

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**

<b>Deadline</b>	<b>Action</b>
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><b>Current system:</b> Disability support delivered through providers is not income of the disabled person.</p> <p><b>Transformed system:</b> Direct payments of disability support may be treated as the income of the disabled person.</p>	<ul style="list-style-type: none"> <li>• People may be assessed for income tax on disability funded disability support payments.</li> <li>• The payments may also adversely affect a person's Working for Families Tax Credit entitlements and require higher Student Loan repayments.</li> </ul>	<p>Direct funding disability support payments should:</p> <ul style="list-style-type: none"> <li>• Be treated as exempt income for income tax purposes.</li> <li>• Not be included in family scheme income for the purposes of Working for Family Tax credits</li> <li>• Not be included in adjusted net income for the purposes of calculating student loan repayment obligations.</li> </ul>
Social Security Act 1964	<p><b>Current system:</b> Support delivered by providers is not counted as income or assets of the disabled person.</p> <p><b>Transformed system:</b> Unclear whether direct payments of disability support:</p> <ul style="list-style-type: none"> <li>• Should be counted as income of the disabled person.</li> <li>• That are held in a bank account should be counted as a cash asset of the disabled person.</li> </ul>	<p>May adversely affect:</p> <ul style="list-style-type: none"> <li>• 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).</li> <li>• 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.</li> </ul>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• Amend the Social Security (Long-Term Residential Care Regulations) 2005 to exempt direct payments of disability support payments being treated as assets.</li> </ul>
Housing and Related Tenancy Matters Act 1992	<p><b>Current system:</b> Support delivered by providers is not counted as income of the disabled person.</p> <p><b>Transformed system:</b> 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"> <li>• Eligibility for public housing.</li> <li>• Calculation of their Income Related Rents.</li> </ul>	<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"> <li>• Amending the Ministerial Directions on Eligibility, and Continued Eligibility, for Social Housing</li> <li>• Introducing new regulations under section 114 of the Housing Restructuring and Tenancy Matters Act 1992.</li> </ul>
Student Allowances Regulations 1998	<p><b>Current system:</b> Disability support does not affect the level of Student Allowance entitlement.</p> <p><b>Transformed system:</b> 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

