

Reprint  
as at 16 April 2019



# Residential Care and Disability Support Services Regulations 2018

(LI 2018/203)

Patsy Reddy, Governor-General

## Order in Council

At Wellington this 15th day of October 2018

Present:

Her Excellency the Governor-General in Council

These regulations are made under section 74 of the Residential Care and Disability Support Services Act 2018—

- (a) on the advice and with the consent of the Executive Council; and
- (b) for exempt persons regulations made under section 74(1)(a) of that Act, on the Minister's recommendation made under section 74(3) and (4) of that Act.

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### Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**These regulations are administered by the Ministry of Social Development and the Ministry of Health.**

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## Regulations

### 1 Title

These regulations are the Residential Care and Disability Support Services Regulations 2018.

### 2 Commencement

These regulations come into force on 26 November 2018.

### 3 Interpretation

(1) In these regulations, unless the context otherwise requires,—

**Accident Compensation Corporation** means the corporation of that name continued by section 259 of the Accident Compensation Act 2001

**Act** means the Residential Care and Disability Support Services Act 2018

**capital value**, in relation to land, means the capital value of that land appearing in the district valuation roll

**district valuation roll** has the same meaning as in section 2 of the Rating Valuations Act 1998

**ex gratia payment** means a payment made without an acknowledgment of legal liability

**rating unit** has the same meaning as in section 2 of the Rating Valuations Act 1998

**tribunal** means a tribunal exercising a power of decision conferred by or under any Act.

- (2) Terms used in these regulations that are defined in section 5 of the Act have the meanings given to them by that section.

Compare: SR 2005/183 r 3

#### 4 Status of examples

- (1) An example used in these regulations is only illustrative of the provision to which it relates. It does not limit the provision.
- (2) If an example and the provision to which it relates are inconsistent, the provision prevails.

Compare: 1964 No 136 s 3B; SR 2005/183 r 3A

#### 5 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

#### 6 Classes of exempt persons

A resident assessed as requiring care belongs to a class of exempt persons for the purposes of section 23(d) of the Act if that resident is a person who—

- (a) received long-stay geriatric care in a geriatric hospital before 1 July 1993; or
- (b) was receiving long-stay care in one of the following hospitals prior to the closure of the hospital:
- (i) Kimberley Hospital (Levin):
  - (ii) Templeton Hospital (Christchurch):
  - (iii) Mangere Hospital (Manukau City):
  - (iv) Braemar Hospital (Nelson); or
- (c) has intellectual disabilities and was receiving long-stay care in a psychiatric hospital (not being a hospital specified in paragraph (b)) prior to the closure of the hospital; or
- (d) is subject to a compulsory treatment order made under section 30 of the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
- (e) is declared a restricted patient (as defined in section 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992) under section 55 of the Mental Health (Compulsory Assessment and Treatment) Act 1992; or

- (f) is a special patient (as defined in section 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992), whether or not that person has been granted leave of absence from a hospital—
  - (i) under section 50 of the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
  - (ii) under section 52 of the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
- (g) is subject to a compulsory care order (as defined in section 5 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003); or
- (h) is residing in a hospital or other place of residence as a result of the making of a direction or an order under section 92I(4)(f), 92J(4)(f), 92K(3)(f), 92ZA(1)(a) or (b), or 92ZJ(2) of the Health Act 1956; or
- (i) is committed to any hospital or rest home under section 126 of the Health Act 1956; or
- (j) was receiving continuing hospital care in a rest home or hospital before 1 July 1993.

Compare: SR 2005/183 r 5

## 7 Elderly victim of crime

- (1) A person must be assessed as being an elderly victim of crime, for the purposes of section 25(d) of the Act, if that person—
  - (a) is a victim of an offence under the Crimes Act 1961 that—
    - (i) is specified in Schedule 2; and
    - (ii) was committed after 1 May 1997; and
  - (b) has suffered personal injury as a result of the commission of that offence; and
  - (c) has had a claim in respect of the personal injury accepted by the Accident Compensation Corporation; and
  - (d) has, within 12 months of the date of the personal injury, been needs assessed as having an injury-related need for long-term residential care; and
  - (e) continues to have an injury-related need for long-term residential care.
- (2) For the purposes of section 25(d) of the Act, every person who immediately before 26 November 2018 had been notified as being, or had been treated as having been, an elderly victim of crime must, on and after 26 November 2018, be treated as a person assessed in accordance with subclause (1) as an elderly victim of crime.
- (3) For the purposes of section 25(d) of the Act,—
  - (a) a person who is assessed as an elderly victim of crime under subclause (1) is no longer an elderly victim of crime on the date on which the per-

son is needs assessed as having no injury-related need for long-term residential care; and

- (b) a person who is treated as an elderly victim of crime under subclause (2) is no longer an elderly victim of crime on the date on which the person is needs assessed as having no injury-related need for long-term residential care.

Compare: SR 2005/183 r 6

## **8 Clothing allowance**

- (1) A clothing allowance is payable on, or as soon as is practicable after, 1 April of each year to both classes of persons specified in section 71(a) and (b) of the Act.
- (2) The clothing allowance is \$283.97.

Compare: SR 2005/183 r 7

Regulation 8(2): amended, on 1 April 2019, by regulation 4 of the Residential Care and Disability Support Services Amendment Regulations 2019 (LI 2019/29).

## **9 Gifting period**

For the purpose of paragraph (b) of the definition of assets in clause 4 of Schedule 2 of the Act, the gifting period is the period that starts 5 years before the date of means assessment.

Compare: SR 2005/183 r 8

## **10 Allowable gifts**

- (1) For the purpose of paragraph (b) of the definition of assets in clause 4 of Schedule 2 of the Act, allowable gifts are gifts of real or personal property (for example, money) gifted during the gifting period that—
  - (a) are gifted by any of the following persons:
    - (i) the person being means assessed:
    - (ii) the spouse or partner of the person being means assessed:
    - (iii) the person being means assessed and that person's spouse or partner jointly; and
  - (b) have a total value—
    - (i) not exceeding \$6,500 each year (the **gifting amount**); or
    - (ii) exceeding the gifting amount but which may be offset as prescribed in subclause (2).
- (2) If during any year of the gifting period the person being means assessed makes gifts of real or personal property that have a total value exceeding the gifting amount, then the difference in value between the total value of the gifts gifted in that year and the gifting amount may be offset against the balance of the gift-

ing amount in each of the remaining subsequent years of the gifting period, if any.

