers under the Health and Disability Services (Safety) Act 2001 and its associated standards is inconsistent with the design of the transformed system. In particular, it is inconsistent with the safeguarding framework through its emphasis on systems and processes, rather than the lives that disabled people lead. A concern that is often expressed within the disability community is that providers may have systems and processes that look good on paper, but may not translate to the residents living good lives. Furthermore, the narrow focus on residential care may not be appropriate in a more flexible transformed system.

61. It may be possible to develop workarounds that allow a stronger focus within the MidCentral prototype on whether people living in residential care are living good lives. It is unlikely, however, to be desirable to continue with any workarounds when the transformed

system is rolled out nationally. Further work is required to determine what changes are necessary to bring the Health and Disability Services (Safety) Act 2001 into line with the overall approach to the transformed system.

Complaints processes

62. Although the Ministry of Health has a complaints process, the disability community is concerned that there is no single independent mechanism for dealing with the wide range of complaints they might have regarding the disability support system. The main independent complaints mechanisms available at present are the Health and Disability Commission (which has a relatively narrow remit that is determined by the Code of Health and Disability Services Consumers' Rights), the Ombudsman, or the Courts.
63. Furthermore, feedback from a working group from the disability community, which assisted with developing safeguarding arrangements, is that the available mechanisms do not necessarily understand or respond well to disabled people. This makes it difficult to have complaints resolved successfully. Further consideration is required to determine the best way of responding to these concerns. The issues to be considered include the scope of complaints that need to be addressed, the range of resolution options, the mandate for it, the process that would be followed, how disabled people should be involved in an independent process, and the entity that should manage the process.

NEXT STEPS IN THE POLICY WORK PROGRAMME

64. An indicative timetable for the next steps in the policy work programme to support a possible nationwide transformation of the disability support system is set out in Table One below.

TABLE ONE: NEXT STEPS IN THE POLICY WORK PROGRAMME

Deadline	Action
September 2019	Advice on options for bringing residential care funding arrangements into line with the transformed system.
September 2019	Advice on options for a single independent process for complaints regarding the disability support system.
September 2019	Advice on possible amendments to the Health and Disability Services (Safety) Act 2001 to reflect the safeguarding approach developed for the transformed system.
September 2019	Advice on options for amending the ID (CC&R) Act in line with the EGL vision and principles that underpin the transformed system.
December 2019	Advice on a shared understanding of supported decision making and barriers to implementing it within current policy and legislation.
Late 2020	Advice on the scope of a nationwide transformation of the disability support system.
Late 2020	Advice on organisational form and governance arrangements for the transformed system (the Machinery of Government Review).

Financial implications

65. The only financial implications arising from the proposals outlined in this paper relate to the GST grossing up proposals. The up-front costs of grossing up direct payments of disability support (estimated to be \$112,000 in 2018/19 and \$220,000 in 2019/20) will be met by increasing funding for the MidCentral prototype. Doing this is expected to be approximately fiscal neutral as this funding will likely be returned to the Crown in the form of GST revenue and increased income tax payable by the people delivering support. The funding sought in the future or grossing up payments may need to be modified in light of actual GST payments in the prototype. The additional funding will come from the Between Budget Contingency.

Consultation

66. This paper was written by the Ministry of Health, in association with the Ministry of Social Development and Inland Revenue. The Ministries of Education, Youth Development, Justice and Transport, The Ministries for Business Innovation and Employment, Women and Pacific Peoples, Oranga Tamariki - Ministry for Children, ACC, Te Puni Kōkiri, the Departments of Corrections, the Department of The Prime Minister and Cabinet, Housing New Zealand, Statistics New Zealand, New Zealand Police, the State Services Commission and The Treasury were consulted. Their views have been included in the paper.
67. The proposals that form the core of the paper were developed through a co-design process that involved disabled people and whānau, representatives of disability NGOs and providers, unions and officials.

Legislative implications and impact analysis

68. There are several proposals in this paper with legislative implications. It is proposed that the amendments to the Income Tax Act 2007 be introduced as a Supplementary Order Paper to the Taxation (Annual Rates for 2018-19, Modernising Tax Administration, and Remedial Matters) Bill.
69. The Minister for Social Development will instruct the Parliamentary Counsel Office to draft the necessary set of amendments to regulations concerning income support, student allowances, residential care subsidy and housing assistance on the basis of Cabinet's decisions. The completed draft regulation changes will be submitted for consideration by the Cabinet Legislation Committee and, once approved, notified in the New Zealand Gazette. The Minister for Social Development will also instruct officials to make the necessary changes to ministerial directions and welfare programmes made under the Social Security Act 1964. It is expected that the Cabinet paper to amend these regulations will be ready in September 2018.
70. Legislation and regulatory change is being progressed as quickly as possible, and no issues are anticipated for the prototype.
71. The Regulatory Quality Team at the Treasury agreed that no formal Impact Analysis was required in support of the proposals in this paper, since the intention is to ensure that there is no impact on the affected individuals.
72. Future work on the broader policy issues raised by the transformation may lead to further legislative and regulatory proposals. Some areas where legislation change might be required are the following:
 - a. The involvement of disabled people in governance of the transformed disability support system.
 - b. Bringing the ID (CC&R) Act into line with the transformed system, to the extent that this is feasible.
 - c. Bringing the Health and Disability Services (Safety) Act 2001 in line with the transformed system.
 - d. Reflecting a supported decision making approach in the Protection of Personal and Property Rights Act 1988.
 - e. Implementing a single independent complaints process for the transformed system.

Human rights

73. The proposals outlined in this paper are consistent with the Human Rights Act 1993, the New Zealand Bill of Rights Act 1990 and the UN Convention on the Rights of Persons with Disabilities 2006. They incorporate a rights-based approach to supporting disabled people.

