



18 April 2023

Andre`

fyi-request-21927-2d6d09cf@requests.fyi.org.nz

Tēnā koe Andre`

On 9 March 2023, you emailed the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982 (the Act), the following information:

- *Debt management policy in relation to whether a debt established in MSD systems is decided to be recoverable or not (or written off in some cases).*
- *Debt management policy in relation to court orders or attachments that MSD may be compelled to deduct payments to recover external debt from other agencies.*

For the sake of clarity, I will respond to each of your requests in turn.

- *Debt management policy in relation to whether a debt established in MSD systems is decided to be recoverable or not (or written off in some cases).*

The following legislative provisions are the legal basis for the Ministry to impose deductions on benefits for debts such as overpayments.

- [Section 362](#) of the Social Security Act 2018 (SSA 2018) imposes a legislative duty on the Ministry to “take all reasonably practicable steps to recover sums that are specified as debts due to the Crown.”
- [Section 353](#) of the SSA 2018 sets out that regulations made under Section 444 provide for recovery of sums specified as debts due to the Crown, issuing of deduction notices, and other related matters.
- [Section 448](#) of the SSA 2018 allows for the Ministry to make regulations on the remittance or suspension of debt.

- [Regulation 206](#) of the Social Security Regulations 2018 (Regulations) specifies what it means to be a debt due to the Crown. It includes identified overpayments, as per Regulation 206(f).
- [Regulation 207](#) sets out the exceptions to the Ministry's legislative duty to recover debts under Section 362 of the SSA 2018.
- [Regulation 209](#) provides that the Ministry must, in performing its duty under section 362 of the SSA 2018 to recover a debt, determine from time to time the rate and method of recovery. Regulation 209(2)(b) provides that one of the recovery methods is to deduct all or part of the debt from any amount payable to the person by the Ministry as a benefit or a student allowance.

Attached at **Appendix One** is the Ministerial delegation to the Chief Executive of the Ministry to write off debts.

The process to be followed in considering whether to write-off debt can be found [here](#), including a copy of the form: www.workandincome.govt.nz/map/income-support/core-policy/current-client-debt/process-for-debt-write-off-decision-01.html

Staff guidance on how to write-off debts created by staff in error can be found here: www.workandincome.govt.nz/map/income-support/core-policy/current-client-debt/accidental-debt-change-01.html

Under Section [391](#) of the SSA 2018, debtors have a right to seek review by a Benefits Review Committee of a decision made by the Ministry to impose a deduction or specified rate of repayment, if they disagree.

Under Section [397](#) of the SSA 2018, debtors have a right to appeal to the Social Security Appeal Authority against a decision made by the Ministry to impose a deduction or specified rate of repayment, if they disagree.

The Ministry has a process for implementing deductions from benefits, by providing guidance to staff in accordance with the Ministerial Direction on Debt Recovery. This is available online here: www.workandincome.govt.nz/map/legislation/ministerial-directions/debt-recovery-direction/index.html.

The following provides information to staff about the processes for debt recovery for clients receiving ongoing income support assistance:

- www.workandincome.govt.nz/map/income-support/core-policy/current-client-debt/negotiating-repayment-of-debt-01.html

- www.workandincome.govt.nz/map/income-support/core-policy/current-client-debt/debt-recovery-maximum-01.html
- www.workandincome.govt.nz/map/income-support/core-policy/current-client-debt/review-of-repayments-due-to-hardship-01.html

See also:

www.workandincome.govt.nz/map/income-support/core-policy/current-client-debt/current-client-debt.html

Attached at **Appendix Two** is a report titled *Debt to Government: Comparing IR and MSD's approaches to writing off debt*. This report provides a comparison of the write-off powers that are available to Inland Revenue and the Ministry when dealing with debt caused by the overpayment of Working for Families tax credits and benefits, as well as recoverable assistance.

You will note that the information regarding some individuals is withheld under section 9(2)(a) of the Act in order to protect the privacy of natural persons. The need to protect the privacy of these individuals outweighs any public interest in this information.

