

Date: 28 April 2010

SH-13-5-2-1

To: Minister of Finance  
cc: Minister of Revenue

**AIDE MEMOIRE: IMPACT OF TOBACCO EXCISE INCREASE ON CPI ADJUSTMENTS TO GSF AND NPF**

**Removing tobacco from adjustment mechanism for GSF and NPF payments**

On 19 April, Cabinet agreed to amend the New Zealand Superannuation and Retirement Income Act 2001, the Income Tax Act 2007, the War Pensions Act 1954 and other relevant Acts to exclude tobacco products from the CPI measures applied to adjust New Zealand Superannuation, Veterans' Pension and Working for Families tax credits (Cab Min (10) 13/24 refers). Cabinet also agreed that tobacco products will not be applied to the inflation adjustment calculation for benefit payments. However, the Cabinet minute does not mention whether tobacco measures should be excluded from the CPI measures applied to adjust GSF and NPF payments.

***GSF***

The GSF Act provides that GSF payments are adjusted by the CPI. To ensure consistency with other CPI adjusted payments from Government, Ministers may wish to amend the GSF Act to remove the impact of tobacco products on the CPI measure used to index these payments. However, although GSF is government funded, it can be contrasted with benefits as GSF payments may approach a contractual obligation (as part of a prior workplace obligation). Officials will investigate this further and report back to you as soon as possible.

***NPF***

Pensions paid under the NPF's DBP Annuitants Scheme are adjusted annually by the CPI in accordance with the trust deed for the scheme.

The investment statement for the scheme notes that:

- the Superannuation Schemes Act 1989 and the trust deed protect each member's rights and interests by requiring his or her consent to any amendment which, among other things, would have the effect of adversely affecting his or her benefits; and
- an Act of Parliament may authorise amendment of the Scheme Trust Deed without the need to obtain members' consents.

On balance, officials recommend that legislation to amend the trust deed's CPI provisions is not introduced as this arguably reduces property rights vested under the trust deed (and advertised in the investment statement) which would be inconsistent with fundamental common law principles regarding vested rights.

This will create some inconsistency with other forms of government assistance but officials believe that this is appropriate in the circumstances.

### **Action**

Officials will report back to you as soon as possible on whether GSF indexation should be amended to exclude the impact of tobacco products on the indexation method. Given the shortness of time, officials will concurrently draft to exclude tobacco products from the CPI measures applied to adjust GSF payments, subject to final approval for the inclusion of these adjustments in the Budget 2010 tax package Bill.

An announcement is being made this afternoon by Minister Turia that the CPI adjustments for benefits, New Zealand Superannuation, Veterans' Pension and Working for Families tax credits will be amended to exclude the impact of tobacco. As Cabinet agreement has not been obtained to include GSF payments in this list, officials recommend that today's announcement is not changed and that responses to direct enquiries about GSF and NPF indicate that the issue is still being considered by Ministers.

### **Fiscal implications**

The fiscal cost of excluding tobacco products from the CPI measures applied to adjust GSF payments is expected to be immaterial and within the margin of uncertainty of the overall revenue projection for the exclusion of tobacco products from CPI adjustments, and will have no impact on the fiscal forecasts.

### **Recommendations**

- a) **Note** that officials will consider whether amendments to the GSF Act to exclude tobacco from the CPI measures used to adjust GSF payments should be made in the Budget 2010 tax package, and will report back to Ministers on this as soon as possible; and
- b) **Agree**, given time constraints, that officials will issue drafting instructions in respect of these amendments prior to final approval being sought to make these changes.

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