

The Treasury

Advice on COVID-19 Response - Tranche Three Information Release

September 2022

This document has been proactively released by the Treasury on the Treasury website at

<https://www.treasury.govt.nz/publications/information-release/advice-covid-19-response-information-release>

Information Withheld

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act).

Where this is the case, the relevant sections of the Act that would apply have been identified.

Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Key to sections of the Act under which information has been withheld:

- [4] 6(c) - to avoid prejudice to the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial
- [25] 9(2)(b)(ii) - to protect the commercial position of the person who supplied the information or who is the subject of the information
- [27] 9(2)(ba)(ii) - to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely otherwise to damage the public interest
- [33] 9(2)(f)(iv) - to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials
- [34] 9(2)(g)(i) - to maintain the effective conduct of public affairs through the free and frank expression of opinions
- [35] 9(2)(g)(ii) - to maintain the effective conduct of public affairs through protecting ministers, members of government organisations, officers and employees from improper pressure or harassment
- [36] 9(2)(h) - to maintain legal professional privilege
- [39] 9(2)(k) - to prevent the disclosure of official information for improper gain or improper advantage
- [41] 18(c)(i) – that the making available of the information requested would be contrary to the provisions of a specified enactment

Where information has been withheld, a numbered reference to the applicable section of the Act has been made, as listed above. For example, a [4] appearing where information has been withheld in a release document refers to section 6(c).

Copyright and Licensing

Cabinet material and advice to Ministers from the Treasury and other public service departments are © **Crown copyright** but are licensed for re-use under **Creative Commons Attribution 4.0 International (CC BY 4.0)** [<https://creativecommons.org/licenses/by/4.0/>].

For material created by other parties, copyright is held by them and they must be consulted on the licensing terms that they apply to their material.

Accessibility

The Treasury can provide an alternate HTML version of this material if requested. Please cite this document's title or PDF file name when you email a request to information@treasury.govt.nz.



Joint Report: Treasury / Ministry of Social Development – Joint Report:
Changes to COVID Leave Schemes in an Omicron
environment

Date:	17 February 2022	Report No:	T2022/162 REP/22/2/096
		File Number:	SH-3-5-4

Action sought

	Action sought	Deadline
Minister of Finance (Hon Grant Robertson)	Agree the recommendations in this report.	21 February 2022
Minister for Social Development and Employment (Hon Carmel Sepuloni)	Agree the recommendations in this report.	
Minister for Workplace Relations and Safety (Hon Michael Wood)	Agree the recommendations in this report.	

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
Katie Keir	Analyst, Welfare & Oranga Tamariki	[39]	[35] ✓
Keiran Kennedy	Manager, Welfare & Oranga Tamariki		
Megan Beecroft	Manager, Employment and Labour Market Policy, Ministry of Social Development		
Chris Hubscher	Manager, Employment Standards Policy		

Minister's Office actions (if required)

Return the signed report to Treasury, MBIE and MSD. Refer to Minister of Revenue.
--

Joint Report: Treasury / Ministry of Social Development – Joint Report: Changes to COVID Leave Schemes in an Omicron environment

Executive Summary

At 11.59pm on 15 February 2022, Aotearoa moved to Phase 2 of the Government’s Omicron plan which means a shift in approach to testing, tracing, isolation and quarantine (**TTIQ Strategy**). A move to Phase 2 reflects an increase in COVID case numbers to over 1,000 per day, with even more required to self-isolate in line with public health guidance.

On 4 February 2022, officials provided initial advice to you on key policy, operational, legal and integrity considerations for the COVID Leave Support Scheme (**LSS**) and Short Term Absence Payment (**STAP**) (together, the **COVID Leave Schemes**) in light of the Omicron environment and new TTIQ Strategy and sought to test possible changes to the Schemes with you [T2022/84 refers].

Following your feedback on this advice, we have prepared this joint report seeking technical decisions from Ministers with delegated authority to make certain changes and clarifications to the COVID Leave Schemes. This will help ensure these schemes remain fit-for-purpose in an Omicron environment.

Clarifying eligibility criteria to align with Phase 2 of TTIQ Strategy

We seek Ministerial decisions to clarify eligibility criteria regarding the COVID Leave Schemes to align with the latest public health guidance on the TTIQ Strategy. In particular, we seek agreement to expand the meaning of “advised to self-isolate” to ensure it covers the range of ways an individual may be notified in Phase 2, including via:

- the Ministry of Health’s (**MoH**) online contact tracing form,
- a text or phone call from MoH, and
- an employer in accordance with their own contact tracing process based on MoH guidance.