- (3) For the purpose of subclause (2), **balance of the gifting amount in each of the remaining subsequent years of the gifting period** is the total of the gifting amounts for each of those years less the total value of allowable gifts gifted in those years.
- (4) If the person being means assessed and that person's spouse or partner are both in long-term residential care, then the value of any gift made jointly by that person and that person's spouse or partner is to be apportioned equally between that person and that person's spouse or partner.

Compare: SR 2005/183 r 9

## 11 Gift in recognition of care

- (1) If all allowable gifts gifted during the gifting period have a total value less than \$32,500, a gift in recognition of care that meets the criteria in subclause (2) is to be treated as an allowable gift.
- (2) The criteria for a gift in recognition of care are that the gift—
  - (a) is a gift of real or personal property (for example, money) gifted by any of the following persons:
    - (i) the person being means assessed;
    - (ii) the spouse or partner of the person being means assessed;
    - (iii) the person being means assessed and the person's spouse or partner jointly; and
  - (b) is gifted within the period of 12 months immediately preceding the date of means assessment; and
  - (c) is gifted to a person who,—
    - (i) for a continuous period of at least 12 months during the gifting period,—
      - (A) lived in the same household as the person being means assessed; and
      - (B) provided to the person being means assessed a high level of care that enabled the person being means assessed to remain in the community without receipt of home-based disability support services (as defined in section 59 of the Act); and
    - (ii) is not the spouse, partner, or dependent child of the person being means assessed; and
  - (d) is of an amount up to \$6,500 for each 12-month period of care provided; and

- (e) is not of an amount that, together with the amounts of any other gifts in recognition of care, exceeds the difference between \$32,500 and the total value of all gifts allowable under regulation 10.
- (3) If the person being means assessed and that person's spouse or partner are both in long-term residential care, then the value of any gift in recognition of care gifted jointly by that person and that person's spouse or partner in respect of the care they both received from the same person may be apportioned equally between the person being means assessed and that person's spouse or partner.

Compare: SR 2005/183 r 9A

## **12 Deprivation of property and income**

For the purposes of sections 39 and 40 of the Act, instances of deprivation of property or income include, but are not limited to, the following:

- (a) gifts that are gifted in the 12-month period prior to the commencement of the gifting period, or in any 12-month period preceding that period, to the extent that the total value of the gifts in each such period exceeds \$27,000:

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### **Example**

In the year before the commencement of the gifting period, the person being means assessed and that person's spouse jointly make gifts having a total value of \$100,000.

The person being means assessed and that person's spouse may be treated as having deprived themselves of \$73,000 in respect of the gifts.

- (b) a disposition of property at any time before the commencement of the gifting period for no consideration, or for a consideration less than the market value of the property at the time of disposition, may be treated as a gift for the purposes of paragraph (a):

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### **Example**

Two years before the commencement of the gifting period, the person being means assessed and that person's partner transfer the \$300,000 house that they jointly own to a family member for \$100,000. One year before the commencement of the gifting period, the person being means assessed and that person's partner gift \$50,000 to another family member.

The person being means assessed and that person's partner may be treated as having deprived themselves of \$196,000 in respect of the disposition and the gift (being the sum of \$200,000 less \$27,000 for the disposition of the house and \$50,000 less \$27,000 for the monetary gift).

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- (c) a disposition of property during the gifting period for no consideration, or for a consideration less than the market value of the property at the time of disposition:

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**Example**

During the gifting period, the person being means assessed sells that person's car for \$10,000. The market value of the car at the time of sale was \$20,000.

The person being means assessed may be treated as having deprived that person of property to the extent of \$10,000 in respect of the car sale.

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- (d) a failure at any time to exercise any right or entitlement to demand a payment:

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**Example**

The spouse of the person being means assessed makes a loan to another person with interest on the loan being payable on demand. The spouse of the person being means assessed never makes a demand for the interest.

The spouse of the person being means assessed may be treated as having deprived that spouse of interest to the extent of the amount of interest that is payable on demand.

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- (e) a waiver of a right at any time to receive any entitlement or payment:

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**Example**

The person being means assessed and that person's partner jointly own a rental property. The tenants of that property fail to pay the rent payable under the tenancy agreement. The person being means assessed and that person's partner take no action to recover the unpaid rent.

The person being means assessed and that person's partner may be treated as having deprived themselves of income to the extent of the unpaid rent.

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- (f) an investment at any time in non-income-earning assets.

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**Example**

The person being means assessed deposits savings in a non-interest-bearing bank account.

The person being means assessed may be treated as having deprived that person of income to the extent of income that could have been earned on the savings if the savings had been invested in an interest-bearing bank account.

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Compare: SR 2005/183 r 9B

### 13 Value of land for purposes of means assessment to be assessed in accordance with regulations 14 and 15

For the purposes of a means assessment as to assets conducted under sections 39 and 40 and Schedule 2 of the Act, or a review of a means assessment as to

assets conducted under section 47, 48, or 49 of the Act, MSD must assess the value of a person's land in accordance with regulations 14 and 15 if the land is—

- (a) a house, a piece of land, or any other asset that comes within the definition of land in section 2 of the Rating Valuations Act 1998; and
- (b) a non-exempt asset of the person being means assessed.

Compare: SR 2005/183 r 9C

#### **14 Value of land is capital value or fair proportion of capital value**

- (1) For the purposes of a means assessment as to assets or a review of a means assessment as to assets, the value of a person's land is,—
  - (a) if the person's land is equivalent to a rating unit, the capital value of the rating unit on the date of the means assessment; or
  - (b) if the person's land is in the form of an estate or interest in a rating unit, the value that is the same proportion of the capital value of the rating unit on the date of the means assessment as the proportion that fairly represents the nature and extent of the person's estate or interest in the rating unit, with the proportion being determined by MSD.
- (2) When determining the proportion for the purposes of subclause (1)(b), MSD must have regard to—
  - (a) the nature and extent of any other person's estate or interest in the rating unit; and
  - (b) the nature and extent of any other estate or interest in the rating unit for which a value can be determined under regulation 15; and
  - (c) any other factors MSD considers relevant.
- (3) Subclause (1) is subject to regulation 15.

