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## MEMO

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**DATE** November 2022

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**TO** Carolyn Tremain, Chief Executive  
Ministry for Business, Innovation and Employment

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**FROM** Alison McDonald, Deputy Secretary Immigration

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**PREPARED BY** Meegan Sorenson, Principal Advisor – Verification & Compliance branch, INZ

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**SUBJECT** **INCREASING FINANCIAL SUPPORT FOR A SMALL GROUP OF REFUGEE OR PROTECTED PERSON CLAIMANTS**

### PURPOSE

This memo seeks approval to increase the living allowance paid to a small group of refugee or protected person claimants (claimants) who have not been issued with visas, and as such are unable to work or claim any benefit from Work and Income.

### RECOMMENDATIONS

It is recommended that you:

- a) **Note** that the allowances paid to claimants was last reviewed in April 2020.

*Noted*

- b) **Note** that the April 2020 review resulted in an increase in allowance for claimants in the community from \$120 to \$225 per week, but no increase was proposed to the allowance for those housed at Te Āhuru Mōwai o Aotearoa who currently receive \$85 per week.

*Noted*

- c) **Note** the approach used to calculating allowances is based on an amount mid-way between the net Jobseeker Support benefit for a single person aged 25 or above and the net Jobseeker Support benefit for a person in a partnership without children.

*Noted*

- d) **Note** that an increase to the allowance does not require Cabinet approval.

*Noted*



- e) **Note** the proposed increase in allowances is consistent with adjustments to benefit rate increases as part of the Government's commitment to lifting incomes and implementing key recommendations of the Welfare Expert Advisory Group (WEAG) and responding to the impacts of COVID-19 and increased cost of living.

*Noted*

- f) **Note** that to date INZ has not routinely reviewed the allowance, but effective from this year, will review the allowances annually.

*Noted*

- g) **Agree** to increase the allowance for claimants in the community who do not hold visas enabling them to work and support themselves from \$225 per week to \$291.50 per week, based on 1 April 2022 benefit rates.

*Agree / Discuss*

- h) **Agree** to increase the allowance for claimants residing at the Te Āhuru Mōwai o Aotearoa from \$85 per week to \$185.00 per week based on 1 April 2022 benefit rates, less accommodation costs.

*Agree / Discuss*

- i) **Note** INZ has sought advice on the necessary level of authority to incur the allowance expense (including increasing the allowance), to determine whether it is appropriate for the decision to sit elsewhere, for example with the Deputy Secretary Immigration, rather than the Chief Executive, and confirmed that the delegation sits with the Chief Executive of MBIE.

*Noted*

- j) **Agree** that INZ further investigate the level of authority to incur the allowance expense (including increasing the allowance), with a view to having the Deputy Secretary Immigration making the decision as an option for future reviews.

*Agree / Discuss*

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**Alison McDonald**  
Deputy Secretary – Immigration

..... November 2022

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**Carolyn Tremain**  
Secretary for Business, Innovation and  
Employment and Chief Executive

..... November 2022



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## BACKGROUND

1. There is currently a small number of claimants<sup>1</sup> in New Zealand who have been refused entry permission and a visa<sup>2</sup>. Because of their refused entry and unlawful immigration status, they are unable to work or claim assistance from the Ministry of Social Development to support themselves in New Zealand while their claim is being progressed. Due to their status as claimants, they are also unable to be deported from New Zealand.
2. Consistent with New Zealand's obligations under the International Covenant on Economic, Social and Cultural Rights (Article 11 which provides that States will take appropriate steps to ensure the realisation of the right to an adequate standard of living), Immigration New Zealand (INZ) pays a living allowance to these claimants where they are in the community and have not been granted visas which would enable them to work to support themselves. Such individuals may be housed at the Asylum Seekers Support Trust, at Te Āhuru Mōwai o Aotearoa, or with family or friends.
3. The allowance is payable to those who have:
  - been refused entry permission and a visa at the border and subject to s315 turnaround provisions of the Immigration Act 2009<sup>3</sup>; and
  - lodged a claim with the Refugee Status Unit to be recognised as refugees and protected persons under Part 5 of the Immigration Act 2009 (the Act)
  - been assessed as eligible for the allowance.
4. Those who have claimed refugee or protected person status more than once in New Zealand and have already had decisions made on their claims are not eligible for the allowance. Those who are detained in a Corrections facility are also not eligible for the allowance, whether a first-time border claimant or second time claimant.

### *Regular review of allowances*

5. There is currently no set review period for the allowance. The allowance was last reviewed in April 2020 and prior to that, in 2015. The April 2020 review resulted from several submissions from members of the public, including from the Asylum Seekers Support Trust (ASST), regarding the need for an increase to the weekly allowance payments. Effective from this year, INZ intend to review the allowance on an annual basis.
6. While work was already underway to propose an increase in the allowance, the situation in April 2020 required more urgent action, as all claimants who had been detained in

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<sup>1</sup> A person who is in New Zealand who has made a claim for recognition as a refugee under the Refugee Convention or a protected person under the Convention Against Torture or a protected person under the Covenant on Civil and Political Rights.