We also seek decisions on the application of rapid antigen tests (**RATs**) to the LSS and STAP, namely:

- for STAP, a person who takes a RAT is not eligible on the basis of that the wait time for a result is only approximately 20 minutes and therefore does not need to ‘miss work’ to wait for the result; and
- for LSS, whether or not a positive RAT result is sufficient to trigger eligibility depends on whether or not MoH considers a RAT to be a diagnostic tool (which we understand differs between Phase 2 and Phase 3 of the TTIQ Strategy).

Strengthening the position for casual and variable hours workers

We also seek your agreement to update the LSS declaration to strengthen the position for casual and variable hours workers, in particular by providing greater guidance around what pay rate applies where a person’s average hours worked is higher than their ‘agreed’ hours of work.

Integrity measures in an Omicron environment

As we move into Phase 2 (and subsequent Phase 3) of the TTIQ Strategy and application volumes significantly increase, there are integrity and operational challenges to work through and trade-offs which need to be made.

While MSD will be in a position to maintain certain integrity measures regardless of COVID Leave Scheme application volumes (including pre-payment validation of employer/employee information with Inland Revenue, exceptioning of higher risk applications for further checks, and responding to allegations and complaints of misuse), some of the existing integrity measures will need to become more targeted or focused on the identified high-risk applicant cohorts to manage operational constraints.

[4], [36], [39]

MSD will report back to joint Ministers on options for what verification might reasonably be obtained from applicants, and on any shift in integrity measures taken as COVID Leave Scheme application volumes increase.

Monitoring cohorts covered by the exclusions lists for COVID Leave Schemes

The LSS and STAP guidelines identify certain scenarios and/or cohorts of people who are not eligible for the Schemes. This exclusion list includes State Sector Organisations (unless they have received an exception via the exceptions process which requires Minister of Finance approval) and includes people entering New Zealand from overseas who are self-isolating.

Regarding the exceptions list, this report:

- clarifies that the air crew exclusion which we raised in our previous advice [T2022/84 refers] does still apply based on current settings;
- updates you on the exceptions process for State Sector Organisations (SSOs) and indicates officials may provide further advice if requests for exceptions for SSOs substantially increase; and
- notes that the exclusion for individuals entering New Zealand from overseas includes where an individual is required to self-isolate somewhere other than MIQ, however the settings for this will be monitored as the Reconnecting New Zealanders plan progresses.

Next steps

Following your feedback and decisions, officials will work at pace to reflect agreed policy changes and changes in public health guidance in updated declarations for the LSS and STAP respectively, and guidance on MSD's website three weeks following Ministerial decisions. Officials will also engage with other agencies to ensure communications are aligned.

Recommended Action

We recommend that you:

Eligibility criteria for Leave Support Scheme (LSS)

- a **agree** to clarify that “advised to self-isolate” as defined in the LSS eligibility settings includes:
- i. notification from the Ministry of Health via its online contact tracing form;
 - ii. notification from the Ministry of Health via a phone call or text;
 - iii. notification from a person’s employer in accordance with the employer’s own contact tracing process based on MoH guidance;

Agree/ disagree
Minister of Finance

Agree/ disagree
**Minister for Social
Development and
Employment**

Agree/ disagree
**Minister for Workplace
Relations and Safety**

- b **note** that in Phase 2 of the TTIQ Strategy a COVID-19 positive case may be expected to notify at least some of their own close contacts directly, and officials are working through how this situation may work with the eligibility criteria for the COVID Leave Schemes and will provide further advice if we consider further changes to the COVID Leave Scheme settings are appropriate and/or required;
- c **note** MSD will need to bundle together any future changes to the COVID Leave Schemes in tranches from an operational perspective;
- d **note** that as New Zealand moves through the different Phases of the Omicron testing, tracing and isolation strategy, there will be different methods of diagnosing COVID-19, in particular with the use of rapid antigen tests;
- e **agree** that a positive rapid antigen test (RAT) will not trigger eligibility for LSS in a scenario where a further PCR test is required by public health guidance to confirm the positive result, but will be sufficient in a scenario where a RAT is considered a diagnostic tool;

Agree/ disagree
Minister of Finance

Agree/ disagree
**Minister for Social
Development and
Employment**

Agree/ disagree
**Minister for Workplace
Relations and Safety**

- f **note** individuals who are working in accordance with the “Close Contact Exemption Scheme” or the “Bubble of One” initiative are not eligible for the LSS on the basis they are continuing to work;

Eligibility criteria for Short Term Absence Payment (STAP)

