

NEW LEGISLATION > SPECIAL REPORT

# **Taxation (Cost of Living Payments) Act 2022**

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The new legislation allows the Commissioner of Inland Revenue to make payments to eligible individuals under the Cost of Living Payments Scheme and to administer the scheme on behalf of the Government. This special report provides a detailed overview of the scheme, including eligibility criteria, followed by a detailed analysis of the legislative amendment.

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## Overview of the payments scheme

The Government's Cost of Living payment is aimed at low to middle income New Zealanders to help them with the increased cost of living. It is a temporary payment of \$350 in total, spread over August, September and October. It will be paid by Inland Revenue automatically to eligible individuals with no need to apply for the payment.

The objective is to quickly address the impacts of cost-of-living increases on low-to middle-income individuals and households. In recognising that costs are expected to increase more than incomes on average this year, a payment is required in the short term. The intention is for it to be paid at a similar time to other supports such as the winter energy payment and transport initiatives. This requirement for a broad payment to supplement low-to middle-incomes in the short term informed the eligibility criteria.

## Eligibility

A person might be eligible to receive the payments if they:

- had net income during the period 1 April 2021 to 31 March 2022 of \$70,000 or less
- are not eligible to receive a qualifying benefit for the Winter Energy Payment (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 for each of the three monthly instalments
- are aged 18 or over
- are both New Zealand tax resident and present in New Zealand; and
- not in prison.

The payment is not intended to be paid to those who are deceased.

There is no application process for the payment. Inland Revenue will determine eligibility based on information it holds and will make the payment into the person's New Zealand bank account.

## Amount

The Cost of Living payments total \$350. This will be paid in monthly instalments over three months and will be made at a flat rate. Payments won't be paid for part of a month – if an

individual is determined to be eligible at the point Inland Revenue checks eligibility, they will get the full payment for that month.

## Timing

The main payment period is from August to October 2022, with the first of the three monthly payments being made on 1 August 2022. Subsequent monthly payments will be made on 1 September and 3 October (3 October being the first business day following 1 October).

Some people who file an IR3 tax return or who use a tax agent may not have their income tax assessment finalised or filed by 1 August, or within the main payment period. This could be because the person's tax return isn't due until a later date because they have a tax agent, or because Inland Revenue needs more information before an assessment can be finalised.

As long as they are eligible, they will receive their payment once their assessment has been finalised. This means some people will not receive their payment until after 31 March 2023 (this is the final date to file tax returns for those with tax agents who have an extension of time).

Eligibility for this group of filers will be based on the person's circumstances assessed close to the beginning of August, September and October. This means their eligibility will be determined in the same way as those who received the three instalments from 1 August.

Before each monthly payment, Inland Revenue will check each individual's eligibility for the payment. This could mean that someone who did not receive the first payment (for instance because they were under 18 or receiving a main benefit) could receive one or both of the following payments, if they meet the eligibility criteria.

To make sure all eligible people receive their payments on time, Inland Revenue will run regular checks to identify and make payments to eligible recipients who have since completed their income tax assessments for 2021–22 and those whose information has been updated.

## Payments made to New Zealand bank accounts

The Cost of Living payment will be paid directly into the bank account Inland Revenue has on file for the individual.

Payments will only be paid into a New Zealand bank account. Payments cannot be made to overseas bank accounts.

If an individual is an undischarged bankrupt, the payment will go directly to that individual, rather than to the Official Assignee.

## No application required

There is no application process for the payment. Inland Revenue will determine eligibility based on information it holds and will make the payment into the person's New Zealand bank account. Payment cannot be made to overseas bank accounts.

## Tax and social policy treatment

The Cost of Living payment is tax exempt, so will not be included in a person's income tax assessment. The payment will also not be included as income for Working for Families tax credits, child support, student loan repayments, student allowances or other welfare support.

The Cost of Living payment will not be used to pay off any debt or overdue money owed to Inland Revenue. Individuals will not be able to request the payments be transferred to pay an existing debt with Inland Revenue, or other social policy obligation. The payments must be paid directly to the individual.

## Criteria in more detail

### Income cap of \$70,000

The maximum income to be eligible for the payment is \$70,000 net income for the period 1 April 2021 to 31 March 2022.