Compare: SR 2005/183 r 9D

#### **15 Value of land if capital value unavailable or contested**

- (1) For the purpose of a means assessment as to assets or a review of a means assessment as to assets, MSD may consider any evidence of the value of a person's land other than a capital value if—
  - (a) a capital value required for determining the value of the land under regulation 14 does not appear on the district valuation roll; or
  - (b) either MSD or the person being means assessed considers that the value of the land determined under regulation 14 is not the true value of the land.
- (2) If MSD receives evidence under subclause (1), the value of a person's land is—
  - (a) the value according to evidence that MSD considers to be the best evidence of the value of the land on the date of the means assessment; or

- (b) if the person's land is in the form of an estate or interest in other land, the value that is the same proportion of the value of the other land as the proportion that fairly represents the nature and extent of the person's estate or interest in the other land, with—
  - (i) the value of the other land being determined according to paragraph (a); and
  - (ii) the proportion being determined by MSD.
- (3) When determining the proportion for the purposes of subclause (2)(b)(ii), MSD must have regard to the matters specified in regulation 14(2).
- (4) For the purposes of this regulation, **evidence**, in relation to the value of land, includes evidence in any of the following forms:
  - (a) a valuation report that is prepared and signed by a registered valuer (as defined in section 2 of the Valuers Act 1948);
  - (b) a decision of a court or tribunal;
  - (c) the district valuation roll.

Compare: SR 2005/183 r 9E

## 16 Assets exempt from means assessment

For the purpose of paragraph (g) of the definition of exempt assets in clause 4 of Schedule 2 of the Act, the assets specified in Part 1 of Schedule 3 are exempt assets.

Compare: SR 2005/183 r 10

## 17 Exempt assets include certain increases in value

- (1) For the purpose of paragraph (g) of the definition of exempt assets in clause 4 of Schedule 2 of the Act, exempt assets include an amount of assets that represents the total increase in value of the non-exempt assets since the date of the last means assessment.
- (2) For the purpose of subclause (1), **non-exempt assets** means the non-exempt assets that have earlier been determined, by a means assessment as to assets, to be equal to or less than the applicable asset threshold.
- (3) Subclause (1) does not apply in respect of a review of a means assessment under section 47(b) or (c) of the Act.

Compare: SR 2005/183 r 10(2)–(4)

## 18 Income exempt from means assessment

For the purpose of paragraph (i) of the definition of income in clause 5 of Schedule 2 of the Act, the following types of income are not to be included in a means assessment as to income:

- (a) any compensation or *ex gratia* payment made by the Government of any country to the person or the person's spouse or partner because the person or the person's spouse or partner—
  - (i) was a prisoner of war, civilian internee, or victim of persecution of any country during the Second World War; or
  - (ii) was a dependent child of a person who was a prisoner of war, civilian internee, or victim of persecution of any country during the Second World War:
- (b) any interest derived from compensation or an *ex gratia* payment referred to in paragraph (a):
- (c) any interest derived from any pre-paid funeral of the person or of the person's spouse or partner that is referred to in paragraph (d) of the definition of exempt assets in clause 4 of Schedule 2 of the Act:
- (d) for the first 12 months after the payment concerned is made, any interest derived by a person from any lump sum payment of arrears of accommodation supplement made to the person, on or after 1 November 2016, and as a result of MSD correcting a specified processing error (as defined in clause 25 of Schedule 3):
- (e) for the first 12 months after the payment concerned is made, any income derived from a lump sum payment of arrears of temporary additional support (as defined in clause 27 of Schedule 3) made to the person on or after 18 August 2017.

Compare: SR 2005/183 r 11

## **19 Personal allowance**

The personal allowance defined in section 24(2) of the Act is \$45.28 per week.

Compare: SR 2005/183 r 12

Regulation 19: amended, on 1 April 2019, by regulation 5 of the Residential Care and Disability Support Services Amendment Regulations 2019 (LI 2019/29).

## **20 Revocation**

The Social Security (Long-term Residential Care) Regulations 2005 (SR 2005/183) are revoked.

Regulation 20: inserted, on 1 April 2019, by regulation 6 of the Residential Care and Disability Support Services Amendment Regulations 2019 (LI 2019/29).

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**Schedule 1**  
**Transitional, savings, and related provisions**

r 5

**Part 1**  
**Provisions relating to these regulations as made**

**1 Things done under 2005 regulations**

- (1) Any thing in progress under the Social Security (Long-Term Residential Care) Regulations 2005 (the **2005 regulations**) immediately before 26 November 2018 is to be treated as having been done under these regulations and may be completed accordingly under these regulations.
- (2) Subclause (1) does not create a right of appeal if the time for an appeal in relation to any thing done under the 2005 regulations has expired or an appeal was lodged in relation to that thing before the commencement of these regulations.

## **Schedule 2 Offences under Crimes Act 1961**

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128B	Sexual violation
129	Attempted sexual violation and assault with intent to commit sexual violation
129A	Sexual conduct with consent induced by certain threats
135	Indecent assault
138	Sexual exploitation of person with significant impairment
141 (as in force before 20 May 2005)	Indecent assault on man or boy
142 (as in force before 20 May 2005)	Anal intercourse
142A	Compelling indecent act with animal
145	Criminal nuisance
156	Duty of persons in charge of dangerous things
157	Duty to avoid omissions dangerous to life
173	Attempt to murder
188	Wounding with intent
189	Injuring with intent
190	Injuring by unlawful act
191	Aggravated wounding or injury
192	Aggravated assault
193	Assault with intent to injure
196	Common assault
197	Disabling
198	Discharging firearm or doing dangerous act with intent
199	Acid throwing
200	Poisoning with intent
201	Infecting with disease
202C	Assault with weapon
204A	Female genital mutilation
208	Abduction for purposes of marriage or sexual connection
209	Kidnapping
232	Aggravated burglary
234	Robbery
235	Aggravated robbery
236	Assault with intent to rob
267	Arson
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## Schedule 3

### Exempt assets

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##### Lake Alice compensation or *ex gratia* payments