- g **agree** that a worker or self-employed person who takes a RAT only will not be eligible for the STAP on the basis that a person only has to wait approximately 20 minutes for a RAT result and is not required to stay at home for that period;

Agree/ disagree
Minister of Finance

Agree/ disagree
**Minister for Social
Development and
Employment**

Agree/ disagree
**Minister for Workplace
Relations and Safety**

- h **note** individuals who are working in accordance with the “Close Contact Exemption Scheme” or the “Bubble of One” initiative are not eligible for the STAP on the basis they are continuing to work;

Changes to exclusions list for COVID Leave Schemes

- i **note** State Sector Organisations (SSOs) are currently ineligible for the COVID Leave Schemes, however the Minister of Finance can grant an exception to SSOs on a case-by-case basis;
- j **note** officials are monitoring the number of requests for exceptions from SSOs in light of the Omicron outbreak (in particular State-owned enterprises and Mixed Ownership Model companies) and will provide further advice to you on options to amend the current exceptions process if considered appropriate;

Integrity measures

- k **agree** that LSS applications must be made within 8 weeks of the employee or self-employed person’s self-isolation period ending, which is consistent with the application window for the STAP;

Agree/ disagree
Minister of Finance

Agree/ disagree
**Minister for Social
Development and
Employment**

Agree/ disagree
**Minister for Workplace
Relations and Safety**

- l **note** officials are not proceeding with advice on a hard payment cap at this stage for the LSS [T2022/84 refers], but will continue to monitor the case for this as application volumes increase;
- m **note** as application volumes for the COVID Leave Schemes increase, some of the existing integrity measures will need to become more targeted or focused on the identified high-risk applicant cohorts to manage operational constraints;
- n **note** MSD will be in a position to maintain certain integrity measures regardless of COVID Leave Scheme application volumes, including pre-payment validation of employer/employee information with Inland Revenue, exceptioning of higher risk applications for further checks, and responding to allegations and complaints of misuse;
- o [4], [36], [39]
- p **note** MSD will report back to joint Ministers on options for what verification might reasonably be obtained from applicants, and on any shift in integrity measures taken as COVID Leave Scheme application volumes increase;

Variable hours worker changes

- q **note** that the LSS requires employers to retain staff and to use best endeavours to pay at least 80% of ‘ordinary wages or salary’, but – as defined – ‘ordinary wages or salary’ can be considerably less than some employees’ usual pay (particularly for casual and ‘variable hours’ workers);

r **note** that the minimum employee payment requirement under the LSS is the lower of the subsidy amount or the employee’s ‘ordinary wages or salary’ (as defined), so in some cases (where employees’ contracted hours are less than the LSS payment amount) employees may not even receive the full subsidy, despite normally earning more than that amount;

s **agree** to update the LSS declaration to give effect to the following:

- i. where an employer applies for the LSS in respect of an employee who has no agreed hours of work, the employer may apply on the basis of the employee’s average hours of work (as agreed by the parties) and must pay the employee at least that amount or the rate of LSS, whichever is the lesser amount;
- ii. where an employer applies for the LSS in respect of an employee who has agreed hours of work, the employer may apply on the basis of the greater of the employee’s ordinary wages or salary (as specified in the employment agreement) or the average hours of work (as agreed by the parties), and must pay the employee at least that amount or the rate of LSS, whichever is the lesser amount;

<i>Agree/ disagree</i> Minister of Finance	<i>Agree/ disagree</i> Minister for Social Development and Employment	<i>Agree/ disagree</i> Minister for Workplace Relations and Safety
--	---	--

t **note** recommendation s does not override any legal requirement to pay ordinary wages and salary;

u **note** that in spite of recommendation s, employers will still need to use best endeavours to pay at least 80% of an employee’s ordinary wages or salary if this is specified in the employment agreement and that this could be more than the subsidy amount;

Report back

v **agree** to defer the planned report back to Joint Ministers on the LSS and STAP under the COVID Protection Framework from March until April 2022 to allow for the changes outlined in this report to be embedded and for the implications of the Omicron outbreak to be clearer;

<i>Agree/ disagree</i> Minister of Finance	<i>Agree/ disagree</i> Minister for Social Development and Employment	<i>Agree/ disagree</i> Minister for Workplace Relations and Safety
--	---	--

Legal review

w [36]

Communications

x **note** officials will reflect agreed policy changes and changes in public health guidance in updated declarations, websites and guidance for the LSS and STAP;

y **note** officials will work on a proactive communications push on the COVID Leave Schemes to be launched as soon as possible once the updated declarations and guidance are in place; and

z **refer** to the Minister of Revenue.