For people who earn their income from a job, net income is usually the same as their gross income because there are limited types of expenses they can claim.<sup>1</sup> For business owners, net income is the person's gross income for the year, minus any business expenses for the year, but before any losses from earlier years are taken into account.

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<sup>1</sup> Salary and wage earners can claim the following expenses:

- return completion and filing expenses (for example, tax agent or accountant)
- cost of income protection insurance (if payout would be taxable)
- commission charged on income from interest and dividends (except bank fees)
- interest on money borrowed to buy shares or to invest (if that investment will produce taxable income), and interest paid to Inland Revenue for late payment of tax.

## Based on assessed income for the 2021–22 tax year

The income eligibility will be based on the income in the person's 2021–22 finalised individual income tax assessment. This means that:

- a person has received their assessment from Inland Revenue, or
- a person has been asked by Inland Revenue to provide more information or to confirm details on their assessment, they have done so and this has been confirmed by Inland Revenue, or
- if a person is required to file an IR3 tax return, that it has been filed before the cut off date of 31 March 2023 and has been processed by Inland Revenue.

For most people, assessments will have been finalised before payments begin.

### **Exclusion: Portfolio Investment Entity (PIE) income only**

Individuals who have PIE income (such as KiwiSaver) only and no net income will not be eligible for the Cost of Living payment.

PIE income is not included in an individual's net income for the year and is taxed separately according to a person's Prescribed Investor Rate (PIR). The individual income tax assessments are a mechanism used to determine if the person had applied the correct PIR rate to their PIE income and to determine if there is a PIE tax debit or refund owing.

This exclusion is broadly consistent with the treatment for those who have no net income and no required assessment. That is, these individuals only have an income tax assessment because of the PIE income assessment and otherwise would not have an income tax assessment as they have no net income to report.

### **Exclusion: Unnecessary assessments with nil income**

Individuals who are not required to request, confirm or file an income tax assessment for any reason and who have no income, will not be eligible for the payment if they request or file an assessment that contains no assessable income.

This exclusion does not affect stay at home parents who have no other income but receive Working for Families (WFF) tax credits. This is because WFF recipients are required to have an income tax assessment to determine their WFF entitlement, even if they have no income. The WFF calculation forms part of their individual income tax assessment along with the income tax assessment of any spouse or partner.

This exclusion also does not affect those who need to file an income tax assessment but have zero net income, such as self-employed people whose allowable deductions reduce their income to zero.

## **Time limits for determining eligibility and making payments**

The final payment approval date for eligibility will be 31 March 2023, which is the last date for tax agents to file individual tax returns for their clients for the 2021–22 tax year. Inland Revenue will not check eligibility for the Cost of Living payment for anyone who has not filed their tax return by 31 March 2023, or had their tax assessment generated by this date. This means that if a person files their tax return or requests an assessment after 31 March 2023 they will not be eligible for the Cost of Living payment. This 31 March 2023 deadline also applies to clients of tax agents who have 'Deferred' status.<sup>2</sup>

Eligibility will still be checked for those whose returns have been filed or assessments have been generated on or before 31 March 2023 but have not been finalised. For example, if a tax agent files their client's tax return on 30 March 2023 and the return is processed on 15 April 2023, Inland Revenue will still check whether that person is eligible for the Cost of Living payment.

The final date for issuing payments will be 31 March 2024. This will be the last date that eligible individuals would be able to supply bank account details. Any amounts that have been approved but haven't been able to be paid out (for example, because the person has not supplied bank account details) will be returned to the Crown after 31 March 2024.

## **Those eligible to receive the Winter Energy Payment (WEP) do not qualify**

The payment will not be paid to individuals who are receiving a qualifying benefit<sup>3</sup> (such as a main benefit, New Zealand Superannuation or Veteran's Pension) at the point in the month that Inland Revenue checks for eligibility for the payment. This is because these individuals are eligible to receive the WEP. The Cost of Living payment is half the couple rate for the WEP.

Before each monthly payment, Inland Revenue will check eligibility for the payment, including whether or not the individual is receiving a qualifying benefit or

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<sup>2</sup> 'Deferred' status can be granted in some circumstances for clients of tax agents where the tax agent is unable to file the return by 31 March deadline. Deferred status stops return policing activities.