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## Part 1

### Exempt assets

#### 1 Exempt assets

The following are exempt assets (*see* regulation 16):

Row	What is exempted	Exemption	Limit (if any)
1	Household furniture and effects	Exempt assets of the person or the person's spouse or partner	
2	Personal belongings such as clothing and jewellery	Exempt assets of the person or the person's spouse or partner	
3	Personal collectables or family treasures or taonga such as artworks, books, stamps, and antiques	Exempt assets of the person or the person's spouse or partner	

<b>Row</b>	<b>What is exempted</b>	<b>Exemption</b>	<b>Limit (if any)</b>
4	Any interest in 1 car or similar vehicle that is for the personal use of the person's dependent child and that is any interest to which clause 3 applies	Exempt assets of the person or the person's spouse or partner	
5	Second World War compensation or <i>ex gratia</i> payments to which clause 4 applies	Exempt assets of the person or the person's spouse or partner	
6	Personal injury from hepatitis C infection contracted through New Zealand blood supply payments to which clause 6 applies	Exempt assets of the person or the person's spouse or partner	Only for the first 12 months after the payment is made
7	Viet Nam veterans <i>ex gratia</i> payments to which clause 8 applies	Exempt assets of the person or the person's spouse or partner	
8	Lake Alice compensation or <i>ex gratia</i> payments to which clause 9 applies	Exempt assets of the person or the person's spouse or partner	Only for the first 12 months after the payment is made
9	Superannuation scheme items to which clause 11 applies	Exempt assets of the person or the person's spouse or partner	
10	Viet Nam Veterans and Their Families Trust payments and income to which clause 13 applies	Exempt assets of the person or the person's spouse or partner	Only for the first 12 months after the payment is made
11	<i>Ex gratia</i> and compensation payments made by the Crown and to which clause 15 applies	Exempt assets of the person or the person's spouse or partner	Only for the first 12 months after the payment is made
12	EVSA (Neville Wallace Memorial) Children's & Grandchildren's Trust payments and income to which clause 17 applies	Exempt assets of the person or the person's spouse or partner	Only for the first 12 months after the payment is made

Row	What is exempted	Exemption	Limit (if any)
13	Canterbury earthquake payment to which clause 19(1), (3), or (5) applies	Exempt assets of the person or the person's spouse or partner	Until the specified time (as defined in clause 20)
14	Payments under the Sleepover Wages (Settlement) Act 2011, and income, to which clause 22 applies	Exempt assets of the person or the person's spouse or partner	Only for the first 12 months after the payment is made
15	Victims of crime payments and income to which clause 24 applies	Exempt assets of the person or the person's spouse or partner	Only for the first 12 months after the payment is made
16	An accommodation supplement arrears lump sum payment to which clause 26 applies	Exempt assets of the person or the person's spouse or partner	Only for the first 12 months after the payment is made
16A	An accommodation supplement arrears lump sum payment and income to which clause 26A applies	Exempt assets of the person or the person's spouse or partner	Only for the first 12 months after the payment is made
17	A lump sum payment of arrears of temporary additional support (as defined in clause 27) to which clause 28 applies	Exempt assets of the person or the person's spouse or partner	Only for the first 12 months after the payment is made
18	Direct disability support payments to which clause 30 applies	Exempt assets of A ( <i>see</i> clause 29)	
19	Housing New Zealand Corporation lump sum payment to which clause 31 applies	Exempt assets of the person or the person's spouse or partner	Only for the first 12 months after the payment is made
20	Christchurch mosques attack support payment and income to which clause 33 applies	Exempt assets of the person or the person's spouse or partner	Only for the first 12 months after the payment is made
21	Refund of a debt repayment and income to which clause 35 applies	Exempt assets of the person or the	Only for the first 12 months after the date

<b>Row</b>	<b>What is exempted</b>	<b>Exemption</b>	<b>Limit (if any)</b>
		person's spouse or partner	the refund is made
	Compare: SR 2005/183 r 10(1), (1A)		
	Schedule 3 clause 1 table: amended, on 16 April 2019, by regulation 4(1) of the Residential Care and Disability Support Services (Exempt Assets—Refunds of Specified Debt Repayments) Amendment Regulations 2019 (LI 2019/77).		
	Schedule 3 clause 1 table: amended, on 2 April 2019, by regulation 4(1) of the Residential Care and Disability Support Services (Exempt Assets—Christchurch Mosques Attack Support Payments) Amendment Regulations 2019 (LI 2019/69).		
	Schedule 3 clause 1 table: amended, on 1 April 2019, by regulation 7(1) of the Residential Care and Disability Support Services Amendment Regulations 2019 (LI 2019/29).		
	Schedule 3 clause 1 table: amended, on 30 November 2018, by regulation 4(1) of the Residential Care and Disability Support Services (Exempt Assets) Amendment Regulations 2018 (LI 2018/238).		

## **Part 2 Interpretation**

### **2 Interpretation**

In this schedule, unless the context otherwise requires,—

**Crown** means all or any of the following:

- (a) the Sovereign in right of New Zealand;
- (b) all Ministers of the Crown, and all departments of the Public Service specified in Schedule 1 of the State Sector Act 1988;
- (c) Crown entities as defined in section 7(1) of the Crown Entities Act 2004 (for example, DHBs);
- (d) every other instrument of the Crown in respect of the Government of New Zealand, whether the instrument is or was an agency, corporation, department, division, enterprise, service, or otherwise (for example, every predecessor in title of a DHB)

**disability support services** has the same meaning as in section 6(1) of the New Zealand Public Health and Disability Act 2000

**DHB** means a district health board established by or under section 19 of the New Zealand Public Health and Disability Act 2000

**health services** has the same meaning as in section 6(1) of the New Zealand Public Health and Disability Act 2000

**predecessor in title**, in relation to a DHB, has the meaning given to it by section 2(1) of the Health Sector (Transfers) Act 1993.

Compare: SR 2005/183 r 10(1B); SR 2006/377 r 3

### Part 3

#### Interest in car or similar vehicle for personal use of dependent child

##### 3 Interest

- (1) This clause applies to any interest in 1 car or similar vehicle that is for the personal use of the person's dependent child.
- (2) However, this clause does not apply to the interest if—
  - (a) an election has been made under clause 2 of Schedule 2 of the Act; or
  - (b) the exemption in paragraph (b) of the definition of exempt assets in clause 4 of Schedule 2 of the Act applies.