Gender implications

74. More males than females will be directly affected by the transformation of the disability support system because a higher proportion of people currently supported by DSS in the MidCentral region are male. More females than males will, however, be indirectly affected by the transformation because females provide a higher proportion of unpaid support than males.

Publicity

75. The Minister for Disability Issues, and the Minister and Associate Minister of Health, will make ongoing announcements about the MidCentral prototype. This Cabinet paper will be publicly released once decisions on it have been made by Cabinet.

Proactive release

76. The Minister of Health, Minister for Disability Issues and the Associate Minister of Health propose to release the paper proactively subject to redactions as appropriate under the Official Information Act 1982.

Disability perspective

77. The disability community strongly supports resolving the issues that are discussed in this paper. The working group established to address these issues supports the approaches proposed in this paper, apart from the issue relating to GST. The working group had a preference for grossing up GST payments by 15%, rather than the proposed 4.5%.

78. There were mixed views on the need for a reconciliation process. While it was generally felt that this would complicate the process more than necessary, there was a view from some people on the working group that if some people will pay more in GST than they receive in the gross up, then an optional reconciliation process should be available to reimburse people for any additional GST expense not covered in the gross-up. A reconciliation process in this circumstance would have fiscal costs for the government.

Recommendations

The Minister for Disability Issues, the Minister of Health, and Associate Minister of Health recommend that Cabinet Social Wellbeing Committee:

BACKGROUND

1 **Note** that in April 2018, Cabinet Social Wellbeing Committee agreed to implement the prototype of the transformed disability support system in MidCentral from 1 October 2018; and invited report backs on:

- 1.1 the appropriate tax treatment of the proposed disability support payments;
- 1.2 any proposed changes to legislation to exempt personal budgets as chargeable income or cash assets, for the purpose of determining eligibility to benefits, supplementary assistance or public housing; and
- 1.3 broader policy proposals to support system transformation.

INCOME TAX ACT AMENDMENT

2 **Agree** that direct payments of disability support should be treated as exempt income for income tax purposes;

- 3 **Note** that the direct funding disability support payments currently covered by recommendation 2 are:
- 3.1 Waikato Enabling Good Lives demonstration payments;
 - 3.2 MidCentral prototype payments; and
 - 3.3 Flexible Respite Budgets.
- 4 **Agree** to amend the Income Tax Act 2007 to include direct funding disability support payments as exempt income.
- 5 **Authorise** the Minister of Revenue to instruct Inland Revenue to draft the necessary amendments to the Income Tax Act 2007.
- 6 **Agree** that, in order to provide clarity at the earliest possible date, the legislative amendment referred to in recommendation 4 should be included in a Supplementary Order Paper to the Taxation (Annual Rates for 2018-19, Modernising Tax Administration, and Remedial Matters) Bill.

SOCIAL SECURITY AND EDUCATION ACT AMENDMENTS

- 7 **Agree** that direct payments of disability support should be exempt from being treated as income or cash assets for assistance provided under the Social Security Act 1964.
- 8 **Agree** to amend the following regulations to give effect to recommendation 7 above:
- 8.1 the Social Security (Income and Cash Assets Exemptions) Regulations 2011;
 - 8.2 the Social Security (Temporary Additional Support) Regulations 2005; and
 - 8.3 the Social Security (Long-Term Residential Care) Regulations 2005.
- 9 **Agree** that, for study starting on or after 1 January 2019, direct payments of disability support made to students should be exempt from being treated as personal/ couple income for Student Allowance purposes.
- 10 **Agree** to amend the Student Allowances Regulations 1998 to give effect to recommendation 9 above.
- 11 **Authorise** the Minister for Social Development to issue drafting instructions to the Parliamentary Counsel Office to give effect to the regulation changes in recommendation 8 and 10 above.
- 12 **Note** that the Minister for Social Development intends to amend Ministerial welfare programmes with separate specific definitions of income and/or assets to ensure that disability direct payments of disability support do not affect assistance delivered through these programmes.

HOUSING RESTRUCTURING AND TENANCY MATTERS ACT 1992 AMENDMENTS

- 13 **Agree** that direct payments of disability support be excluded from the definition of income used to determine eligibility and continued eligibility for social housing.
- 14 **Agree** to amend the Ministerial Direction on Eligibility for Social Housing and the Ministerial Direction on Continued Eligibility for Social Housing to give effect to the decision in recommendation 13 above.
- 15 **Agree** that direct payments of disability support should be excluded from the definition of income used to calculate Income-Related Rent.

- 16 **Agree** to introduce new Regulations under section 114 of the Housing Restructuring and Tenancy Matters Act 1992 Regulations to give effect to the decision in recommendation 15 above.
- 17 **Authorise** the Minister of Housing and Urban Development to issue drafting instructions to the Parliamentary Counsel Office to give effect to the regulation changes in recommendation 16 above.

FURTHER ISSUES RELATED TO TAX AND FINANCIAL ASSISTANCE

79. **Note** that, as required, advice will be provided to Cabinet on how to resolve any further issues related to tax and financial assistance that are identified during the MidCentral prototype.

ADDRESSING THE GST ISSUE

- 18 **Agree** that direct payments of disability support be grossed up by the estimated average amount of GST that is expected to be incurred in the MidCentral prototype.
- 19 **Note** that officials estimate that the required gross up will be 4.5% of direct payments of disability support.
- 20 **Note** that this approach means that the amount of the GST gross up will, for some people, be more, and for other people, be less than the GST payable.
- 21 **Agree** that there be no reconciliation process at the end of the year to adjust the GST gross up to reflect the actual amount of GST paid.
- 22 **Note** that the amount by which budgets are grossed up, and the level of additional funding required, will be reviewed and may be adjusted periodically to reflect the amount of GST actually incurred by people with direct payments of disability support.
- 23 **Agree** to increase the funding for the MidCentral prototype of the transformed disability support system to cover the costs of grossing up personal budgets by the estimated amount of GST that is expected to be incurred.
- 24 **Approve** the following changes to appropriations to give effect to the policy decision in recommendation 23 above, with a corresponding impact on the operating balance:

Vote Health Minister of Health	\$m – increase/(decrease)				
	2018/19	2019/20	2020/21	2021/22	2022/23 & Outyears
Non-Departmental Output Expense: National Disability Support Services	0.112	0.220	0.000	0.000	0.000

- 25 **Note** that the impact on the operating balance is expected to be offset by additional GST and income tax revenue.
- 26 **Agree** that the proposed change to appropriations for 2018/19 above be included in the 2018/19 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply.
- 27 **Agree** that the expenses incurred under recommendation 24 above be a charge against the between-Budget contingency, established as part of Budget 2018.