<sup>2</sup> A person who comes to New Zealand and is denied entry, may be detained until they can be removed (s115 refers). If a claim is then made, that person may continue to be detained but is not removed. INZ determines whether it is proportionate to restrict the freedom of movement of such individuals in terms of the 2012 UN Guidelines on Detention and may decide to continue to detain them or allow them to remain in the community on a Residence and Reporting Requirements Agreement (RRRA), or to be granted a visa.

<sup>3</sup> Restrictions on freedom of movement do not necessarily impact an individual's eligibility for the allowance, except for those identified as ineligible in paragraph 4.



Corrections facilities had been released into the community in response to the COVID-19 lock-down.

7. The outcome of the April 2020 review was an increase in allowance for claimants in the community who do not hold visas enabling them to work and support themselves from \$120 to \$225 per week. No increase was proposed to the \$85 allowance for those housed at Te Āhuru Mōwai o Aotearoa as it was considered at the time that the housing requirements for claimants released there were fully met.

#### **PAYMENT OF ALLOWANCES IS DISCRETIONARY AND SUBJECT TO REVIEW**

8. Generally, allowances can be paid to first time claimants who are subject to s315 turnaround provisions of the Immigration Act 2009 (see description at paragraph 3). The payment of these allowances by INZ is discretionary<sup>4</sup>. In most cases, it will be the individual's representative or the Asylum Seekers Support Trust who requests the payment on behalf of the claimant.
9. The payment of allowances to each individual is reviewed every six months to confirm whether the claimant is still meeting relevant criteria. As soon as a claim is either approved or declined, the claimant, their representative, and the Ministry of Business, Innovation and Employment (MBIE) Finance team are notified. Where the claim is declined the payment is ceased.

#### **OFFICE OF THE OMBUDSMAN REVIEW – OPCAT REPORT**

10. In June 2020, the Office of the Ombudsman conducted a two-day inspection of Te Āhuru Mōwai o Aotearoa under the Crimes of Torture Act 1989 to assess the treatment and living conditions of the claimants detained there. A further inspection took place on Thursday, 28 July 2022.
11. The report from the June 2020 inspection, which was published in April 2021 noted that Te Āhuru Mōwai o Aotearoa was well run, with several positive practices to be commended. The report made several recommendations including that the amount of the weekly allowance provided to residents should be reviewed to ensure it is fair and reasonable in relation to residents' food and other essential living costs.
12. INZ accepted the recommendation relating to a review of the weekly allowance however, there has been a delay in completing the review and seeking decisions on changes to allowances (this memo).
13. There have been no claimants residing at Te Āhuru Mōwai o Aotearoa due to their freedom of movement being restricted, since August 2021.

#### **VICTORIA CASEY REVIEW INTO THE RESTRICTION OF MOVEMENT OF CLAIMANTS**

14. On 23 March 2022, Victoria Casey QC concluded her independent review of INZ's processes and procedures relating to restriction of liberty of claimants for refugee and

<sup>4</sup> There is a small additional group of people who may be housed at Te Āhuru Mōwai o Aotearoa, including multiple time claimants, who may be paid the allowance. Consideration of such payments are made on a discretionary and case by case basis.



protection status. The review included consideration of the appropriate use of Corrections and Police facilities in New Zealand for Immigration detention.

15. While the Victoria Casey review does not have any immediate impact on the matter of allowances discussed in this paper, final outcomes from the Victoria Casey review may impact matters of allowances in the future.
16. The Victoria Casey review also acknowledged the findings of the Ombudsman's April 2021 OPCAT Report and supported the review of the adequacy of the allowance for claimants residing at Te Āhuru Mōwai o Aotearoa.

### **2022 REVIEW OF ALLOWANCES**

17. INZ recommends that based on benefit rates as at 1 April 2022:
  - the current allowance of \$225 for claimants residing in the community is increased to \$291.50 (a 29.5 per cent increase); and
  - the current allowance of \$85 for claimant's resident at Te Āhuru Mōwai o Aotearoa is increased to \$185.00 (a 118<sup>5</sup> per cent increase).

#### *Allowance calculation approach*

18. The approach taken to calculating the allowance uses the most recent Ministry of Social Development (MSD) Jobseeker Support benefit rates and takes the midpoint between the net Job Seeker's Support benefit for a single person 25+ years (\$315.00 as at 1 April 2022) and a person in a relationship without children (\$268 as at 1 April 2022)). For claimants residing at Te Āhuru Mōwai o Aotearoa, the calculated figure is reduced to factor in that there are no accommodation costs for this group of people.
19. The approach to calculating the accommodation supplement deduction for residents at Te Āhuru Mōwai o Aotearoa is the midpoint between the Jobseeker Rent or Board Accommodation Supplement for a single person 25 years or over (\$79.00 as at 1 April 2022) and a person<sup>6</sup> in a relationship without children (\$134 as at 1 April 2022). Using this approach, the accommodation supplement calculation equates to \$106.50.
20. In determining the level of increase, INZ has considered the need to keep the amount less than that provided to single jobseekers aged 25 and above, to ensure that the increase does not in itself incentivise unlawful entry to New Zealand.
21. MSD Jobseeker Support benefit rates provide for a separate accommodation supplement to be paid in certain circumstances. INZ's approach to calculating allowances does not factor in this supplement.