Compare: SR 2005/183 r 10(1)(d)

### Part 4

#### Second World War compensation or *ex gratia* payment

##### 4 Payment

This clause applies to any compensation or *ex gratia* payment made by the Government of any country to the person or the person's spouse or partner because the person or the person's spouse or partner—

- (a) was a prisoner of war, civilian internee, or victim of persecution of any country during the Second World War; or
- (b) was a dependent child of a person who was a prisoner of war, civilian internee, or victim of persecution of any country during the Second World War.

Compare: SR 2005/183 r 10(1)(e)

### Part 5

#### Personal injury from hepatitis C infection contracted through New Zealand blood supply payments

##### 5 Interpretation

In this Part, unless the context otherwise requires,—

**New Zealand blood supply** means either or both of the following:

- (a) blood collected in New Zealand (whether or not that blood was donated, or otherwise collected, with assistance provided or funded by or on behalf of the Crown);
- (b) any blood product derived from blood of that kind

**personal injury** has the meaning set out in section 26 of the Accident Compensation Act 2001.

Compare: SR 2005/183 r 10(1B); SR 2006/377 r 3

## 6 Payments

This clause applies to any *ex gratia* payment—

- (a) made to the person, on or after 15 December 2006, by or on behalf of the Crown; and
- (b) made because the person suffered a personal injury that is, or was caused by, hepatitis C infection contracted through the New Zealand blood supply.

Compare: SR 2005/183 r 10(1)(f)

## Part 6

### Viet Nam veterans *ex gratia* payments

## 7 Interpretation

In this Part, unless the context otherwise requires, **MoU on measures related to veterans** means the memorandum of understanding—

- (a) signed on 6 December 2006 for and on behalf of the following (the **parties**):
  - (i) the Ex-Vietnam Services Association; and
  - (ii) the Royal New Zealand Returned and Services Association; and
  - (iii) the Crown; and
- (b) not intended to be legally binding on the parties, but recording their intentions on a package of measures related to Viet Nam veterans and other veterans.

Compare: SR 2005/183 r 10(1C)

## 8 Payments

This clause applies to any *ex gratia* payment—

- (a) made to the person, on or after 27 April 2007, by the Crown; and
- (b) made in accordance with the MoU on measures related to veterans.

Compare: SR 2005/183 r 10(1)(g)

## Part 7

### Lake Alice compensation or *ex gratia* payments

## 9 Payments

This clause applies to any compensation payment or *ex gratia* payment—

- (a) made to the person, on or after 26 October 2007, by or on behalf of the Crown; and

- (b) made because the person is a former patient of the Lake Alice Psychiatric Hospital.

Compare: SR 2005/183 r 10(1)(h)

## Part 8 Superannuation schemes

### 10 Interpretation

In this Part, unless the context otherwise requires,—

**benefit** means any lump sum, annuity, pension, allowance, refund, or other payment arising from membership of a superannuation scheme

**expected time of retirement** means the member's expected age or date of retirement as defined in the provisions of the scheme

**permitted**, in relation to a withdrawal or proposed withdrawal, means that the withdrawal is, or the proposed withdrawal if it were provided would be, permitted under the provisions of the scheme

**proposed withdrawal** means a withdrawal that has been applied for but has not yet been approved

**provision** means a provision (express or implied) of either or both of the following:

- (a) the deed that established the relevant trust or (as the case may be) the Act of the Parliament of New Zealand that constituted the relevant arrangement:
- (b) any rules of the scheme

**qualifying lock-in clause** means a provision of the scheme that—

- (a) prevents a member of the scheme from making or receiving a withdrawal from the scheme until either or both of the following apply to the member:
- (i) the member reaches the expected time of retirement:
- (ii) before reaching the expected time of retirement, the member leaves—
- (A) the employment in respect of which the scheme was constituted or established; or
- (B) any employment covered by the scheme; and
- (b) may—
- (i) be a standard withdrawals clause; or
- (ii) be accompanied by another provision of the scheme that is a standard withdrawals clause

**specified non-KiwiSaver scheme** or **scheme** means a scheme that is not a KiwiSaver scheme but—

- (a) is registered as a superannuation scheme under subpart 2 of Part 4 of the Financial Markets Conduct Act 2013; and
- (b) whose provisions include a qualifying lock-in clause

**standard withdrawals clause** means a provision of the scheme that permits a member of the scheme to make or receive a withdrawal from the scheme in circumstances that are, or are essentially, the same as those specified in all or any of the following clauses of Schedule 1 of the KiwiSaver Act 2006:

- (a) clause 8 (purchase of a first home):
- (b) clause 10 (significant financial hardship):
- (c) clause 12 (serious illness)

**withdrawal**, in relation to a member,—

- (a) includes any benefit provided from, and debited against the member's interest in, the scheme; but
- (b) does not include a permitted withdrawal or permitted proposed withdrawal that is a transfer (with or without the member's consent) from the scheme to a KiwiSaver scheme or to another non-KiwiSaver scheme.

Compare: SR 2005/183 r 10(1D)

## 11 Superannuation scheme items

This clause applies, if the person or the person's spouse or partner is a member of a specified non-KiwiSaver scheme, to the following items:

- (a) any contributions made to that scheme on or after 1 May 2008 by, or in respect of, the member; and
- (b) any interest that the member has in that scheme on or after 1 May 2008 except—
  - (i) a withdrawal that the member has received from the scheme:
  - (ii) a withdrawal that the member is entitled to receive from the scheme on reaching the expected time of retirement:
  - (iii) a withdrawal that the member is entitled to receive from the scheme on leaving the employment in respect of which the scheme was constituted or established, or any employment covered by the scheme, before reaching the expected time of retirement:
  - (iv) a withdrawal that the member has applied to receive from the scheme that the member is permitted to receive under the provisions of the scheme.

Compare: SR 2005/183 r 10(1)(i)

## Part 9

### Viet Nam Veterans and Their Families Trust payments and income

#### 12 Interpretation

In this Part, unless the context otherwise requires,—

**MoU on measures related to veterans** has the meaning given to it in clause 7

**Trust** means the trust established by the trust deed and that was, immediately before 26 November 2018, called the Viet Nam Veterans and Their Families Trust

**trust deed** means the deed signed on 16 August 2007 in accordance with clause 18 of the MoU on measures related to veterans.