BROADER POLICY ISSUES

- 28 **Invite** the Minister for Disability Issues, the Minister of Health and/or the Associate Minister of Health to report back to Cabinet in due course on the following policy issues associated with the transformation:
- 28.1 options for bringing residential care funding arrangements into line with the transformed system;

- 28.2 how to implement the Government's Family Carers Policy within a transformed disability support system;
- 28.3 options for a single independent process for complaints regarding the disability support system;
- 28.4 possible amendments to the Health and Disability Services (Safety) Act 2001 to reflect the safeguarding approach developed for the transformed system;
- 28.5 options for amending the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 in line with the EGL vision and principles that underpin the transformed system;
- 28.6 the scope of a nationwide transformation of the disability support system; and
- 28.7 organisational form and governance arrangements for the transformed system (the Machinery of Government Review).
- 29 **Note** that the Minister for Disability Issues will report back to Cabinet in December 2019 on a shared understanding of supported decision making and barriers to implementing it within current policy and legislation.

Authorised for lodgement.

Hon Carmel Sepuloni
Minister for Disability Issues

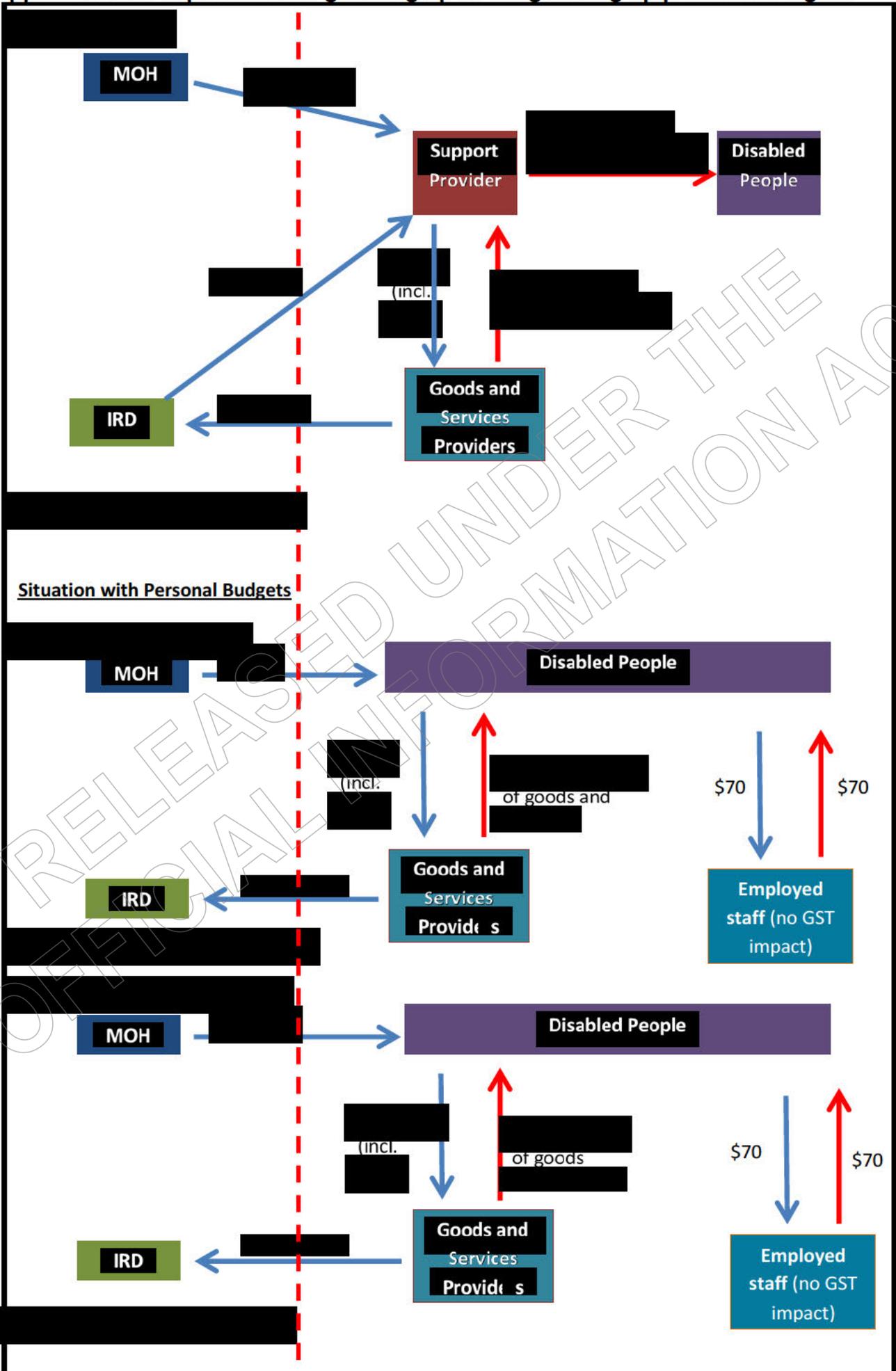
Hon Dr David Clark
Minister of Health

Hon Julie Anne Genter
Associate Minister of Health

Appendix One: Income tax and financial assistance implications of the introduction of the direct payment of disability support