Refer/Not referred.

Keiran Kennedy
**Manager, Welfare & Oranga
Tamariki, The Treasury**

Megan Beecroft
**Manager, Employment and Labour
Market Policy, Ministry of Social
Development**

Chris Hubscher
**Manager, Employment Standards
Policy**

Hon Grant Robertson
Minister of Finance

Hon Carmel Sepuloni
**Minister for Social Development
and Employment**

Hon Michael Wood
**Minister for Workplace
Relations and Safety**

Joint Report: Treasury / Ministry of Social Development – Joint Report: Changes to COVID Leave Schemes in an Omicron environment

Background and Purpose of Report

1. On 4 February 2022, we provided initial advice to the Minister of Finance and Minister for Social Development and Employment on key policy, operational, legal and integrity considerations for the COVID Leave Schemes in light of the Omicron environment and new TTIQ Strategy and sought to test possible changes to the Schemes [T2022/84 refers].
2. Following Ministers' feedback on this advice, we have prepared this joint report seeking decisions from Ministers with delegated authority¹ to make certain changes and clarifications to the COVID Leave Schemes to help ensure these Schemes remain fit for purpose in an Omicron environment, particularly as we enter Phase 2 of the Government's Omicron TTIQ Strategy.
3. In particular, this report:
 - a. seeks decisions to clarify eligibility criteria regarding the COVID Leave Support Scheme (**LSS**) and Short-Term Absence Payment (**STAP**) (together, the **COVID Leave Schemes**) to align with the latest public health guidance on testing and isolation (**TTIQ Strategy**);
 - b. seeks decisions on changes to the LSS declaration to strengthen the position for casual and variable hours workers;
 - c. outlines the integrity measures which MSD propose to use at different stages of the Omicron outbreak in the absence of a hard payment cap; and
 - d. updates you on the exceptions process for State Sector Organisations (SSOs) and indicates officials may provide further advice if requests for exceptions for SSOs substantially increases.

Decisions sought on changes to COVID Leave Schemes

Clarifying eligibility criteria for COVID Leave Schemes

4. Following the initial advice we provided Ministers [T2022/84 refers], officials have carried out further work to assess what changes and/or clarifications are required to the COVID Leave Schemes in light of the new three-phased TTIQ Strategy and Omicron environment. Our assessment has been based on information currently available from the Ministry of Health (**MoH**).
5. Officials have attempted to account for the various new scenarios arising from the new TTIQ Strategy in this report. However, we are aware that that the TTIQ Strategy may be subject to further change as the Omicron outbreak unfolds. Depending on what changes (if any) are made, this may necessitate officials revisiting the Scheme settings again and advising Ministers if further changes are required.

¹ The Minister of Finance, Minister for Social Development and Employment and Minister for Workplace Relations and Safety have delegated authority to make minor policy decisions and clarify eligibility criteria regarding the LSS and STAP, including to align eligibility settings with public health guidance regarding testing, self-isolation and staying at home when sick [CAB-20-MIN-0531 refers].

6. Further changes in the public health guidance will have an operational impact on MSD as there is a need to update:
 - a. Eligibility criteria and the declaration;
 - b. IT systems including the application form;
 - c. Operational policy and guidance for MSD staff;
 - d. Communications and guidance for applicants and employees on the Work and Income website; and
 - e. Integrity practices and processes.
7. Due to this, MSD will need to bundle together changes to the COVID Leave Schemes in tranches. This ensures changes are implemented consistently and considers other BAU work as well as operational constraints due to Omicron. This means COVID-19 Leave Scheme settings may not align with the current public health guidelines for a period of time.