<sup>3</sup> A qualifying benefit for the WEP is 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 and Veteran's Pension.

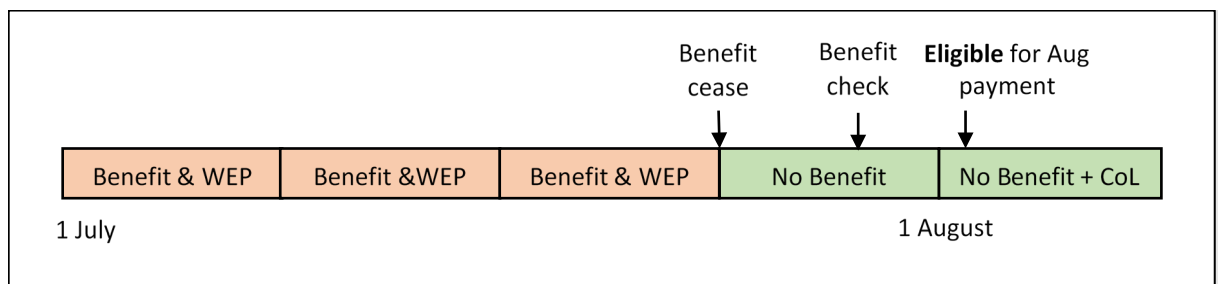
NZ Superannuation. Changes in circumstances, such as coming off a benefit, will be taken into account during the main payment period from August to October.

This means that people who are moving on or off benefit during a month may:

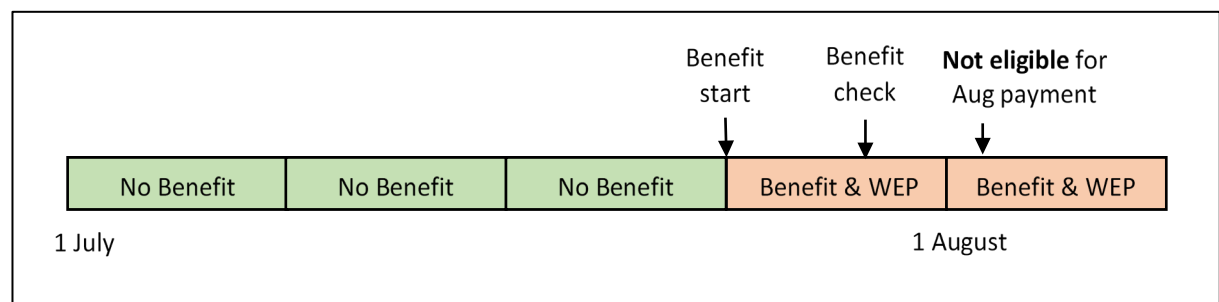
- receive some WEP as well as the Cost of Living payment (for example, individuals who cease benefit partway through the month would show as not in receipt of a benefit at the monthly check); or
- receive WEP for part of the month but no Cost of Living payment (for example, start benefit near the end of the month so would show as in receipt of benefit at the monthly check).

Figures 1 and 2 below illustrate these scenarios.

**Figure 1:** Effect of ceasing a benefit during a month



**Figure 2:** Effect of starting a benefit in a month



## Minimum age requirement

Individuals must be aged 18 years or over to qualify for the payment. Eligibility will be checked ahead of each monthly instalment date, so that if a person turns 18 during the August to October payment period they will qualify for one or more payments, depending on when they turn 18.



### Example 1

Kahu turns 18 on 25 August 2022. She meets all of the other criteria for the payment. She won't qualify for the August payment but will qualify for the payments in September and October. Kahu will be eligible for two of the three payments.

## Must be present in New Zealand and tax resident in New Zealand

A person must be present in New Zealand and a New Zealand tax resident to be eligible for the payment. Inland Revenue will determine this based on the information it holds, such as tax residency status, address and bank account information.

## People in prison do not qualify

A person in prison will not qualify for the payment. In prison includes those on remand but does not include those on home detention. This means that individuals on home detention may qualify for the Cost of Living payment. This is because they are still responsible for their own living costs.

Inland Revenue will use the information it holds to determine whether a person is in prison ahead of each monthly payment.