Legislation	Differential treatment	Impact on disabled people	Proposed response
Income Tax Act	<p>Current system: Disability support delivered through providers is not income of the disabled person.</p> <p>Transformed system: Direct payments of disability support may be treated as the income of the disabled person.</p>	<ul style="list-style-type: none"> • People may be assessed for income tax on disability funded disability support payments. • The payments may also adversely affect a person's Working for Families Tax Credit entitlements and require higher Student Loan repayments. 	<p>Direct funding disability support payments should:</p> <ul style="list-style-type: none"> • Be treated as exempt income for income tax purposes. • Not be included in family scheme income for the purposes of Working for Family Tax credits • Not be included in adjusted net income for the purposes of calculating student loan repayment obligations.
Social Security Act 1964	<p>Current system: Support delivered by providers is not counted as income or assets of the disabled person.</p> <p>Transformed system: Unclear whether direct payments of disability support:</p> <ul style="list-style-type: none"> • Should be counted as income of the disabled person. • That are held in a bank account should be counted as a cash asset of the disabled person. 	<p>May adversely affect:</p> <ul style="list-style-type: none"> • A disabled person's eligibility for main benefits (e.g. Jobseeker Support) and hardship assistance (e.g. Temporary Additional Support) or supplementary assistance (e.g. the Accommodation Supplement and the Disability Allowance). • The level of contribution that disabled people are required to make to the costs of residential care that is funded by DHBs and the Ministry of Health. 	<ul style="list-style-type: none"> • Amend the Social Security (Income and Cash Assets Exemptions) Regulations 2011 to clarify that direct payments of disability support payments are not income or cash assets. • Amend the Social Security (Temporary Additional Support) Regulations 2005 to exempt direct payments of disability support payments from being treated as income or cash assets. • Amend the Social Security (Long-Term Residential Care Regulations) 2005 to exempt direct payments of disability support payments being treated as assets.
Housing and Related Tenancy Matters Act 1992	<p>Current system: Support delivered by providers is not counted as income of the disabled person.</p> <p>Transformed system: Direct payments of disability support that are held in a person's bank account may be counted as income.</p>	<p>May adversely affect a disabled person's:</p> <ul style="list-style-type: none"> • Eligibility for public housing. • Calculation of their Income Related Rents. 	<p>Clarify that direct payments of disability support are not income for public housing eligibility or income related rent purposes through:</p> <ul style="list-style-type: none"> • Amending the Ministerial Directions on Eligibility, and Continued Eligibility, for Social Housing • Introducing new regulations under section 114 of the Housing Restructuring and Tenancy Matters Act 1992.
Student Allowances Regulations 1998	<p>Current system: Disability support does not affect the level of Student Allowance entitlement.</p> <p>Transformed system: Direct payments of disability support may be treated as personal or couple income.</p>	<p>May adversely impacts a disabled person's ability to receive Student Allowances.</p>	<p>Amend the Student Allowances Regulations 1998 to exempt direct payments of disability support from being treated as income for the personal/ couple income test for study starting on or after 1 January 2019.</p>

Appendix Two: Implications of grossing up or not grossing up personal budgets





Cabinet Social Wellbeing Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Disability Support System Transformation: Policy and Regulatory Issues

Portfolios **Disability Issues/ Health/ Associate Health (Hon Julie Anne Genter)**

On 15 August 2018, the Cabinet Social Wellbeing Committee (SWC):

Background

- 1 **noted** that in April 2018, SWC agreed to implement the prototype of the transformed disability support system in MidCentral District Health Board from 1 October 2018; and invited reports back on:
 - 1.1 the appropriate tax treatment of the proposed disability support payments;
 - 1.2 any proposed changes to legislation to exempt personal budgets as chargeable income or cash assets, for the purpose of determining eligibility to benefits, supplementary assistance or public housing;
 - 1.3 broader policy proposals to support system transformation;

[SWC-18-MIN-0029]

Income Tax Act amendment

- 2 **agreed** that direct payments of disability support should be treated as exempt income for income tax purposes;
- 3 **noted** that the direct funding disability support payments currently covered by paragraph 2 are:
 - 3.1 Waikato Enabling Good Lives demonstration payments;
 - 3.2 MidCentral prototype payments; and
 - 3.3 Flexible Respite Budgets;
- 4 **agreed** to amend the Income Tax Act 2007 to include direct funding disability support payments as exempt income;
- 5 **invited** the Minister of Revenue to issue drafting instructions to the Inland Revenue Department to provide for the necessary amendments to the Income Tax Act 2007;

6 **agreed** that, in order to provide clarity at the earliest possible date, the legislative amendment referred to in paragraph 4 be included in a Supplementary Order Paper to the Taxation (Annual Rates for 2018-19, Modernising Tax Administration, and Remedial Matters) Bill;

Social Security and Education Act amendments

7 **agreed** that direct payments of disability support be exempt from being treated as income or cash assets for assistance provided under the Social Security Act 1964;

8 **agreed** to amend the following regulations to give effect to paragraph 7 above:

8.1 the Social Security (Income and Cash Assets Exemptions) Regulations 2011;

8.2 the Social Security (Temporary Additional Support) Regulations 2005;

8.3 the Social Security (Long-Term Residential Care) Regulations 2005;

9 **agreed** that, for study starting on or after 1 January 2019, direct payments of disability support made to students should be exempt from being treated as personal/ couple income for Student Allowance purposes;

10 **agreed** to amend the Student Allowances Regulations 1998 to give effect to paragraph 9 above;

11 **invited** the Minister for Social Development to issue drafting instructions to the Parliamentary Counsel Office to give effect to the regulation changes in paragraphs 8 and 10 above;

12 **noted** that the Minister for Social Development intends to amend Ministerial welfare programmes with separate specific definitions of income and/or assets to ensure that disability direct payments of disability support do not affect assistance delivered through these programmes;