Compare: SR 2005/183 r 10(1)(j)

#### 13 Payments and income

This clause applies to—

- (a) any payment made to the person under the Trust other than a payment of the kind referred to in any of paragraphs (a) to (d) of clause 14.2 of the trust deed:
- (b) any amount of income derived by the person from a payment of the kind referred to in paragraph (a).

Compare: SR 2005/183 r 10(1)(j), (ja)

## Part 10

### *Ex gratia* and compensation payments made by the Crown

#### 14 Interpretation

In this Part, unless the context otherwise requires,—

**compensation**—

- (a) means a payment made—
  - (i) in satisfaction of a judgment or an order of any court or an award of any tribunal, other than an award of costs; or
  - (ii) in settlement of a claim against the Crown (whether or not that claim has been formally filed in a court or tribunal); but
- (b) does not include a payment made under—
  - (i) an employment relationship; or
  - (ii) a contract to provide goods or services

**economic loss** means loss that is of a pecuniary nature, for example, lost wages

**harm**—

- (a) means illness or injury, or both; and

- (b) includes—
  - (i) physical harm; and
  - (ii) mental harm; and
  - (iii) humiliation, loss of dignity, and injury to the feelings of the aggrieved person; but
- (c) does not include—
  - (i) economic loss; or
  - (ii) loss or reduction of property; or
  - (iii) loss of any benefit, whether or not of a monetary kind, that the aggrieved person might reasonably have been expected to obtain; or
  - (iv) loss of employment or office

**property** has the meaning given to it by section 4 of the Property Law Act 2007.

## **15 Payments**

This clause applies to any compensation or *ex gratia* payment made—

- (a) by the Crown to a person; and
- (b) in recognition of harm or in respect of a claim of harm.

Compare: SR 2005/183 r 10(1)(k)

## **Part 11**

### **EVSA (Neville Wallace Memorial) Children's & Grandchildren's Trust payments**

## **16 Interpretation**

In this Part, unless the context otherwise requires, **Trust** means the trust immediately before the commencement of this Part called the EVSA (Neville Wallace Memorial) Children's & Grandchildren's Trust—

- (a) that was established as the EVSA Youth Development Trust by a trust deed signed on 4 December 1993; and
- (b) whose trustees are incorporated as a charitable trust board under the Charitable Trusts Act 1957.

Compare: SR 2005/183 r 10(1)(l)

## **17 Payments and income**

This clause applies to—

- (a) any payment made on or after 17 August 2007 to a person by the Trust; and

- (b) any income derived by the person from that payment.

Compare: SR 2005/183 r 10(1)(l), (m)

## Part 12

### Canterbury earthquake payments or amounts

#### 18 Interpretation

In this Part, unless the context otherwise requires,—

**Canterbury earthquake** means the earthquake that occurred on 4 September 2010 in Canterbury, and includes all of its aftershocks

**Government offer** means an offer by or on behalf of the Government of New Zealand in respect of any residential premises in the red zone—

- (a) to purchase the whole of the premises and to subrogate the owner's claims for damage to the premises from the earthquake to the Earthquake Commission continued by section 4 of the Earthquake Commission Act 1993 and the owner's insurance company; or
- (b) to purchase the land only of the premises, without subrogation of the owner's claim for damage to the premises from the earthquake to the owner's insurance company

**red zone** or **red zone land** means the area designated in the Prime Minister's public announcement of 23 June 2011 as the red zone, and any other area included in that zone or designated as red zone land by any subsequent announcement of the New Zealand Government.

Compare: SR 2005/183 r 3(1)

#### 19 Payments and amounts

- (1) This subclause applies to every payment made on or after 13 September 2010—
- (a) by the Canterbury Earthquake Commission (a body set up by the National Board of New Zealand Red Cross Incorporated in consultation with the Mayors of Christchurch City, the Waimakariri District, and the Selwyn District, and proposed to be incorporated as a charitable trust under the Charitable Trusts Act 1957); and
- (b) in relation to the effects of the Canterbury earthquake; and
- (c) out of the fund created by donations made to the Canterbury Earthquake Appeal of New Zealand Red Cross Incorporated (and by money from other sources).
- (2) This subclause applies to every payment made on or after 24 December 2010—
- (a) by the Earthquake Commission continued in existence by section 4(1) of the Earthquake Commission Act 1993, or by an insurance company; and

- (b) either in respect of the destruction of or any damage to any property caused by the Canterbury earthquake, or for or towards the costs of renting accommodation in place of residential premises destroyed or made uninhabitable by the Canterbury earthquake.
- (3) This subclause applies to every payment made on or after 23 June 2011 by or on behalf of the Crown as a payment or part payment of the purchase price for any property or land in the red zone under a Government offer that has been accepted by the person to whom it was made.
- (4) If any payments to which subclause (2) or (3) applies are paid in instalments, or 1 or more payments are made under subclause (2) or (3), the date that the payments are made is the date on which the final instalment is paid or the last payment is made.

Compare: SR 2005/183 r 10(1)(la), (lab), and (lb), (1DD)

## 20 Specified time defined for payments

- (1) For a payment to which clause 19(1) or (3) applies, the **specified time**, in relation to a person and a payment, means,—
  - (a) if the person intends to use the payment to repair or rebuild any existing premises or to purchase any replacement residential premises, 48 months after the payment was made; or
  - (b) in any other case, 12 months after the payment was made.
- (2) For a payment to which clause 19(2) applies, the **specified time**, in relation to a person and a payment, means (subject to subclause (3)) the start of the day that is 48 months after the day on which the payment was made to the person.
- (3) Despite subclause (2), for clause 1 and a payment to which clause 19(2) applies, the **specified time**, in relation to a person and a payment, means,—
  - (a) if the person intends to use the payment to repair or rebuild any existing premises or to purchase any replacement residential premises, 48 months; or
  - (b) in any other case, 12 months.