#### *Further rationale for proposed increase in allowance*

22. Claimants at Te Āhuru Mōwai o Aotearoa are provided with accommodation and some basic items such as hygiene and welcome packs. Claimants meet their basic living costs, including food, clothing, personal hygiene items and some medical needs through their living allowance.

<sup>5</sup> Note the large increase is due to this allowance not being increased since before 2020

<sup>6</sup> Based on the MSD Accommodation Supplement for couples without children



23. During COVID-19 Alert Levels 4 and 3 in 2020 and 2021, \$50 per week was deducted from claimants' \$85 per week allowance to cover the costs for prepared meals<sup>7</sup> as claimants were unable to travel freely to buy their own food under the alert level restrictions. The Ombudsman's report (highlighted earlier in this paper), noted that claimants residing at the Te Āhuru Mōwai o Aotearoa told the inspectors that the remaining \$35 was not enough to cover their other weekly expenses.
24. While claimants are now able to travel freely to do their own shopping for food, staff at Te Āhuru Mōwai o Aotearoa commented during interviews in April 2020 as part of the Office of the Ombudsman inspection (OPCAT), that the weekly allowance of \$85 per week was insufficient to adequately support the claimants as food and other basic living costs had increased quite significantly.
25. The proposed increase in allowances is consistent with adjustments to benefit rate increases as part of the Government's commitment to lifting incomes and implementing key recommendations of the Welfare Expert Advisory Group (WEAG) and in response to the impacts of COVID-19 and increased cost of living.

*The increased allowance constitutes a reasonable use of public money*

26. While INZ is empowered to determine the level of financial support that it will provide to any given claimant without further authority from Cabinet, in determining the amount of any allowance payments, consideration should be given to what constitutes a reasonable use of public money.
27. Considering the extended period since the last increase to the allowance, the increase in costs of living over that period, and the need for New Zealand to meet its obligations under the International Covenant on Economic, Social and Cultural Rights regarding the right to an adequate standard of living, we consider the proposed increase constitutes a reasonable use of public money.

#### **FINANCIAL IMPLICATIONS**

28. Allowances are paid to a small group of claimants and expenditure has been traditionally low, apart from a spike in the 2020/2021 financial year resulting from an accumulation of claims lodged from early 2019 (calendar year).

	Total	Community	MRRC
2017/18	\$10,765	\$10,765	\$ -
2018/19	\$5,082	\$5,082	\$ -
2019/20	\$60,053	\$56,362	\$3,691
2020/21	\$99,705	\$96,511	\$3,193
2021/22	\$68,175	\$68,175	\$ -

29. Based on the number of claimants in the community receiving an allowance,<sup>8</sup> if the allowance is increased from \$225 to \$291.50, the cost increase for 22/23 would be

<sup>7</sup> Prepared meals amounted to \$115 per week. The remainder of the cost was paid from INZ's Refugee & Migrant Services budget.

<sup>8</sup> Four people in the community as at 31 July 2022



\$10,374<sup>9</sup>, or an increase from approximately \$50,000 to \$60,000 for the year (if the allowances were to continue for the full financial year for the current claimants).

#### *Affordability*

30. INZ currently has several cost and funding pressures however, this expenditure represents only a very small portion of the total Immigration budget. While the increased cost will need to be absorbed from within INZ's existing baseline, it is not likely to have a material impact on INZ activity.
31. The allowances are paid from Crown funding, rather than through Fees and Levies.

#### *Costs in out-years*

32. It is difficult to determine the likely cost to INZ of allowance payments in out-years as the number of claimants in New Zealand at any given time will be influenced by events outside the control of New Zealand. However, with the border fully reopening from 31 July 2022, there is a chance that claimant numbers may increase.

s 9(2)(h)



#### **POTENTIAL RISKS**

36. There are potential media and political risks associated with a decision to increase the allowance, primarily the potential negative perception that claimants are receiving similar entitlements to New Zealand citizens and residents and that increasing the allowance may incentivise individuals to make unmeritorious claims.
37. The INZ Comms team is aware of the proposed change in allowance and will have key messages prepared for use in the event of media interest.

#### **CONSULTATION**

38. INZ Finance, INZ Refugee and Migrant Services and MBIE Legal Services have been consulted during the drafting of this paper.

<sup>9</sup> This assumes an effective date of early September 2022. The amount will be lower if implemented later than September.



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39. MSD have not been consulted on the proposals in this memo however, they have been consulted previously with respect to methodology for calculating the allowance to ensure it was reasonable.

**NEXT STEPS**

40. If the proposed increase to the allowance is approved, INZ will move to implement the increase by the middle of November 2022 and will prepare messaging to stakeholders at the appropriate time.
41. Given the potential risks set out above, if the allowance increase is approved, the Minister of Immigration will also be briefed on the increase.

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