Housing Restructuring and Tenancy Matters Act 1992 amendments

13 **agreed** that direct payments of disability support be excluded from the definition of income used to determine eligibility and continued eligibility for social housing;

14 **agreed** to amend the Ministerial Direction on Eligibility for Social Housing and the Ministerial Direction on Continued Eligibility for Social Housing to give effect to the decision in paragraph 13 above;

15 **agreed** that direct payments of disability support should be excluded from the definition of income used to calculate Income-Related Rent;

16 **agreed** to introduce new Regulations under section 114 of the Housing Restructuring and Tenancy Matters Act 1992 to give effect to the decision in paragraph 15 above;

17 **invited** the Minister of Housing and Urban Development to issue drafting instructions to the Parliamentary Counsel Office to give effect to the regulation changes in paragraph 16 above;

Further issues related to tax and financial assistance

18 **noted** that, as required, advice will be provided to Cabinet on how to resolve any further issues related to tax and financial assistance that are identified during the MidCentral prototype;

Addressing the GST issue

19 **agreed** that direct payments of disability support be grossed up by the estimated average amount of GST that is expected to be incurred in the MidCentral prototype;

20 **noted** that officials estimate that the required gross up will be 4.5 per cent of direct payments of disability support;

21 **noted** that this approach means that the amount of the GST gross up will, for some people, be more, and for other people, be less than the GST payable;

22 **agreed** that there be no reconciliation process at the end of the year to adjust the GST gross up to reflect the actual amount of GST paid;

23 **noted** that the amount by which budgets are grossed up, and the level of additional funding required, will be reviewed and may be adjusted periodically to reflect the amount of GST actually incurred by people with direct payments of disability support;

24 **agreed** to increase the funding for the MidCentral prototype of the transformed disability support system to cover the costs of grossing up personal budgets by the estimated amount of GST that is expected to be incurred;

25 **approved** the following changes to appropriations to give effect to the decision in paragraph 23 above, with a corresponding impact on the operating balance:

Vote Health Minister of Health	\$m – increase/(decrease)				
	2018/19	2019/20	2020/21	2021/22	2022/23 & Outyears
Non-Departmental Output Expense: National Disability Support Services	0.112	0.220	0.000	0.000	0.000

26 **noted** that the impact on the operating balance is expected to be offset by additional GST and income tax revenue;

27 **agreed** that the change to appropriations for 2018/19 above be included in the 2018/19 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply;

28 **agreed** that the expenses incurred under paragraph 24 above be a charge against the between-Budget contingency, established as part of Budget 2018;

Broader policy issues

29 **invited** the Minister for Disability Issues, the Minister of Health and/or the Associate Minister of Health (Hon Julie Anne Genter) to report to SWC in due course on the following policy issues associated with the transformation:

29.1 options for bringing residential care funding arrangements into line with the transformed system;

29.2 how to implement the government's Family Carers Policy within a transformed disability support system;

- 29.3 options for a single independent process for complaints regarding the disability support system;
- 29.4 possible amendments to the Health and Disability Services (Safety) Act 2001 to reflect the safeguarding approach developed for the transformed system;
- 29.5 options for amending the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 in line with the Enabling Good Lives vision and principles that underpin the transformed system;
- 29.6 the scope of a nationwide transformation of the disability support system; and
- 29.7 organisational form and governance arrangements for the transformed system (the Machinery of Government Review);
- 30 **noted** that the Minister for Disability Issues will report to SWC in December 2019 on a shared understanding of supported decision making and barriers to implementing it within current policy and legislation.

Gerrard Carter
Committee Secretary

Present:

Rt Hon Winston Peters
Hon Kelvin Davis
Hon Grant Robertson
Hon Phil Twyford
Hon Andrew Little
Hon Carmel Sepuloni (Chair)
Hon Dr David Clark
Hon Iain Lees-Galloway
Hon Jenny Salesa
Hon Damien O'Connor
Hon Willie Jackson
Michael Wood, MP
Jan Logie, MP

Officials present from:

Office of the Prime Minister
Office of the Chair
Officials Committee for SWC

Hard-copy distribution:

Minister for Disability Issues
Minister of Health
Associate Minister of Health (Hon Julie Anne Genter)



25 January 2019

IN CONFIDENCE

Hon Gerry Brownlee
Chairperson
Regulations Review Committee
Parliament Buildings
WELLINGTON

Dear Hon Gerry Brownlee

Student Allowances Amendment Regulations (No 2) 2018

Thank you for your letter, dated 18 December 2018, in which you requested information on the Student Allowances Amendment Regulations (No 2) 2018 (the SA Amendment Regulations) and the effect of excluding disability support payments from the definition of a student's personal income or spousal or partner's income on student allowances.

Some government assistance measures are means-tested

Student allowances are among a range of government assistance measures in which a person's means (their income and/or assets) may affect their eligibility for the assistance, or the amount of assistance they receive. In addition to a personal means test, eligibility for student allowances is also determined by a parental means test (for people under 24 years of age) and partner's/spouse's means test (for people 24 years of age and over and/or with dependents).

The definitions of means, in a variety of legal instruments, typically exclude the value of government services, including when such services are delivered by DHBs or contracted providers.

The disability support system is being transformed

As part of the Enabling Good Lives approach, disabled people are being given more choice and control over the purchase of their disability support. Disability support has traditionally been provided in the form of contracted services or as reimbursement of purchases already made.

The transformation of the disability support system, which started as a prototype in the MidCentral DHB region on 1 October 2018, gives disabled people the option of purchasing support themselves rather than having that support delivered by contracted providers. Under this option, funds are paid into a bank account controlled by the disabled person (with assistance where necessary) for them to use to purchase the disability support that is most suitable for them.