Compare: SR 2005/183 r 10(1)(la), (lab), and (lb), (1DC)

## Part 13

### Payments under Sleepover Wages (Settlement) Act 2011

#### 21 Interpretation

- (1) In this Part, unless the context otherwise requires,—
  - Sleepover Act** means the Sleepover Wages (Settlement) Act 2011
  - specified employer** means—
    - (a) Idea Services Limited; or

- (b) Timata Hou Limited; or
  - (c) any other employer in the health and disability sector to whom subpart 2 of Part 2 of the Sleepover Act applies (with or without modifications) because of an order made under section 24(1)(b) of the Sleepover Act; or
  - (d) any other employer to whom subparts 1 and 2 of Part 2 of the Sleepover Act apply (with or without modifications) because of an order made under section 24(1)(a) of the Sleepover Act.
- (2) A term that is defined in section 4 or 23 of the Sleepover Act and that is used but not defined in this Part has the same meaning as in section 4 or 23 of the Sleepover Act.
- Compare: SR 2005/183 r 10(1)(lc), (1DA), (1DB)

## 22 Payments and income

This clause applies to—

- (a) every payment—
  - (i) of back wages for a sleepover that began to be performed on or after 1 June 2004; and
  - (ii) made by a specified employer, made on or after 18 October 2011, and made to any of the following who is entitled to the payment under any of sections 14 to 16 of the Sleepover Act:
    - (A) a current employee:
    - (B) a recent employee:
    - (C) a historic employee:
- (b) any amount of income derived by the person from a payment of a kind referred to in paragraph (a).

Compare: SR 2005/183 r 10(1)(lc)

## Part 14 Victims of crime payments and income

### 23 Interpretation

In this Part, unless the context otherwise requires,—

**crime** means an offence for which the offender—

- (a) is liable on conviction to imprisonment for life or to imprisonment for more than 3 months; or
- (b) would have been liable on conviction to imprisonment for life or to imprisonment for more than 3 months but for circumstances (for example, where the offender has died)

**immediate family**, in relation to a person,—

- (a) means a member of the person's family, whānau, or other culturally recognised family group, who is in a close relationship with the person at the time of the crime; and
- (b) to avoid doubt, includes—
  - (i) a spouse, civil union partner, or de facto partner:
  - (ii) a child or stepchild:
  - (iii) a brother, sister, stepbrother, or stepsister:
  - (iv) a parent or step-parent:
  - (v) a grandparent

**victim** means—

- (a) a person against whom a crime has been committed by another person; and
- (b) a person who, through, or by means of, a crime committed by another person, has suffered physical or emotional harm, or loss of, or damage to, property; and
- (c) a parent or legal guardian of a child, or of a young person, who falls within paragraph (a) or (b), unless that parent or guardian is charged with the commission of, or convicted or found guilty of, or pleads guilty to, the crime concerned; and
- (d) a member of the immediate family of a person who, as a result of a crime committed by another person, has died, unless that member is charged with the commission of, or convicted or found guilty of, or pleads guilty to, the crime concerned.

Compare: SR 2005/183 r 10(1E); SR 2011/287 r 36

## **24 Payments and income**

This clause applies to—

- (a) any payment made by or on behalf of the Crown to a person because the person is a victim; and
- (b) any income derived by the person from that payment.

Compare: SR 2005/183 r 10(1)(n), (o)

## **Part 15 Accommodation supplement arrears lump sum payments and income**

## **25 Interpretation**

In this Part, unless the context otherwise requires,—

**accommodation supplement** means accommodation supplement under the Social Security Act 1964

**specified area boundary error**, for a person, means incorrect data relating to the person's accommodation costs (within the meaning of section 61E of the Social Security Act 1964) entered—

- (a) into a computer system operated by or on behalf of MSD; and
- (b) as a result of a failure to update the applicable parts of New Zealand in accordance with the definitions of Area 1, Area 2, Area 3, or Area 4 contained in Schedule 18 of the Social Security Act 1964; and
- (c) at any time in the period of 1 April 2005 and the close of 31 March 2018 (inclusive).

**specified processing error**, for a person, means incorrect data relating to either or both of the type of the person's premises and the person's accommodation costs (within the meaning of section 61E of the Social Security Act 1964) entered—

- (a) into a computer system operated by or on behalf of MSD; and
- (b) as a result of a system error; and
- (c) at any time in the years 1993 to 2014 (inclusive).

Compare: SR 2005/183 r 10(1F)

Schedule 3 clause 25 **specified area boundary error**: inserted, on 1 April 2019, by regulation 7(2) of the Residential Care and Disability Support Services Amendment Regulations 2019 (LI 2019/29).

## 26 **Payments and income for specified processing error**

This clause applies to—

- (a) any lump sum payment of arrears of accommodation supplement made to the person, on or after 1 November 2016, as a result of MSD correcting a specified processing error; and
- (b) any amount of income derived by the person from a payment of a kind referred to in paragraph (a).

Compare: SR 2005/183 r 10(1)(p), (q), (1F)

Schedule 3 clause 26 heading: replaced, on 1 April 2019, by regulation 7(3) of the Residential Care and Disability Support Services Amendment Regulations 2019 (LI 2019/29).

## 26A **Payments and income for specified area boundary error**

This clause applies to—

- (a) any lump sum payment of arrears of accommodation supplement made to the person, on or after 1 April 2019, as a result of MSD correcting a specified area boundary error; and
- (b) any amount of income derived by the person from a payment of a kind referred to in paragraph (a).

Schedule 3 clause 26A: inserted, on 1 April 2019, by regulation 7(4) of the Residential Care and Disability Support Services Amendment Regulations 2019 (LI 2019/29).