## Payment made to people who are ineligible

It is possible that the information that Inland Revenue has been provided to determine eligibility, could be incorrect. The correct information may show that a person is not eligible. For example, a person may be recorded as 27 when they are actually 17 years old.

However, Inland Revenue will only apply resources to identify such cases, and to recover payments, when there has been fraudulent or wilfully misleading information provided. Inland Revenue will be able to use its usual debt recovery options, such as deductions from a person's salary and wages, or their bank account.

## Opting out of the scheme

If an individual does not want to receive the Cost of Living payment, they can opt out of the scheme. They can do this by calling Inland Revenue or, from the end of July, through their secure online services account in myIR.

The decision to opt out is final. Once an individual has opted out, they will not be able to change their mind and receive payments.

## Overview of the legislative change

The Taxation (Cost of Living Payments) Bill was passed under urgency on 19 May 2022. The new Act received Royal assent on 24 May 2022. It amends the Tax Administration Act 1994 and the Income Tax Act 2007.

The new legislation allows the Commissioner of Inland Revenue to administer the Cost of Living Payments Scheme (the scheme).

## Cost of Living Payments Scheme

***Sections 3, 7AAA, and 157 of the Tax Administration Act 1994; sections CW 33 and MB 13 of the Income Tax Act 2007***

The Act provides authorisation for the Commissioner of Inland Revenue to make payments to eligible individuals under the Cost of Living Payments Scheme (the scheme) and to administer the scheme on behalf of the Government.

## Background

The Act contains several amendments to support the scheme to provide temporary financial support to eligible low-to middle-income individuals facing increased cost-of-living pressures because of the recent spike in inflation. The scheme will be administered by Inland Revenue.

Under the scheme, cost of living payments totalling \$350 will provide short-term support for low-to middle-income individuals earning up to \$70,000 in the 2021–22 tax year and who are not eligible for the WEP.

The payments will be made in three monthly instalments from 1 August 2022 and will be made at a flat rate with no apportionment. Eligibility will be assessed for each instalment separately.

The main eligibility criteria for receiving the payments are:

- net income of \$70,000 or less in the period 1 April 2021 to 31 March 2022
- a finalised income tax assessment for the period 1 April 2021 to 31 March 2022

- not receiving 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) on the date eligibility is assessed
- aged 18 or over
- both New Zealand tax resident and present in New Zealand and
- not in prison.

The payment is not intended to be paid to those who are deceased.

More detailed information on the operation of the scheme is available on Inland Revenue's website at: <https://www.ird.govt.nz/cost-of-living-payment>.

## Key features

The new Act makes the following changes to the Tax Administration Act 1994 (TAA):

- Inserting the definition of the 'Cost of Living Payments Scheme' in section 3 of the TAA for the purpose of administering the scheme.
- Amending the definition of 'disputable decision' in section 3 of the TAA to exclude a decision to make, or to decline to make, a payment under the scheme.
- Amending the definition of 'tax' in section 3 of the TAA to allow Inland Revenue to use its existing debt management and care and management powers to administer the scheme.
- Inserting new section 7AAA to the TAA to enable the Commissioner of Inland Revenue to administer the scheme.
- Amending section 157 of the TAA to include payments made under the scheme.

The new Act makes the following changes to the Income Tax Act 2007:

- Amending section CW 33 to exempt a payment made under the scheme from income tax.
- Amending section MB 13 to exclude a payment under the scheme from family scheme income.

## Effective date

The amendments applied from the day after the date the Act received Royal assent – 25 May 2022.

## Detailed analysis

The Act amends the Tax Administration Act 1994 and the Income Tax Act 2007.

### Section 3 of the Tax Administration Act 1994

#### Definition of ‘cost of living payments scheme’

The definition of the Cost of Living Payments Scheme is inserted in section 3 of the Tax Administration Act 1994 for the purpose of administering the scheme.

The definition of the ‘cost of living payments scheme’ means the Cost of Living Payments Scheme established and administered by the Crown to provide financial support to certain low- and middle-income persons affected by an increase in the cost of living.

#### Definition of ‘disputable decision’

The definition of ‘disputable decision’ in section 3 of the Tax Administration Act 1994 is amended to exclude a decision to make, or to decline to make, a grant under the Scheme.