As part of the transformed system, Connectors/Kaitūhono are available to assist disabled people and family/whānau, if they choose. The Connectors can help them identify what they want and the range of supports available and suitable to assist them to achieve what they want.

Transformed disability support could have affected other government support

The move to payments being made into disabled people's bank accounts in advance of support being purchased ('direct payments of disability support') could have led to them being counted in means testing for other government support if the definitions of income and assets in those means tests had been left unchanged. That would have resulted in inequitable treatment of people who receive direct payments of disability support compared to those who continue to receive their support through the purchaser/provider model or reimbursement.

Regulatory amendments were made to prevent inequitable impacts for disabled people

Amending regulations, including the SA Amendment Regulations, were made to ensure that direct payments of disability support do not adversely affect other government assistance. The regulations for this purpose are the:

- Social Security (Income and Cash Assets Exemptions) Amendment Regulations (No 3) 2018;
- Social Security (Temporary Additional Support) Amendment Regulations (No 3) 2018;
- Social Security (Long-term Residential Care) Amendment Regulations (No 4) 2018;
- Student Allowances Amendment Regulations (No 2) 2018;
- Housing Restructuring and Tenancy Matters (Prescribed Elements of Calculation Mechanism) Regulations 2018.

The regulations ensure the payments are not taken into account in:

- income and cash asset testing for benefits and additional assistance under the Social Security Act including Accommodation Supplement;
- the parental income test for student allowances – since the Social Security (Income and Cash Assets Exemptions) Regulations are referenced in other legislation, including the definition of Family Scheme Income [refer MB13(2) of the Income Tax Act 2007] which in turn defines income for the purposes of the parental income test for student allowances;
- determining income and cash assets for Temporary Additional Support;
- the means assessment used to determine the financial contribution that is expected from people who are in long-term residential care;
- the student allowances income tests applied in respect of a student and the spouse or partner of a student;
- the formula used to calculate income-related rent.

As a set, the regulations protect low income disabled people from having other government assistance they are entitled to reduced, or cease altogether, as a result of the support that the Ministry of Health provides them being transformed into direct payments, rather than delivered as contracted services.

Changes to the Income Tax Act are also planned to ensure that the payments are not subject to income tax. The changes to the Income Tax Act will be proposed by way of a Supplementary Order Paper to the (Annual Rates for 2018-19, Modernising Tax Administration, and Remedial Matters) Bill.

The impact of the Student Allowances Amendment Regulations (No 2) 2018

The SA Amendment Regulations ensure that student allowances are not reduced as a result of a disabled student, or the disabled spouse or partner of a student, choosing to receive disability support in the form of direct payments, rather than as contracted services.

The change brought into effect by the SA Amendment Regulations applies to studies commencing on or after 1 January 2019. Prior to the SA Amendment Regulations being passed, lump sum payments, other than scholarships or awards of bursaries, were already exempt under the Student Allowances Regulations. As the direct payments of disability support may be either lump sum or periodical payments an amendment was required. Any lump sum direct payment of disability support to a student or partner/spouse under the MidCentral prototype before 1 January 2019 is exempt under the previous provision.

Other information you may find useful

You asked for supporting information such as the Regulatory Impact Statement. Since the regulations had no impact (they preserve the way disability support is treated in relation to other government assistance) no Regulatory Impact Statement was required.

The September 2018 Cabinet paper *Disability Support System Transformation Paper 2- Policy and Regulatory Issues* describes in more detail the potential problems the regulations addressed, along with other identified issues, and measures that Cabinet agreed be taken. That paper, along with information and other Cabinet papers about the transformation of the disability support system, has been published and can be found at: <http://www.enablinggoodlives.co.nz/system-transformation/>.

Relevant government agencies were consulted over this response

This response was drafted by the Ministry of Social Development in consultation with the Ministry of Education (responsible for student allowances policy), the Ministry of Health and Inland Revenue.

Yours sincerely



Simon MacPherson
Deputy Chief Executive (Policy)



POLICY AND STRATEGY

Tax policy report: **Appropriate treatment of disability support payments for income tax purposes**

Date:	XX May 2018	Priority:	Medium
Security level:	In Confidence	Report no:	IR2018/XXX

Action sought

	Action sought	Deadline
Minister of Revenue	Agree to the recommendations. Refer a copy of this report to the Minister for Social Development, Minister for Disability Issues and Associate Minister of Health (Hon Julie Anne Genter).	XX May 2018

Contact for telephone discussion (if required)

Name	Position	Telephone
Charles Ngaki	Policy Manager	Out of scope
Laura Harris	Policy Analyst	Out of scope

POLICY AND STRATEGY
Te Wāhanga o te Rautaki me te Kaupapa

XX May 2018

Minister of Revenue

Appropriate treatment of disability support payments for income tax purposes

Executive summary

1. This report seeks your agreement to direct funding disability support payments being treated as exempt income for income tax purposes.
2. In April, Cabinet agreed to a prototype for a new disability support system to commence in the MidCentral District Health Board region (the MidCentral prototype) from 1 October 2018 [SWC-18-MIN-0029 refers]. This opt-in prototype will include disability support direct funding payments, which would allow disabled people to purchase disability services and support themselves, rather than a disability service provider purchasing on their behalf. Since 2015 similar direct funding payments have been made in the Waikato region as part of an Enabling Good Lives (EGL) demonstration.
3. There is the potential for further direct funding disability support payments to be made in the future when the disability system transformation is expanded beyond the MidCentral region.
4. The Income Tax Act 2007 is not specific on the treatment for income tax purposes of disability support direct funding payments. Therefore, if the law is not clarified, it could be argued that direct funding payments should be treated as taxable income. This may not reflect the purpose of disability support funding, which is to promote the inclusion and participation in society and independence of people with disabilities. It also may not be consistent with the outcome the payments seek to achieve, which is to help ensure that people with disabilities are no better or worse off financially than people who do not have disabilities.
5. Officials consider the law should be clarified to provide that direct funding disability support payments are exempt income in the hands of the disabled person recipient.
6. The Minister for Disability Issues and Associate Minister of Health (Hon Julie Anne Genter) are reporting back to the Cabinet Social Wellbeing Committee on the transformation

at the end of June 2018. Since the recommendations in this report are related to this work, officials consider it would be appropriate to seek Cabinet approval to treat the direct funding payments as exempt income in this paper.