Confirming scope of “advised to self-isolate” definition for LSS

8. Part of the eligibility for LSS is that an employee, or their dependant, must have been “advised to self-isolate”. “Advised to self-isolate” includes being advised to self-isolate by any one of the following:
 - a. advice from a medical practitioner (as defined in the Health Act 1956) e.g. a GP or doctors at the hospital;
 - b. advice given through the National Investigation and Tracing Centre; or
 - c. advice from a medical officer of health (as defined in the Health Act 1956) or their delegate e.g. the Ministry of Health or a public health unit.
9. Under Phase 2 of the TTIQ Strategy, the methods by which people may be notified significantly broadens. To date, the Ministry of Health and its contact tracing centre has been the main tool for notifying individuals and households to self-isolate. Under Phase 2, an online contact tracing form has been created to replace phone interviews (in most cases) and employers are now being required to carry out their own contact tracing processes for their workplaces.
10. We understand MoH’s online contact tracing form² will be a key channel in Phase 2 and 3 for MoH to advise COVID positive cases on what they need to do in terms of testing and isolating, as well as to identify close contacts who also need to self-isolate. This online form will be used in addition to official text messages from MoH, and phone calls where digital accessibility is an issue.
11. Officials consider that the current wording of “advised to self-isolate” does cover being advised via the online contact tracing form given MoH is a “delegate” for a medical officer of health. However, for the avoidance of doubt, we seek agreement from Ministers that “advised to self-isolate” as defined in the LSS eligibility settings includes notification from MoH via its contact tracing tool or any channel that communicates directly with the person (including but not limited to a phone call or text from MoH).
12. We also understand that under Phase 2, MoH requires employers to have their own contact tracing processes in place to identify close contacts in the workplace.³ Verification of eligibility will become more difficult as employers determine (based on

² MoH has guidance on the COVID-19 contact tracing form on its website: <https://www.health.govt.nz/covid-19-novelcoronavirus/covid-19-resources-and-tools/covid-19-contact-tracing-form>

³ MoH has guidance for employers to follow on its website: <https://www.health.govt.nz/covid-19-novel-coronavirus/covid-19-health-advice-public/covid-19-information-close-contacts/guidance-workplaces-have-case-covid-19>

MoH guidance) which of their employees should self-isolate, without documented communication from MoH. While there are risks around verification of eligibility in this scenario, officials consider it is in line with the policy intent of the LSS to include those notified via their employer to self-isolate within the scope of the LSS, particularly if the intent is to maintain a broad-based scheme.

13. To ensure this cohort of close contacts is covered by the LSS, we seek your agreement to expand the meaning of “advised to self-isolate” to include notification from a person’s employer in accordance with the employer’s own contact tracing process based on MoH guidance.
14. We note that in Phase 2 of the TTIQ Strategy a COVID-19 positive case may be expected to notify their own close contacts directly i.e. individuals notifying a friend. There are integrity concerns with this situation given the level of informality of notification. Officials are working through how this situation may work with the eligibility criteria for the COVID Leave Schemes and will provide further advice if we consider changes to the COVID Leave Scheme settings is appropriate and/or required.

Application of rapid antigen tests (RATs)

15. Officials are aware that with changes to the TTIQ Strategy, there will be new methods of diagnosing COVID-19, including with use of rapid antigen tests (**RATs**). As you confirmed [T2022/84 refers], the primary policy objective of the COVID Leave Schemes continues to be to support employees and employers to comply with public health rules related to self-isolation and testing. We set out below some relevant scenarios based on information currently available from MoH on Phase 2 and 3 of the TTIQ Strategy, and how we propose these scenarios will be addressed with the above policy intent in mind:
 - a. **Example Scenario one:** In Phase 2 of the TTIQ Strategy, we understand that a person who receives a positive RAT result will be required to take a follow up PCR test as RATs are not at this stage considered a diagnostic tool. In this scenario, it is the PCR test that is the diagnostic tool which triggers LSS eligibility if positive (and the applicant meets all other eligibility criteria). In this scenario, the positive RAT result will not trigger LSS eligibility. However, the STAP will be available while the individual is awaiting the PCR test result.
 - b. **Example Scenario two:** In Phase 3 of the TTIQ Strategy, public health guidance may change so that a RAT is considered a diagnostic tool in certain situations, meaning that a follow up PCR test may no longer be required. In this scenario, a positive RAT will trigger LSS eligibility on the basis that the RAT is considered a diagnostic tool.
 - c. **Example Scenario three:** In Phase 3 of the TTIQ Strategy, we understand there may be a distinction between “household close contacts” and “close contacts”, with only “household close contacts” being required to self-isolate. In this scenario, “close contacts” will not be eligible for the LSS because they will not be advised to self-isolate (unless they themselves become a positive COVID case).
16. We note individuals who are working in accordance with the “Close Contact Exemption Scheme” or the “Bubble of One” are not eligible for the LSS or STAP on the basis they are continuing to work.⁴
17. We seek your agreement to make minor changes to the LSS and STAP declarations and guidance as required in line with the above approach, and will come back to

⁴ Guidance on the Close Contact Exemption Scheme and “Bubble of One” initiative can be found on the business.govt website: <https://www.business.govt.nz/>

Ministers if more substantive policy decisions are required to align with further changes to the TTIQ Strategy.