#### Definition of ‘tax’

The definition of ‘tax’ in section 3 of the Tax Administration Act 1994 is amended to include an amount payable in relation to the grant made under the scheme. The amendment will allow Inland Revenue to use its existing debt management and care and management powers to administer the grant. These are:

- Care and management powers (sections 6 to 6B): this will allow the Commissioner to use their existing care and management powers when making resourcing decisions.
- Recovery powers (sections 156 to 165): this includes the existing recovery powers available to the Commissioner under the TAA.
- Relief provisions (sections 174AA, and 176 to 177CA): this includes write-off of small amounts, general recovery powers and the hardship provisions (such as not to recover if it would be an inefficient use of resources).

## **Section 7AAA of the Tax Administration Act 1994**

The new section 7AAA authorises the Commissioner of Inland Revenue to administer the scheme on behalf of the Crown.

Under existing legislation (section 17M of the TAA) the Commissioner may use information obtained under any of the Revenue Acts to carry out or support a function lawfully conferred on the Commissioner.

By including the scheme as a function of the Commissioner, this allows the Commissioner to use information already held to determine eligibility for payment under the Scheme and to make payments. This information will include information such as an individual's 2021–22 tax assessment, employment income, bank account details, date of birth, tax residency status, incarceration status and date of death information.

### **Eligibility requirements**

Due to the nature of the payments scheme, the eligibility requirements are not required to be included in primary legislation. The legislation specifies that the Commissioner must publish the eligibility requirements on their website (Inland Revenue's website).

The eligibility requirements have been decided by the Government and are explained in more detail above. Further information can also be found on Inland Revenue's website at <https://www.ird.govt.nz/cost-of-living-payment>.

### **Ineligible recipients**

If a person receives a grant who does not qualify under the eligibility requirements, section 7AAA of the TAA provides that the person must immediately repay the total amount of the grant.

Inland Revenue will broadly follow its usual processes in cases where payments have been made to someone and later it is determined that they were not eligible. Inland Revenue will also use existing monitoring systems to identify cases where payments may have been paid based on fraudulent or wilfully misleading information and will prioritise recovery of these amounts.

## **Section 157 of the Tax Administration Act 1994**

The definition of 'income tax' in section 157(10) of the Tax Administration Act 1994 is amended to include the entire amount of the grant that the recipient has to pay back. In the event that the recipient makes a default in the repayment of the grant to the Commissioner

of Inland Revenue, the Commissioner is able to pursue the outstanding balance by issuing a notice under section 157.

### **Section CW 33 of the Income Tax Act 2007**

The amendment to section CW 33 of the Income Tax Act 2007 exempts a payment under the scheme from income tax. This means a payment under the scheme will not be:

- subject to income tax,
- offset against other amounts owed to Inland Revenue, or
- included as income for social policy purposes (for example, child support, student loan or for Working for Families tax credit purposes).

### **Section MB 13 of the Income Tax Act 2007**

The amendment to section MB 13 of the Income Tax Act 2007 excludes a payment under the scheme from the calculation of a person's family scheme income. This ensures that the payment will not inadvertently be included in the catch-all provision (MB 13) which includes income from other payments.

### **Consequential changes to the Social Security Regulations and Student Allowance Regulations**

The Social Security (Cash Assets and Income Exemptions—Cost of Living Payment) Amendment Regulations 2022 amended the Social Security Regulations 2018. Amendment Regulations 2022 will exempt the Cost of Living payment, for a period of 12 months after receipt of the payment, from being considered:

- income and cash assets for benefit purposes generally
- cash assets and chargeable income for eligibility for Temporary Additional Support
- cash assets for eligibility for Accommodation Supplement.

The Student Allowances (Income Exemptions—Cost of Living Payment) Amendment Regulations 2022 amended the Student Allowance Regulations 2018 and excludes the Cost of Living Payment from the personal and partner income definitions for students. This ensures that students do not receive a reduced rate or are disentitled to student allowances because of any Cost of Living payments they, their parents or their partner receives.

## References

### Legislative references

**Income Tax Act 2007:** sections CW 33 and MB 13.

**Tax Administration Act 1994:** sections 3, 7AAA, and 157.

### About this document

Special reports are published shortly after new legislation is enacted to help affected taxpayers and their advisors understand the consequences of the changes. These are published in advance of an article in the *Tax Information Bulletin*.