7. The Minister for Social Development is also expected to report back to Cabinet seeking approval to exempt direct funding disability support payments from being treated as chargeable income or cash assets for determining eligibility to a benefits, supplementary assistance or social housing. We recommend that consistent with this approach the direct funding payments should not be treated as income for the purposes of Child Support, Working for Families Tax Credits and Student Loans.

8. Necessary legislative amendments could be included in the next available tax omnibus bill, and should have general effect for the 2017-18 and out tax years (with the exemption applying to the EGL payments since the commencement of the demonstration in 2015).

Recommended action

9. We recommend that you:

(a) **Note** the contents of this report.

Noted

(b) **Agree** that direct funding disability support payments currently made as part of the Enabling Good Lives Waikato demonstration be treated as exempt income for income tax purposes.

Agreed/Not agreed

(c) **Agree** that the direct funding payments proposed to be made as part of the MidCentral prototype be treated as exempt income for income tax purposes.

Agreed/Not agreed

(d) **Agree** that direct funding disability support payments should not be treated as:

- family scheme income for determining Working for Families Tax Credits;
- income for determining a parent's Child Support entitlement or payment obligations; or
- adjusted net income for determining Student Loan repayment obligations.

Agreed/Not agreed

(e) **Note** the recommendations in this report could be included in a paper on the disability system transformation the Minister for Disability Issues and Associate Minister of

Health (Hon Julie Anne Genter) are taking to the Cabinet Social Wellbeing Committee at the end of June 2018.

Noted

- (f) **Agree** the law should be clarified to provide that direct funding disability support payments are exempt income, and legislative amendment should be included in the next available tax omnibus bill.

Agreed/Not agreed

- (g) **Refer** a copy of this report to the Minister for Social Development, Minister for Disability Issues and the Associate Minister of Health (Hon Julie Anne Genter).

Referred/Not referred

Charles Ngaki
Policy Manager
Policy and Strategy

Hon Stuart Nash
Minister of Revenue
/ /2018

Background

10. On 20 February 2017, the previous Government agreed to a nationwide transformation of the disability support system [SOC-17-MIN-0007 refers].

11. The overall direction of the transformation is based on the Enabling Good Lives (EGL) approach, which seeks to improve the choices and control disabled people have over their lives and support. Based on this approach two EGL demonstrations have taken place - one in Christchurch (from 2013 to 2016, with similar arrangements continuing in place at the end of the demonstration), and one in the Waikato (since 2015). As part of the EGL Waikato demonstration participants have the option of receiving direct funding payments. Direct funding payments were not made to participants in the Christchurch demonstration.

12. In agreeing to transform the disability support system, the previous Government also agreed that the first phase of the transformation would:

- focus on people who are eligible for National Disability Support Services (DSS) funding (these people all have long-term physical, intellectual and/or sensory disabilities that arise before they reach the age of 65 years old);¹ and
- that a prototype transformation would be rolled out in the MidCentral District Health Board region (the MidCentral prototype).²

13. On 7 April 2018 Cabinet agreed that the MidCentral prototype would commence on 1 October 2018 [SWC-18-MIN-0029 refers]. The prototype would operate on an “opt-in” basis, so eligible disabled people would continue with their current disability support arrangements until they choose to participate in the prototype. Disabled people would also be able to opt-in to some aspect of the prototype, while maintaining existing options for managing their support.

14. The MidCentral prototype is expected to allow for flexible funding arrangements for disabled people, including disability support funding which is paid directly to the disabled person. Given that the correct income tax treatment of these payments needs to be clarified, the Minister of Revenue was invited by Cabinet at its 7 April meeting to report back on the appropriate tax treatment of the proposed disability support payments.

15. The transformed disability support system is eventually intended to be rolled out nationwide. Advice about expanding the transformed disability support system beyond the MidCentral region is expected to be provided to Cabinet in late 2020.

¹ Disability support service funding does not include funding for disability allowance or supported living payments made by the Ministry of Social Development.

² This region is comprised of Palmerston North city, the Manawatu, Horowhenua, Tararua and Otaki.

Current disability support arrangements

16. Currently approximately 33,000 disabled people in New Zealand are supported by DSS. Under DSS arrangements qualifying disabled people are allocated disability support services and products, based on assessments made by Needs Assessment and Service Coordination organisations.

17. As no payments are made directly to the DSS recipients, this type of disability support is not treated as income of the disabled person and no tax obligations arise.

Future direct funding payments

18. The New Zealand Public Health and Disability Act 2000 provides the Ministry of Health with the delegated authority to enter into Government funded arrangements that contain any terms and conditions agreed to by the parties to the arrangement. It is under this authority that direct funding payments can be established. The Act provides that one of the purposes of disability support funding is to promote the inclusion and participation in society and independence of people with disabilities. Funding is also aimed at ensuring that people with disabilities are no better or worse off financially than people who do not have disabilities.

19. The unifying feature of direct funding disability support payments is that they involve funding that is paid directly to a disabled person or their agent, which the disabled person is able to use to purchase disability support services. Recipients are allocated a personal budget based on an assessment of their needs. The personal budget sets out the amount of funding they receive and how the funding can be used to address the specific disabled person's needs.

20. Payments are to be made directly into a separate bank account set up by recipients (that cannot be used for any purpose other than receiving disability support funding). The Ministry of Health aims to provide sufficient support and education to direct funding recipients to ensure they use funding in a way that addresses their needs. The use of funding is also expected to be monitored by the Ministry of Health to ensure it is being used for its intended purpose.