You will also note that some information has been withheld under section 18(c)(i) of the Act, as the release of this information would be contrary to the provision of a specific enactment, namely section 18(3) of the Tax Administration Act 1994.

Some Special Needs Grants (SNG) are non-recoverable on the basis of discretion. SNGs are a kind of one-off assistance that can be granted to people in hardship. The SNG programme outlines the parameters of the programme, including which payment categories can be made non-recoverable. It can be found in its entirety here: www.workandincome.govt.nz/map/legislation/welfare-programmes/special-needs-grants-programme/index.html

Operational guidance to staff on administering SNGs, including under what conditions they should use their discretion to make a non-recoverable grant, can be found here: www.workandincome.govt.nz/map/income-support/extra-help/special-needs-grant/index.html

- *Debt management policy in relation to court orders or attachments that MSD may be compelled to deduct payments to recover external debt from other agencies.*

The Ministry of Justice (MOJ) has the authority to impose a civil attachment order on a main benefit, in order to meet outstanding court fines or to pay a creditor. An attachment order requires an employer or Work and Income (i.e. when such an order is made against a main benefit recipient) to deduct a

specified amount or percentage from a judgement debtor's salary, wages, or benefit. MOJ is responsible for making decisions regarding the granting of a civil debt recovery order. But either party – i.e., the debtor or creditor – can apply to MOJ to vary, suspend, or cancel that order.

More information about attachment orders can be found on MOJ's website, here:

www.justice.govt.nz/fines/about-civil-debt/collect-civil-debt/attachment-orders/.

While responsibility for the imposition, variation, or cancellation of an attachment order lies with MOJ, the Ministry has protocols for benefit redirections made in accordance with such an order. These protocols relate to a prescribed rate of protected earnings and determining the priority of various types of benefit redirection.

Case managers must not make deductions of more than 40 percent of the client's net income, and child support payments take precedence over all other reasons for a benefit deduction, including a civil attachment order. This is because clients have 60 percent of their net income protected by law, and certain types of redirections (such as child support) take priority when a benefit recipient is subject to multiple orders and redirections.

The priority of redirection types is as follows:

- Child Support deductions made under the Child Support Act 1991
- Inland Revenue tax deductions
- Work and Income debt repayments including Liable Parent Contributions, child maintenance debts and Major Repairs Advances
- Attachment orders made under the Family Proceedings Act 1980
- Court attachment orders made under the Summary Proceedings Act 1957 – Court Fines
- Court attachment orders issued under the District Courts Act 2016 – Civil Attachment Orders
- Student Loan repayments.

Where a benefit recipient has more than one order on their record, it is sometimes necessary to determine the priority of those deductions. If the amount of the deductions need to be reduced, in accordance with the protected earnings rule, then adjustments are made to the lowest priority deduction type first.

The Ministry does not have the authority to consider a challenge to a court attachment order, but our staff are responsible for advising MOJ if, for any reason, we are unable to load a deduction onto a client's file or a discrepancy or error has been identified. Furthermore, staff are instructed to advise clients suffering undue hardship because of the amount of an attachment order that they should contact the Registrar of the District Court for a reassessment of

the payment rate or cancellation of the order. Out of concern for the client's right to privacy, however, Ministry staff would not usually contact MOJ about such a client directly, but rather encourage that client to contact MOJ themselves.

More information about the Ministry's protocols regarding attachment orders can be found here:

www.workandincome.govt.nz/map/income-support/extra-help/accommodation-supplement/changes-and-reviews-accommodation-supplement/court-attachment-orders-01.html

The principles and purposes of the Official Information Act 1982 under which you made your request are:

- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

This Ministry fully supports those principles and purposes. The Ministry therefore intends to make the information contained in this letter and any attached documents available to the wider public. The Ministry will do this by publishing this letter on the Ministry's website. Your personal details will be deleted, and the Ministry will not publish any information that would identify you as the person who requested the information.

If you wish to discuss this response with us, please feel free to contact OIA_Requests@msd.govt.nz.

If you are not satisfied with this response, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Ngā mihi nui

Bridget Saunders

Bridget Saunders
Issue Resolution Manager
Service Delivery