Exclusion of RATs for STAP

18. The current eligibility for STAP requires that an employee is “not able to be at work, is staying home, and is unable to work from home while waiting for: their COVID-19 test result; the COVID-19 test result of a dependant; or where the employee is a household member or secondary contact of a close contact (as described in public health guidelines), the COVID-19 test result of the close contact”.
19. The current wording specifies that the “missing work” must be connected to the “waiting for” of a COVID test result. With PCR tests, employees need to wait up to five days to receive their test result and public health guidance advises they stay at home for this period. For those unable to work from home, this means that the person has to miss work to comply with public health guidance. STAP provides an incentive to comply with the public health guidance, as well as recognises the cost incurred to business. However, with RATs, results are provided in approximately 20 minutes and there is no specific public health requirement to stay at home for this period (noting a person may be required to self-isolate for other reasons i.e. being a close contact). This means employees do not need to miss work to undertake a RAT test.
20. On this basis, we seek agreement from Ministers that a worker or self-employed person who takes a RAT will not be eligible for the STAP. This provides a clear position to applicants, particularly as we enter Phase 2 and 3 where RATs will become more widely used.

Update on Integrity measures in Omicron environment

21. Officials have considered a range of integrity measures to help mitigate integrity risks in a high application scenario, including implementing a hard payment cap [T2022/84 refers]. You have indicated that you do not wish to proceed with a hard payment cap at this stage given the desire to maintain a broad-based and accessible scheme, but for officials to monitor the case for this as case volumes increase.

Integrity measures available at all application volumes

22. At all application volumes MSD will maintain the following integrity measures for the COVID Leave Schemes:
 - a. Pre-payment validation of application information against Inland Revenue (IR) data, to ensure that the business is a tax-registered operating business which files regular returns with IR, and that the employee applied for is recorded as a staff member in IR’s records. These checks were enhanced in line with integrity enhancements made for the August 2021 Wage Subsidy to provide greater assurance of the legitimacy of self-employed applicants;
 - b. Pre-payment exceptioning of higher risk applicants where MSD has concerns about previous Wage Subsidy, LSS or STAP applications, for example, where an investigation is currently underway;
 - c. Responding to allegations and complaints about misuse of the COVID Leave Schemes through the cross-agency complaints process. All complaints and allegations received by MSD are followed up on and, where fraud is suspected, these are referred for further investigation which may result in a repayment being

requested or enforcement action being recommended. However, unlike the Wage Subsidy Scheme, the names of COVID Leave Scheme employer applicants are not publicly available which may limit the effectiveness of the complaints process.

23. MSD currently has the following additional pre-payment exception processes in place [4], [39]

24.

Impact on integrity approach as application volumes increase

25. MSD will need to review its integrity measures as daily application volumes increase and demand pressures grow [4], [39]
26. At higher volumes, MSD may need to move to completing integrity checks on a sample of applicants only, [4], [36], [39]
27. In line with recommendations made by the Office of the Auditor-General (**OAG**) in their May 2021 report on the Wage Subsidy, these sample integrity checks, which could be pre- or post-payment, will seek documentary verification where possible from applicants to confirm their eligibility.
28. As a further integrity measure, we seek agreement that LSS applications must be made within 8 weeks of the employee or self-employed person's self-isolation period ending, which is consistent with the application window for STAP and helps mitigate the risk of applications being made for. Note this agreement was sought in our initial advice [T2022/84 refers], however we require agreement from all three Ministers (Finance, Social Development and Employment, and Workplace Relations and Safety) to implement this decision.

Current limitations with verification

29. [4], [36], [39]
30. Officials are working through options for what verification might reasonably be able to be obtained from applicants, for example communication with or from MoH. This includes assessing any legal or privacy constraints on the information that can be requested.

31. [4], [39]

Integrity reporting

32. MSD will report back to joint Ministers on options for what verification might reasonably be able to be obtained from applicants to support eligibility for the COVID Leave Schemes, and on integrity results and any shift in integrity measures taken as application volumes increase.

Engagement with Office of the Auditor-General (OAG)

33. Officials from the Treasury and MSD met with representatives from the OAG to have a “without prejudice” discussion of the integrity challenges and opportunities for the COVID Leave Schemes in a still uncertain COVID environment, and to discuss the OAG’s engagement with officials with work going forward. The OAG were supportive of more proactive engagement on integrity in this space, and a follow up meeting has been arranged for two months’ time to continue discussions.