## Part 16

### Temporary additional support arrears lump sum payments and income

#### 27 Interpretation

In this Part, unless the context otherwise requires,—

**lump sum eligibility requirements**, for a person (A), means that,—

- (a) on 1 April 2006, A was entitled to continue receiving the special benefit; and
- (b) during any period on or after 1 April 2006, A would have received more assistance from temporary additional support than the special benefit but was not advised by MSD that A could apply for temporary additional support (**lump sum eligibility period**); and
- (c) in response to advice by MSD on or after 18 August 2017, A cancels the special benefit and applies for temporary additional support in respect of any lump sum eligibility period

**lump sum payment of arrears of temporary additional support** means a lump sum payment of arrears of temporary additional support—

- (a) made as a result of an application of section 317 of the Social Security Act 2018 (Minister may consent to backdating); and
- (b) made to—
  - (i) a person (A) who meets the lump sum eligibility requirements; or
  - (ii) a person (B) who, during any lump sum eligibility period, is or was the spouse or partner of A and is or was entitled, under regulation 191 of the Social Security Regulations 2018, to an apportionment of any other benefit payable to A; and
- (c) calculated after the deduction of the amount of the special benefit that was paid to A or B during any lump sum eligibility period

**special benefit** means the special benefit as continued under section 23 of the Social Security (Working for Families) Amendment Act 2004 (as saved by clause 19 of Schedule 1 of the Social Security Act 2018)

**temporary additional support** means the benefit described in section 61G of the Social Security Act 1964 or in subpart 16 of Part 2 of the Social Security Act 2018.

Compare: SR 2005/183 r 10(1G)

**28 Payments**

This clause applies to any lump sum payment of arrears of temporary additional support made to the person on or after 18 August 2017.

Compare: SR 2005/183 r 10(1)(r)

**Part 17****Direct disability support payments****29 Interpretation**

In this Part, unless the context otherwise requires, **direct disability support payment**, for a person with a disability (A), means any direct payment of disability support made by or on behalf of the Crown to A or a person on A's behalf, for the purpose of purchasing or obtaining disability support services for A.

**30 Payments**

This clause applies to a direct disability support payment made on or after 1 October 2018.

**Part 18****Housing New Zealand Corporation payments for alleged methamphetamine contamination**

Schedule 3 Part 18: inserted, on 30 November 2018, by regulation 4(2) of the Residential Care and Disability Support Services (Exempt Assets) Amendment Regulations 2018 (LI 2018/238).

**31 Payments and interest**

This clause applies to—

- (a) any lump sum payment made to a person on or after 30 November 2018 by Housing New Zealand Corporation to reimburse the costs arising from the termination of a person's tenancy with the Corporation due to alleged methamphetamine contamination of the property to which the tenancy relates; and
- (b) any interest derived (directly or indirectly) by the person from the payment referred to in paragraph (a).

## Part 19

### Christchurch mosques attack support payments

Schedule 3 Part 19: inserted, on 2 April 2019, by regulation 4(2) of the Residential Care and Disability Support Services (Exempt Assets—Christchurch Mosques Attack Support Payments) Amendment Regulations 2019 (LI 2019/69).

#### 32 Interpretation

In this Part, unless the context otherwise requires, **Christchurch mosques attack support payment**—

- (a) means a payment made to a person because they are a person affected by an attack on 15 March 2019 on a Christchurch mosque; and
- (b) includes, without limitation, a payment specified in paragraph (a) made from donations collected or made by all or any of the following:
  - (i) an organisation that has collected donations, for example, by means that are or include any of the following crowdfunding websites:
    - (A) [www.everydayhero.co.nz](http://www.everydayhero.co.nz);
    - (B) [www.givealittle.co.nz](http://www.givealittle.co.nz);
    - (C) [www.launchgood.com](http://www.launchgood.com);
  - (ii) businesses;
  - (iii) employers;
  - (iv) individuals;
  - (v) overseas governments.

Schedule 3 clause 32: inserted, on 2 April 2019, by regulation 4(2) of the Residential Care and Disability Support Services (Exempt Assets—Christchurch Mosques Attack Support Payments) Amendment Regulations 2019 (LI 2019/69).

#### 33 Payments and income

This clause applies to—

- (a) a Christchurch mosques attack support payment made to a person on or after 2 April 2019; and
- (b) any income derived (directly or indirectly) by the person from the payment referred to in paragraph (a).

Schedule 3 clause 33: inserted, on 2 April 2019, by regulation 4(2) of the Residential Care and Disability Support Services (Exempt Assets—Christchurch Mosques Attack Support Payments) Amendment Regulations 2019 (LI 2019/69).

**Part 20**  
**Refunds of debt repayments made by recipients of recoverable  
financial assistance relating to alleged methamphetamine  
contamination**

Schedule 3 Part 20: inserted, on 16 April 2019, by regulation 4(2) of the Residential Care and Disability Support Services (Exempt Assets—Refunds of Specified Debt Repayments) Amendment Regulations 2019 (LI 2019/77).

**34 Interpretation**

In this Part, unless the context otherwise requires,—

**specified debt repayment** means a debt repayment made to MSD, on or after 1 July 2013, in respect of recoverable financial assistance granted to A to meet certain costs arising from Housing New Zealand Corporation’s zero-tolerance methamphetamine contamination policy

**Housing New Zealand Corporation’s zero-tolerance methamphetamine contamination policy** means the policy applied by Housing New Zealand Corporation on methamphetamine contamination between 1 July 2013 and 1 June 2018.

Schedule 3 clause 34: inserted, on 16 April 2019, by regulation 4(2) of the Residential Care and Disability Support Services (Exempt Assets—Refunds of Specified Debt Repayments) Amendment Regulations 2019 (LI 2019/77).

**35 Payments and income**

This clause applies to—

- (a) a refund to a person (A) of the amount of a specified debt repayment; and
- (b) any income derived (directly or indirectly) by A from the refund referred to in paragraph (a).

Schedule 3 clause 35: inserted, on 16 April 2019, by regulation 4(2) of the Residential Care and Disability Support Services (Exempt Assets—Refunds of Specified Debt Repayments) Amendment Regulations 2019 (LI 2019/77).

Michael Webster,  
Clerk of the Executive Council.

## **Reprints notes**

### **1    *General***

This is a reprint of the Residential Care and Disability Support Services Regulations 2018 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

### **2    *Legal status***

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### **3    *Editorial and format changes***

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### **4    *Amendments incorporated in this reprint***

Residential Care and Disability Support Services (Exempt Assets—Refunds of Specified Debt Repayments) Amendment Regulations 2019 (LI 2019/77)

Residential Care and Disability Support Services (Exempt Assets—Christchurch Mosques Attack Support Payments) Amendment Regulations 2019 (LI 2019/69)

Residential Care and Disability Support Services Amendment Regulations 2019 (LI 2019/29)

Residential Care and Disability Support Services (Exempt Assets) Amendment Regulations 2018 (LI 2018/238)