Existing EGL demonstration and proposed direct funding payments

21. EGL direct funding payments are currently being made to approximately 250 disabled people in the Waikato. Income tax is currently not deducted from these payments, and it has been generally assumed that the payments are not income, although this has not been explicitly tested. The recommendations in this report would confirm this existing practice.

22. Approximately 1,600 disabled people would be entitled to receive direct funding payments as part of the proposed MidCentral prototype. The expectation is that small numbers will opt in initially, but that the numbers will increase over time.

Future expansion of the transformation

23. The number of people receiving direct funding disability support payments as part of disability system transformation is expected to further increase as the transformed system is rolled out nationwide (i.e. post 2020). It is anticipated that the type of direct funding payments included in the final transformed disability support system would be similar to those included in the MidCentral prototype, although some modifications may prove to be necessary as a result of feedback and monitoring of the prototype.

24. Given that the design of the direct funding disability support payments to be included as the transformation is expanded beyond the MidCentral region is subject to modification, it would be difficult to effectively clarify the law in respect of these future payments at this time.

Treating “direct funding” payments as exempt income

Taxable income

25. In general, income is caught by the provisions of the Income Tax Act 2007, which sets out the detailed taxation rules that apply.

26. The common law definition of income under ordinary concepts considers several criteria for determining whether an amount is income, including: periodicity, recurrence and regularity of the payment, whether the payment is something that “comes in” (in the form of money or as a benefit that can be converted into money), as well as the quality of the payment in the hands of the recipient.³

27. As direct funding payments have some of the hallmarks of income under ordinary concepts, in the absence of specific provisions it could be assumed that they are income of the recipient. Therefore, if the law is not clarified, the payments may be treated as the assessable income of the disabled person for income tax purposes.

“Direct funding” payments as exempt income

28. As discussed above (in para 18), direct disability support funding is aimed at ensuring that people with disabilities are no better or worse off financially than people who do not have disabilities. Therefore, it may not be appropriate for it to be treated as assessable income.

29. Treating direct funding payments as assessable income would also create a financial disadvantage for recipients. Disabled people not participating in the EGL Waikato demonstration or the MidCentral prototype would still be receiving DSS funding, meaning no income tax obligations would arise. Therefore, the value of services and supports DSS recipients receive may be greater than the after tax amount received by direct funding recipients. It would also be desirable for the decision to “opt-in” to the MidCentral prototype or take up a direct funding payment arrangements more generally to remain tax neutral.

³ *Reid v Commissioner of Inland Revenue* (1983) 6 NZTC 61,624 (HC).

Moreover, if direct funding payments were subject to income tax, this may act as a disincentive for disabled people to take up the new arrangements.

30. Officials consider the law should be clarified to provide that direct funding disability support payments are exempt income.

Social policy implications

31. The Ministry for Social Development is preparing advice for the Minister of Social Development seeking her agreement to direct funding disability support payments being exempt from being treated as chargeable income or cash assets for determining benefit entitlements. The Minister of Social Development has been invited to report back to Cabinet separately on this matter [SWC-18-MIN-0029 refers].

32. Where appropriate it would be desirable to maintain consistency between what is treated as income for the purposes of benefit entitlements administered by the Ministry of Social Development and social policy products administered by Inland Revenue. Therefore, for the purposes of calculating entitlement to Working for Families Tax Credits, Student Loan repayment obligations, and Child Support entitlement and payment obligations officials recommend the direct funding payments should not be treated as income.

GST implications

33. Disability service providers, who are registered for GST purposes, can claim back input tax on products and services they have purchased on behalf of a disabled person, whereas disabled people purchasing similar products or services cannot claim GST back on these purchases. As a result, the “purchasing power” of direct funding recipients is reduced compared with the value of support purchased through a GST-registered disability service provider.

34. No decisions are sought from you on this matter. Officials understand the Minister for Disability Issues and Associate Minister of Health (Hon Julie Anne Genter) intend to seek additional funding from Cabinet to “gross-up” the direct funding payments made as part of the MidCentral prototype. This is Inland Revenue officials’ preferred approach to addressing the differential GST impact.

Consultation

35. The Treasury, the Ministry of Health and Ministry of Social Development were consulted on the contents of this report.

36. The Ministry of Health have worked with the disability sector to co-design a transformed disability support system. This co-design approach includes a tax work stream,

where representatives from the disability sector have expressed their views on tax implications relating to the transformation.⁴ Inland Revenue have been involved in the tax work stream and participants' views have informed the recommendations in this report.

Financial implications

37. Under current DSS arrangements funding provided to disability service providers is not subject to income tax. As the MidCentral direct funding payments are intended to partially replace this funding structure, treating these payments as exempt income would not have an impact on tax revenue collected. Similarly, income tax is not currently deducted from EGL direct funding payments, so treating these payments as exempt income would also not result in a loss of tax revenue.

Administrative implications

38. If the treatment of disability support payments as exempt income is approved, updates will be required to internal and external Inland Revenue publications and web content. This work can be done within existing resources and baseline funding.

Next steps

39. If you agree to direct funding payments being treated as exempt income for income tax purposes, officials consider that it would be appropriate to include the proposal in a paper the Minister for Disability Issues and Associate Minister of Health (Hon Julie Anne Genter) are taking to the Cabinet Social Wellbeing Committee on the transformation at the end of June 2018.

40. Legislative change would be required to provide certainty about the proposed income tax treatment of the payments. Officials recommend amendments should be included in the next available tax omnibus bill and should have general application for the 2017-18 and out tax years in respect of the payments to be made under the MidCentral prototype. In relation to the EGL Waikato payments amendments would need to apply since the commencement of the demonstration in 2015.

⁴ The tax work stream includes officials (from the Ministry of Health and Ministry of Social Development), disabled people, the parent of a disabled person and representatives from two disability support service providers.