Exclusion lists for COVID Leave Schemes

International air crew exclusion

34. As signalled in our previous advice [T2022/84 refers], officials have been reviewing the exclusions relating to the COVID Leave Schemes, particularly those relating to air crew.
35. The LSS is not available for employees, or self-employed people, who are employed as an air-crew member and required to comply with any orders, unless they meet one of the other LSS eligibility criterion e.g. they are a parent or caregiver of a dependent who has been advised to self-isolate. For the STAP, the Scheme cannot be paid for workers who are returning international air crew.
36. Our concern was whether the exclusion inadvertently covered individuals who we considered should be eligible for the LSS i.e. domestic air crew. However, on further review, we have clarified that the orders relating to aircrew are targeted at aircrew on international flights only. Aircrew on domestic flights are not covered by these orders and therefore would be eligible for the LSS, if they meet the other relevant criteria. Allowing domestic aircrew to access the Schemes fits within the policy intent, so we propose clarifying the exclusion criteria on MSD’s website to make it clear it is international aircrew only that are covered by the exclusion.

Review scope of State Sector Organisations exclusion

37. State Sector Organisations (SSOs) are currently ineligible for the COVID Leave Schemes [CAB-20-MIN-0105 refers]. However, the Minister of Finance can grant exceptions to SSOs on a case-by-case basis allowing them to access the Schemes.⁵ Appendix 1 of this report sets out the current process by which SSOs can seek an exception to apply for the COVID Leave Schemes.

⁵ The following SSOs have already received an exception making them eligible for the COVID Leave Schemes (as well as the wage subsidy when it was available): Crown Research Institutes, Airways Corporation of New Zealand, Quotable Value, New Zealand Post, KiwiRail, Television New Zealand, and New Zealand Artificial Limb Service.

38. This approach to SSOs was decided at a time when the wage subsidy scheme, rather than the COVID Leave Schemes, was the primary economic support available and where numbers of workers self-isolating (in a non-lockdown scenario) was relatively low. In light of the wage subsidy scheme no longer being available and the anticipated high numbers of workers needing to self-isolate during the Omicron outbreak, officials are revisiting the rationale for excluding different categories of SSOs from the COVID Leave Schemes.
39. We note that agreement is being sought at Cabinet to delegate authority to joint Ministers (Finance, Social Development and Employment, and Workplace Relations and Safety) to make decisions on the eligibility of categories of SSOs (in particular, State-owned enterprises, and Mixed Ownership Model companies) for the COVID Leave Schemes [DEV-22-SUB-0014 refers].
40. Officials are monitoring the situation, including if there is an increase in requests from SSOs for an exception, and intend to provide further advice to Ministers on options to amend the current approach to SSOs if appropriate. At present we are aware that Te Papa and AssureQuality have approached their monitoring agencies and enquired about the process for seeking an exception (Ministry of Culture and Heritage, and the Treasury respectively).

Returning overseas travellers

41. MSD has recently received queries regarding the eligibility of overseas returnees for the LSS, in particular with the latest announcements regarding Reconnecting New Zealanders.
42. Under current settings, people who are required to enter Managed Isolation and Quarantine (MIQ) because they are returning to New Zealand from overseas or who are migrating to NZ are ineligible for LSS [CAB-20-MIN-0451]. This exclusion also applies to STAP [CAB-20-MIN-0531]. Officials have clarified that this exclusion applies to people self-isolating in places other than MIQ such as their home, in line with the recent Reconnecting New Zealanders announcements.
43. Officials are not proposing to change the above position for overseas returnees at this stage as we consider the policy rationale for their exclusion still stands. We also note that more people will be self-isolating at home, or in places other than MIQ in the future. We also understand the current intention is for support to be available for those who most need it through the Care in the Community model. However, we will monitor the situation as the border reopening process progresses and provide updated advice to Ministers on this exclusion if required.

Changes for workers with variable hours

44. Inequities have been identified for employees who regularly work more than their contractually agreed hours of work, in particular casual employees who may not have any agreed hours of work at all but who do work regularly.
45. The current LSS guidance allows employers to apply for the scheme on the basis of an employee's average hours worked over an appropriate reference period. This allows an employer to claim the rate of subsidy that best reflects the employee's actual hours of work (paid at \$359 for part-time employees and \$600 for full-time employees).

