

Departmental Disclosure Statement

Taxation (Cost of Living Payments) Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by Inland Revenue.

Inland Revenue certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

12 May 2022

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Part One: General Policy Statement

This Bill amends the Tax Administration Act 1994 and the Income Tax Act 2007.

The amendments proposed by the Bill are in relation to the Cost of Living Payments Scheme (the **scheme**), which is aimed at providing financial support to eligible low-to middle-income individuals facing increased cost-of-living pressures because of the recent spike in inflation. The Government intends that payments under the scheme will provide transitional support as the Government's extended fuel excise duty reductions and half-price public transport policies are phased out. The scheme will be in effect for 1 year only.

The proposed amendments would allow the Commissioner of Inland Revenue (the **Commissioner**) to use their existing tax administration powers for the purposes of administering the scheme. They also provide how the payments under the scheme would be treated for income tax and social policy purposes.

The Bill does not contain the eligibility criteria for the payments, which have been separately decided by the Government. Because of the nature of the payments, the eligibility criteria do not need to be included in legislation. Instead, the Bill requires the Commissioner to publish the eligibility criteria on the Inland Revenue Department's website.

Under the scheme, cost-of-living payments totalling \$350, which is half the couple rate for the winter energy payment (WEP), will provide short-term support for low-to middle-income individuals earning up to \$70,000 per annum and who are not eligible for the WEP. The payments will be made in 3 monthly instalments from 1 August 2022.

The main eligibility criteria for an individual receiving the payments are:

- net income of \$70,000 or less for the 2021–22 tax year;
- not eligible to receive a qualifying benefit for the WEP (sole parent support, supported living payment, jobseeker support, jobseeker support student hardship, emergency benefit, emergency maintenance allowance, youth payment, young parent payment, New Zealand superannuation, or veteran's pension) during the payment period;
- aged 18 or over;
- both New Zealand tax resident and present in New Zealand; and
- not incarcerated.

The Inland Revenue Department will administer the payments and will determine eligibility based on the information it holds for individuals. Individuals will not need to apply for the payments.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	N/A

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO
<p>Given time constraints, a Regulatory Impact Assessment was not able to be completed and submitted to inform policy decisions. However, a Supplementary Analysis Report (SAR) has been completed and submitted with the Bill and draft Cabinet paper seeking approval for introduction. Copies will be available at—</p> <ul style="list-style-type: none">▪ https://taxpolicy.ird.govt.nz/publications▪ https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
<p>The Inland Revenue Quality Assurance Panel has reviewed the <i>Cost of living payments Supplementary Analysis Report (SAR)</i> prepared by Inland Revenue and considers that the information and analysis summarised in the SAR partially meets the quality assurance criteria.</p> <p>Analysis of the problem and potential options has been significantly constrained by shortened timeframes, Ministerial direction on options and lack of stakeholder consultation outside Government. Given this, the panel considers that the information in the RIS is as complete as could reasonably be expected and identifies the main judgements, risks and uncertainties within the policy.</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p>The SAR contains information on the potential costs and benefits.</p> <p>Copies will be available at—</p> <ul style="list-style-type: none"> ▪ https://taxpolicy.ird.govt.nz/publications ▪ https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments 	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>The effectiveness of taxation legislation is, by its nature, reliant on effective and voluntary compliance. The level of effective compliance or non-compliance with specific applicable obligations or standards and the nature of regulator effort, may have an impact on the potential costs or benefits of the policy to be given effect by the Bill.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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No formal steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's obligations.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

No formal steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi.
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Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
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Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be available on the Ministry's website at https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/
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Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
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3.4.1. Was the Ministry of Justice consulted about these provisions?	N/A
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Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
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Clause 5 of the Bill authorises the Commissioner of Inland Revenue (the Commissioner) to administer the cost of living payments scheme. Under existing legislation (s 17M of the Tax Administration Act 1994), the Commissioner may use information obtained under any of the Revenue Acts to carry out or support a function lawfully conferred on the Commissioner. This means that the Commissioner may use information already held to determine eligibility for payment under the cost of living payment scheme and to make those payments.
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3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
<p>Inland Revenue did consult on the proposal with the Privacy Commissioner. Given the very tight timeframes and Budget sensitives consultation was limited and at a high level. Based on the limited consultation, the Privacy Commissioner indicated that they were broadly comfortable with the proposal but did not provide a comment for inclusion in the Cabinet Paper. They also raised a question about whether an end to the extension of the Commissioner's powers to include the administration of the proposed payment should be included in the legislation. Inland Revenue officials considered this but, on balance, thought that there were sufficient limitations in the design of the payment itself with the limited payment window and an end date to the scheme.</p>	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	NO
<p>Stakeholders, except for key government departments, were not consulted on the proposals in the Bill due to time constraints and the sensitive nature of the policy. The Treasury was jointly involved in the development. In addition, MSD was involved at an early stage in the initial policy advice and provided some initial options that they could deliver. These options were not progressed.</p> <p>The Parliamentary Counsel Office (PCO) reviewed a draft of the Bill and provided comments. PCO raised a question about whether the approach to publish the eligibility criteria for the payments scheme on the Inland Revenue website, rather than including them in secondary legislation, was the appropriate approach.</p> <p>Consequently, Inland Revenue officials consulted the Legislative Design and Advisory Committee (LDAC) for their view on whether the eligibility criteria should be set out in secondary legislation or in an administrative notice.</p> <p>LDAC considered that the key question was whether the proposed cost of living payments scheme was more similar in nature to an administratively managed grant scheme, like the COVID support scheme (CSP), or more similar to an entitlement, like ACC or social welfare payments.</p> <p>LDAC noted that there was no clear legally correct answer in this situation and that a case could be made for either outcome. However, after considering the arguments for each option they advised:</p> <p><i>“On balance, we think that the balance is slightly tilted in favour of treating this as an administrative scheme, principally due to its nature as a short-term response to an immediate problem, which makes it a bit more akin to the CSP scheme. If this option is progressed, care will need to be taken to clearly set out the eligibility requirements in the administrative notice so that they are transparent (and that they are the full set), particularly given the potential for clawback.”</i></p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
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The proposals in the Bill have been reviewed by internal system design and operational subject matter experts according to Inland Revenue's standard process for assessing the administrative impacts of any new policy initiatives and ensuring they are workable and complete. This involves assessing whether systems need to be changed and, if so, whether formal testing needs to be carried out. It also includes analysis of the operational impacts associated with implementing the proposal.

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO

4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	YES
<p>The proposed amendments in the Bill would allow the Commissioner of Inland Revenue (the Commissioner) to use their existing tax administration powers for the purposes of administering the scheme. The scheme does not require application by potentially eligible people as other similar schemes have, but instead will be determined by the Commissioner and issued directly based on the information the Commissioner holds. There will be no application required.</p> <p>The amendments propose how the payments under the scheme would be treated for income tax and social policy purposes.</p> <p>The Bill does not contain the eligibility criteria for the payments, which have been separately decided by the Government. Because of the nature of the payments, the eligibility criteria do not need to be included in legislation. Instead, the Bill requires the Commissioner to publish the eligibility criteria on the Inland Revenue Department's website.</p> <p>Refer to section 3.6 for a summary of the LDAC advice received in relation to the decision not to include the eligibility criteria in legislation.</p>	