46. Current LSS settings allow employers to determine what to pay self-isolating employees based on the employment agreement alone. As a result an employer is permitted to claim LSS payments based on an employee's actual pattern of work, and by inference the employee's actual pay, but the employer does not – under the LSS declaration – have any obligation to pay the employee an amount that reflects this while they are self-isolating.
47. For example, where a worker's initial employment agreement is for 15 hours per week, but they have consistently worked 25 hours per week during the reference period for averaging, an employer in receipt of the LSS is only legally obliged to meet the wage associated with the employment agreement. In this case, that would equate to only 60% of that employee's actual average weekly wage. In the case of a casual employee who agrees to work on a day-to-day basis, and who has consistently worked an average of 15 hours per week, there is no clear legal obligation on the employer to pay the employee anything at all.
48. To address this issue, we propose to create an obligation for employers applying for the LSS to pay employees in these situations based on the greater of "average hours" or "agreed hours" – but only up to the maximum dollar value of the LSS payment. We propose that 'average hours' for this purpose be agreed by the employer and employee. We note that MSD provides employer guidance on this calculation⁶ for the purposes of determining the subsidy rate, which we do not propose to update.
49. This new rule would not override any existing legal obligation to pay employees' wages, and the LSS direction to use best endeavours to pay at least 80% of ordinary wages or salary would still apply. We consider that this new rule will go some way to mitigate the inequities for workers with variable hours.

Broader changes to employment relations

50. MBIE officials are providing further advice to the Minister for Workplace Relations and Safety on a range of options for broader employment relations changes to address the challenges that self-isolation may present for employers and employees. The objectives of these options will be to incentivise maintaining employment relationships during periods of self-isolation, incentivising payment to employees and uptake of the LSS, and adherence to public health guidelines. This may involve further changes to the LSS and its interaction with employment law. Officials will provide further advice on this matter in due course.

Implementation

51. Officials will reflect agreed policy changes and changes in public health guidance in updated declarations for the LSS and STAP respectively, and guidance on MSD's website three weeks following Ministerial decisions. Officials will also engage with other agencies to ensure communications are aligned.

⁶ If you worked variable hours (or your employee did), you can use an average to work out what rate to apply for. How to work it out:

- Use the average hours worked each week over the last 12 months.
- If they (or you) have been working less than a year, use the average hours worked over an 8 week period, unless another period of time would be more appropriate.
- For example, if the usual hours are better represented over the whole period of time they (or you) have been employed for, use this instead.

Additional Funding

52. As at 17 February 2022, there is \$141.4 million left in the Leave Support Scheme appropriation, which funds both the LSS and STAP.
53. Additional funding of \$157 million has been sought from Cabinet to top-up the appropriation with delegated authority to Joint Ministers to drawdown additional funding from the COVID Response and Recovery Fund (CRRF) as required [DEV-22-SUB-0014 refers].
54. There is significant uncertainty with our cost estimates for the COVID-19 Leave Schemes, in part due to the inherent uncertainty around the public health scenario and uptake of the Schemes. For the purposes of generating these costings, the Treasury has costed these Schemes assuming modest, escalating and peak case numbers. We have assumed that the following twelve weeks will be split evenly across the different case scenarios. We expect the balance of costs will remain evenly split between LSS and STAP with modest and escalating case numbers, however we expect that the majority of the cost would be for the LSS under peak case numbers due to the evolution of the testing strategy and isolating requirements.

	Estimated combined cost of COVID-19 Leave Schemes per week (LSS and STAP)	Estimated number of people self-isolating
Modest case numbers	\$5 million	15,000 – 30,000
Escalating case numbers	\$20 million	70,000 – 120,000
Peak case numbers	\$50 million	300,000 – 450,000

55. Officials will provide you with further advice if it looks likely that a further draw down from the CRRF or reprioritisation of wage subsidy appropriation funding is required, but consider this is unlikely to be needed within the next 12 weeks.

Appendix 1 – LSS / STAP exceptions process for State Sector Organisations

Step 1: If a State Sector Organisation (SSO) wants to seek an exception to apply for the LSS / STAP, the monitoring agency will work with the SSO to understand why this support is required, and what mitigations have already been put in place.

Step 2: If an exception is supported by the monitoring agency, it will work together with Treasury to provide joint advice to the Minister of Finance seeking a decision on granting an exception. Other relevant Ministers (e.g. shareholding Ministers) will be copied on the advice.

Step 3: The Minister of Finance's decision to grant an exception or not will be provided to MSD and the monitoring agency by the Treasury. The monitoring agency will then convey this outcome to the SSO.

Step 4: If an exception is granted, the SSO can apply for the LSS / STAP. MSD will follow the standard process once an application is received, and will only make payment if the requirements of the schemes are met.

Note:

1. This is based on the WSS exception process established in May 2020.
2. If an SSO applies to the LSS / STAP without first securing an exception from the Minister of Finance, MSD will reject the application and will direct the SSO to engage with its monitoring agency.